HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2011

Legal Provisions, Pratice and International Human Rights Standards with Public Opinion Survey

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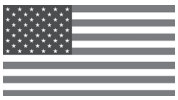

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Human Rights Centre University of Sarajevo

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PREFACE

The Human Rights Centre of Sarajevo University is publishing its second synthetic **Report on Human Rights in Bosnia and Herzegovina, which aims to illustrate and assess the level of the enjoyment of human rights**. This year special emphasis was placed on economic and social rights. The analysis was aimed at ascertaining to which extent domestic legislation is harmonized with the key international and regional standards established under the European Convention on Human Rights and Fundamental Freedoms of the Council of Europe, and the Covenant on Economic, Social and Cultural Rights of the United Nations. Due to limited funding, the part that refers to a set of civil and political rights was only changed and updated, while the detailed attention was paid to the set of economic and social rights.

The report consists of six parts: *Human Rights in legislation* – updates in the set of *civil and political rights,* which will be presented in the electronic version and will be read together with the 2008 Report, available at www.ljudskaprava.ba; *Economic and Social Rights; Human Rights in Practice; Awareness about Human Rights among citizens of Bosnia and Herzegovina* and *Special Topics*, for which the editors thought that are of significant importance for observation in 2011, and the *List of Signed and Ratified International Agreements that relate to Human Rights.*

Formally, the Reports follows the structure of the 2008 Report although the methodology was changed in part that relates to media monitoring (instead of daily media monitoring, specified was time sample and ten themes were selected). Although we have recognized the shortcomings of the questionnaire from 2008, we kept it in the same form and substance with the same variables, in order to carry out a comparative analysis between 2008 and 2011.

The editors have selected the key issues that have been observed, both from the standpoint of legal norms and implementation of the norm in practice that is by analyzing several phenomena in our society. Selected themes are:

- Problems regarding constitutional framework in BiH and its (non)implementation,

- Constitutional judicature in BiH – problems and perspectives,
- Public administration and Human Rights,
- Corruption in BiH – analysis,
- Hate crimes: regulations and practices in BiH,
- Right to privacy and personal data protection in BiH and
- Juveniles in conflict with the law.

It was necessary to gather all documents regarding human rights, when they were ratified and where they were published, and also to have an insight of all the obligations of Bosnia and Herzegovina when it comes to human rights.

We have also established the Human Rights Observatory in BiH available at www.ljudskaprava.ba containing over 90 reports and analysis that originally appeared in 2008 Report and also in 2011 Report.

The preparation of the Report and its electronic edition would have not been possible without financial assistance of the Embassy of the United States of America in Bosnia and Herzegovina and the Heinrich Böll Foundation Office for Bosnia and Herzegovina, while printing was supported by the Civil Rights Defenders.

The Human Rights Centre of Sarajevo University would like to thank all the authors that have contributed to the Report, the team that has prepared printing and publication of the Report, all friends and friends of the Human Rights Centre who with their advice and suggestions have helped in making the Report.

Editors

I
Human Rights in Legislation: Economic and Social Rights[1]

1. GENERAL

Bosnia and Herzegovina has ratified numerous international conventions dealing with the protection of economic and social rights: the International Covenant on Economic, Social and Cultural Rights (CESCR) with its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Child, and the Convention on the Rights of Persons with Disabilities with its Optional Protocol. In 2008, Bosnia and Herzegovina ratified the revised European Social Charter. In addition to the aforementioned documents, Bosnia and Herzegovina adopted 77 International Labour Organisation (ILO) Conventions including fundamental conventions such as:

- Convention no. 87 and 98 on Freedom of Association, Collective Bargaining and Right to Organise;
- Convention no. 29 and 105 concerning Elimination of Forced or Compulsory Labour;
- Convention no. 100 and 111 concerning Elimination of Discrimination in Respect of Employment and Occupation;
- Convention no. 138 and 182 on Eliminating Child Labour;
- Convention no. 177 on regulating Home Work.

Economic and social rights are guaranteed under the Constitution of Bosnia and Herzegovina, under Article II/3 of the Constitution, which states that the European Convention on Human Rights and Fundamental Freedoms directly applies in Bosnia and Herzegovina. Annex I of the Constitution contains a list of international agreements that apply in Bosnia and Herzegovina. Annex I of the BiH Constitution lists the International Covenant on Economic, Social and Cultural Rights, and conventions that contain a combination of civil, economic and social rights such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Child, and the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families.

[1] This chapter presents a selection of rights within the group of economic and social rights, and presents a revised and amended version of the publication *Economic and social rights in Bosnia and Herzegovina: Report* by G. Mlinarević and A. Lalović.

The Constitution of the Federation of Bosnia and Herzegovina, under Article II/A.2 provides a wide range of rights including economic and social rights such as the right to social protection, health care, nutrition, shelter, and the protection of minorities and vulnerable groups. The protection of economic, social, and cultural rights is included in more details in the Constitution of the Republika Srpska. So for example the Constitution of the Republika Srpska guarantees the right to health protection, the right to education, the right to work and freedom of work, the freedom of forming trade union organisations and associations, the right to strike, and the right to social security.[2] In order to ensure compliance with the Constitution of Bosnia and Herzegovina, Article 49 of the Constitution of the Republika Srpska was supplemented by items 1 through 3 of Amendment LVII emphasizing that in case there are differences between provisions of the Entity and State Constitutions, the provisions which are more favourable for the individual shall be applied.

The Brčko District of BiH, as a separate administrative unit, provides in its Status for the direct applicability and compliance with the existing laws and decisions of Bosnia and Herzegovina.[3] Article 8 of the Status defines the functions and authority of the District through which economic and social rights are provided.

The Law on the Prohibition of Discrimination[4] and the Law on Gender Equality[5] are significant in the context of economic, social, and cultural rights and in ensuring equal access to rights. The Law on the Prohibition of Discrimination establishes responsibilities and obligations for all levels of authority, legal persons and individuals exercising public powers to ensure protection, promotion, and creation of conditions for equal treatment.[6] In regards to economic, social and cultural rights, the importance of this Law is in the fact that it explicitly prohibits discrimination in the public and private sectors when it comes to employment, membership in professional organisations, education, training, housing, health and social protection etc.[7] The Law on Gender Equality in BiH is important for the realization of the Economic, Social and Cultural rights as it mandates gender equality in both public and private spheres, mandates protection from discrimination based on sex, and mandates education, economy, employment and labour, social and health protection regardless of marital and family status.

[2] Articles 37, 38, 39, 41, 42 and 43 of the Republika Srpska Constitution.

[3] Brčko District Status-consolidated text, Art.1 paragraph 4.

[4] Law on Prohibition of Discrimination, "Official Gazette BiH" No.: 59/09.

[5] Law on Gender Equality in Bosnia and Herzegovina-consolidated text, "Official Gazette BiH" No.: 32/10.

[6] Article 1 paragraph 2 of the Law on Prohibition of Discrimination, "Official Gazette BiH" No.: 59/09.

[7] Article 2 paragraph 2 and Article 6, ibidem.

2. RIGHT TO WORK

Article 6 of the CESCR:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be undertaken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 of the CESCR:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

a) remuneration which provides all workers, as a minimum, with:

(i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;

b) safe and healthy working conditions;

c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence;

d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

In the General Comment no. 18, the Committee on Economic, Social and Cultural Rights of the UN emphasized that the right to work implies the "right of every human being to decide freely to accept or choose work (...) not being forced in any way whatsoever to exercise or engage in employment and the right to a system of protection guaranteeing each worker access to employment[8] (...), as well as the right not to be unfairly deprived of employment.[9] In paragraph 7 of the Comment, the Committee emphasizes that work must be *decent work* (which is in line with provisions of the International Labour Organisation conventions). This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration and work that allows workers to support themselves and their families.[10] In paragraph 12 of the Comment, the

[8] Paragraph 6, General Comment No. 18, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4415453b4&page=search, (accessed on 01.12.2011).

[9] Paragraph 6, General Comment No. 18

[10] Paragraph 7, General Comment No. 18

Committee emphasizes obligations of the State parties and essential elements necessary in order to exercise the right to work at all levels: (1) availability – the existence of specialized services for employment, (2) accessibility – the labour market should be open to everyone under the jurisdiction of the State parties, (3) acceptability and quality – the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.[11]

In the General Comment no. 18, paragraph 31, the Committee on Economic, Social and Cultural Rights of the UN specifies minimum and core obligations of the State parties in terms of ensuring the right to work and ensuring non-discrimination and equal protection in employment. In that context, the State party is obliged to ensure the right of access to employment avoiding measures that would result in discrimination and unequal treatment in the private and public sectors especially for individuals belonging to disadvantaged and marginalized groups. Also, the State party is obliged to adopt and implement a national employment strategy and plan of action.[12]

In the context of ensuring minimal and core obligations, Bosnia and Herzegovina still has not fulfilled them. In terms of ensuring the right to work, Bosnia and Herzegovina does not even meet minimum standards in implementation although the legislative framework is quite acceptable, but only on paper.

As already mentioned in the general section on economic, social and cultural rights, Bosnia and Herzegovina has ratified the revised European Social Charter but with certain reservations. Bosnia and Herzegovina did not ratify Article 3 and it has not ratified a considerable part of the Article 4 (only ratified paragraph 3) of the first 8 Articles of the Charter that concern the right to work. In so doing, Bosnia and Herzegovina recognized only one part of the right to work, the part that refers to right to employment, while leaving out the part that refers to right to dignity of employment. By refusing to recognize the right to equal pay for work of equal value to the workers, the right of workers to a fair remuneration that would ensure a decent standard of living for themselves and their families, the right of workers to an increased rate of remuneration for overtime work, and the right of all workers to a reasonable period of notice for termination of employment and to regulate wage deductions, Bosnia and Herzegovina has reduced its role as a protector of rights.

2.1. Legal framework regarding the right to work

The introduction part highlighted the importance of the Law on Prohibiting Discrimination and the Law on Gender Equality in BiH in relation to achieving equal

[11] Paragraph 12, General Comment No. 18

[12] Paragraph 31, General Comment No. 18

access to economic and social rights, and thus the right to work. Part five of the Law on Gender Equality in BiH[13] directly relates to employment, work, and access to all types of resources. Article 13 of the Law provides a comprehensive list of practices that are considered discriminatory on the basis of gender in the employment context, and requires, for example: equal wages and benefits for work of equal value[14]; promotion at work on equal terms[15]; education, training and professional qualifications[16]; equal status regardless of gender or marital status when organising work; and equal allocation of tasks or other conditions of work or dismissal from work.[17] The same Article prohibits different treatment on the grounds of pregnancy, childbirth, or exercising right to maternity leave, different treatment of men and women in regard to deciding how to take up maternity leave following the birth of a child,[18] or any unfavourable treatment of a parent or guardian in balancing their commitments in family and professional life.[19] The Law requires that employers undertake effective measures to prevent harassment, sexual harassment and gender discrimination at work and in employment.[20] The Law stipulates alignment of all general and specific collective agreements within the provisions of this Law, and emphasizes the important role of the trade unions and associations in ensuring equal protection of the right to work regardless of the gender.[21]

The legislation in the field of labour relations is almost exclusively within the competency of the Entities and the Brčko District. Exceptions arise for issues related to immigration and refugees,[22] and the regulation of labour relations for employees of the institutions of Bosnia and Herzegovina. At the state level, employment is regulated by the Law on the Work in the Institutions of Bosnia and Herzegovina[23] and the Law on Civil Service in the Institutions of Bosnia and Herzegovina.[24] Article 6 of the Law on the Work in the Institutions of Bosnia and Herzegovina and Article 23 of the Law

13 Respectively Articles 12-15

14 Line (a), Article 13, Law on Gender Equality consolidated text, "Official Gazette BiH" No.: 32/10

15 Line (b), Article 13, ibidem.

16 Line (c), Article 13, ibidem.

17 Line (g), Article 13, ibidem.

18 Line (e), Article 13, ibidem.

19 Line (f), Article 13, ibidem.

20 Paragraph (2), Article 13, ibidem.

21 Article 14, ibidem.

22 Article III/1.f, of the Constitution of BiH.

23 "Official Gazette BiH" No.: 26/04, 7/05, 48/05, 50/08 and 60/10.

24 "Official Gazette BiH" No.: 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09 and 8/10.

on Civil Service in the Institutions of Bosnia and Herzegovina prohibit discrimination in employment on various grounds. Both laws directly prohibit discrimination based on physical disabilities. The Law on Civil Service in the Institutions of Bosnia and Herzegovina prohibits age discrimination[25]. The Law on the Work in the Institutions of Bosnia and Herzegovina stipulates that only a person who is over 18 years of age can be employed in the Institutions of Bosnia and Herzegovina[26], and it specifically prohibits employers from asking a woman that is competing for employment or who is already hired to take a pregnancy test. Also, the employer is forbidden to refuse to employ a woman because of pregnancy or to terminate her employment if she is pregnant.[27] This Law provides for a 30 minute break, a 12 hour rest between two consecutive days, a minimum 24 hours rest per week, and a minimum of 18 days of paid leave.[28] The Law governs the issue of safety and the right of an employee to refuse to work at his/her post or perform regular duties if under imminent risk to life or health because protective and safety measures have not been undertaken.[29]

Amendments to the Law on the Work in the Institutions of Bosnia and Herzegovina from 2010 introduced parts that deal exclusively with prohibiting discrimination.[30] These amendments introduced new definitions of direct and indirect discrimination and enumerated areas where discrimination is prohibited (employment conditions, selection of candidates for a specific post, work conditions and all rights from the employment, education, training and specialization, career advancement and termination of employment). Furthermore, these amendments introduced prohibitions against harassment and sexual harassment, gender based violence and systematic abuse of employees by employers and other employees (mobbing). With these changes and amendments all discriminatory employment contracts were nullified and employers were made responsible for implementation of effective measures in preventing gender based violence, discrimination, harassment, sexual harassment in work or in relation to work, and mobbing. However, it is necessary to highlight a problem with the non-discrimination restrictions introduced under Article 86.b. While the provisions of providing protection to certain categories of employees can be interpreted as positive insofar as they create better working conditions for vulnerable

[25] Article 10 paragraph 1 line a) of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, "Official Gazette BiH", no. 26/04, 7/05, 48/05, 50/08 and 60/10.

[26] Article 14 paragraph 2.

[27] Article 34 of the Law on the Work in the Institutions of BiH, "Official Gazette BiH" No.: 26/04, 7/05, 48/05, 50/08 and 60/10.

[28] Articles 20-31 of the Law on the Work in the Institutions of BiH, "Official Gazette BiH" No.: 26/04, 7/05, 48/05, 50/08 and 60/10.

[29] Articles 32 and 33 of the Law on the Work in the Institutions of BiH, "Official Gazette BiH" No.: 26/04, 7/05, 48/05, 50/08 and 60/10.

[30] Entirely new section c and six new Articles (86.a – 86.f).

categories (e.g. better technically equipped offices for disabled peoples), the part allowing "distinction in relation to the nature of work and conditions under which this work is carried out" is problematic and could be abused. Finally, it should be noted that special attention is paid to gender equality under Article 86.d, which in addition to equal treatment allows temporary measures of affirmative action to eliminate existing inequalities. With the amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina[31], discrimination, gender based violence or sexual orientation, harassment and sexual harassment, as well as any other form of discrimination are considered a violation of duty.[32]

Another law that governs the right to work at the state level is the Law on Movement and Residence of Foreigners and Asylum[33] which, inter alia, regulates the right to work for foreigners given residence permits for humanitarian reasons,[34] equalizing the right to work for foreigners with permanent residence in BiH, foreigners that have been granted international protection in BiH, and foreigners with approved temporary protection with the right to work as citizens of BiH.[35] Article 11 of the Law sets out the procedures for obtaining a work permit in cases when a foreigner intends to reside in BiH for the purpose of paid work (however the actual criteria for issuing work permits is provided under entity laws).

The Law on Civil Service in the Federation of Bosnia and Herzegovina[36] contains a provision prohibiting discrimination based on ethnic origin, social origin, entity citizenship, permanent residence, religion, political or other opinion, sex, colour, birth, marital status, age, property, disability, or other status equally in the treatment of civil servants and employment policy. The Law on Administrative Service in the Republika Srpska[37] contains a provision prohibiting discrimination on the grounds of political affiliation, ethnic origin, permanent residence, age, disability sex, and religion, but only in regard to civil servants.[38] The Law on Civil Service in the Administration of the Brčko District BiH[39] provides for equal treatment for civil servants. Article 26

31 Adopted in April 2009.

32 Article 24 of the Law on changes and amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina, "Official Gazette BiH" No.: 43/09.

33 "Official Gazette BiH" number: 36/08.

34 Article 54 (3), Law on Movement and Residence of Foreigners and Asylum, "Official Gazette BiH" No.: 36/08.

35 Article 85, ibidem.

36 "Official Gazette FBiH" No.: 29/03, 23/04, 39/04, 54/04, 67/05 and 8/06, changes and amendments from 20.12.2011, on the course of writing this report they were not published in the Official Gazette of FBiH.

37 "Official Gazette RS" No.: 16/02, 62/02, 38/03, 42/04, 49/06 and 20/07.

38 Article 85 of the Law on Civil Service in the Republika Srpska.

39 "Official Gazette of Brčko District BiH" No.: 28/06, 29/06, 19/07, 2/08, 9/08, 44/08 and 25/09.

paragraph 2 provides for the possibility of some affirmative action during the hiring process for the civil service. Also, the Law provides for the protection of women and maternity, and gives persons that are 70% disabled the right to an additional two days of annual leave.

As for the Entity laws governing labour relations and access to the right to work, apart from civil service, there are the following laws: the Labour Law of the Federation of BiH[40] (the FBiH Government on its 30th session from 22.12.2011 adopted the draft of the new Labour Law of FBiH and forwarded it to parliamentary procedure[41]), the Law on Employing Foreigners in the Federation of BiH,[42] the Law on Mediation in Employment and Social Security of Unemployed Persons in the Federation of BiH,[43] the Law on Vocational Rehabilitation, Training and Employment of Persons with Disability in the Federation of BiH, the[44] Labour Law of RS,[45] the Law on Mediation in Employment and Rights during Unemployment of RS,[46] the Law on Employing Foreigners and persons without citizenship in RS,[47] the Law on Vocational Rehabilitation, Training and Employment of Persons with Disability in RS,[48] the Law on Safety at Work in RS,[49] the Labour Law of the Brčko District BiH,[50] the Law on Employment and Rights during Unemployment in the Brčko District BiH,[51] the Law on Employing Foreigners in the Brčko District BiH,[52] and the Law on Safety at Work.[53] In the Federation of BiH the Law on Safety at Work from 1990 is still in force[54] although the Government of the Federation of BiH drafted a new Law on Health and Safety at Work and forwarded it to parliamentary procedure in 2011 where the issues of safety at work are aligned with the recommendations from the International Labour Organisation and Framework Directive of the EEC in terms of using the concept of health and safety at work.[55]

40 "Official Gazette of the Federation BiH" number: 43/99, 32/00, 29/03

41 See: http://www.fbihvlada.gov.ba/bosanski/sjednica.php?sjed_id=247&col=sjed_saopcenje (accessed on 27.12.2011).

42 "Official Gazette of the Federation BiH" No.: 8/99.

43 "Official Gazette of the Federation BiH" No.: 55/00, 41/01, 22/05 and 9/08.

44 "Official Gazette of the Federation BiH" No.: 9/10.

45 "Official Gazette of the RS" No.: 55/07.

46 "Official Gazette of the RS" No.: 30/10.

47 "Official Gazette of the RS" No.: 24/09.

48 "Official Gazette of the RS" No.: 54/09.

49 "Official Gazette of the RS" No.: 1/08 and 13/10.

50 "Official Gazette of Brčko District BiH" No.: 19/06, 19/07 and 25/08.

51 "Official Gazette of Brčko District BiH" No.: 33/04, 19/07 and 25/08.

52 "Official Gazette of Brčko District BiH" No.: 15/09, 19/09 and 20/10.

53 "Official Gazette of Brčko District BiH" No.: 31/05 and 35/05.

54 "Official Gazette SRBiH" No.: 22/90.

55 EU Directive 89/391 – Occupational Safety and Health Framework Directive

All three labour laws contain provisions that prohibit discrimination of persons seeking employment and employees.[56] Although there are no major differences in the three laws regarding the basis for the prohibition of discrimination, only the Labour Law of the Brčko District BiH specifically lists sexual/gender orientation as a ground for the prohibition of discrimination. All three laws provide for protection of women and maternity, and prohibit employers from refusing to employ a woman or terminate her contract because she is pregnant.[57]

All three laws related to employment stipulate a prohibition of discrimination during the hiring process, although the Law on Mediation in Employment and Rights during Unemployment of the RS, and the Law on Employment and Rights during Unemployment in the Brčko District BiH leave space for a certain type of the affirmative action. For example, the Law on Mediation in Employment and Rights during Unemployment of the RS allows for the establishment of special measures to promote gender equality and for the elimination of existing inequality, and gender protection based on the biological determination.[58] The Law on Employment and Rights during Unemployment in the Brčko District BiH provides that special protection of certain categories of people (disabled, under-aged, elderly) does not contradict the principle of non-discrimination.[59]

The Law on Vocational Rehabilitation, Training and Employment of Persons with Disability in the Federation of BiH and the Law on Vocational Rehabilitation, Training and Employment of People with Disability in the RS are laws that directly relate to the right to work of vulnerable and marginalized groups of people. The law in the Federation BiH aims to increase (from 31 December 2009 at least one person with a disability for every 39 employees, by 31 December 2013 at least one person with a disability for every 16 employees) the employment of persons with disabilities in public sector.[60] If the institutions fail to meet these obligations they must, on a monthly basis when paying salaries, calculate and pay into the Fund 25% of the average monthly wage in the Federation for any person with disabilities who they were obliged to employ in order to encourage rehabilitation and employment of persons with disabilities.[61] Also, economic and other legal entities established in accordance with the law, not required

[56] Article 5 of the Labour Law FBiH, Article 5 of the Labour Law RS and Article 4 of the Labour Law BD BiH

[57] Article 77 of the Labour Law of RS, Article 53 of the Labour Law FBiH and Article 43 of the Labour Law of BD BiH.

[58] Pursuant to the Article 5, paragraph 3, line b).

[59] Article 5 paragraph 2.

[60] Article 18 of the Law on Vocational Rehabilitation, Training and Employing Persons with Disability in the Federation BiH, "Official Gazette of the Federation BiH" No.: 9/10.

[61] Ibidem.

to employ persons with disabilities, may employ such persons to appropriate tasks and on that basis make certain benefits and privileges in accordance with the law.[62] These legal entities are obliged, on a monthly basis when paying salaries, to pay to the Fund a special sum of money amounting to 0.5% of the paid gross salary of all employees, except when employing persons with disabilities.[63] Also, this Law provides for the establishment of companies for employing people with disabilities, sheltered workshops, work centres, as well as self-employment and employment in independent activities, and further provides legal exemptions and benefits.[64] As for the Law on Vocational Rehabilitation, Training and Employment of People with Disability in the RS, it is interesting to note that amongst other things, the law prohibits discrimination based on gender and sexual orientation, thus leaving space for affirmative action in relation to gender as basis for different treatment.[65] The Article 16 of the Law sets out a quota (progressive realization) for employing persons with disabilities in the state administration, judiciary and other state organs, organs of local governance, public agencies, institutions and funds, and in companies that are owned or majority-owned by the Republika Srpska.

Although the laws governing rights related to work at all levels in BiH are fairly consistent with ILO conventions which have been ratified by BiH and which prohibit discrimination on different grounds when it comes to recruitment, employment regulation, application of equal pay for equal work, permitting career advancement, access to resources etc., the question of whether the right to work can be enjoyed in Bosnia and Herzegovina is being asked. In regard to that question, we should mention the fact that the labour laws in both entities and the Brčko District foresee a possibility of employing persons older than 15, with 40 hours of work per week (with a possibility for another maximum 10 hours of overtime agreed with the employer), a minimum of 12 consecutive hours of rest (with the exception of seasonal works where the minimum is 10 hours) and a minimum of 18 days of paid leave.[66] Besides the fact that the law permits employment for persons under the age of 16, other legal provisions appear to be in compliance with the minimum core obligations of respecting the right to work as defined by the UN Committee for Economic, Social and Cultural Rights. However, as the ILO Committee already observed in consideration of Conventions number 14 and 106 in regards to weekly rest in industry and trade, the implementation of the

62 Article 19, ibidem.

63 Ibidem.

64 Articles 21-36, ibidem.

65 Article 4 of the Law on Vocational Rehabilitation, Training and Employing Persons with Disability in RS – consolidated text.

66 Articles 40-48, and Article 57 of the Labour Law of RS, Articles 29-36, and Article 41 of the Labour Law of FBiH and Articles 22-28, and Article 32 of the Labour Law of BD BiH.

aforementioned provisions remains very questionable, especially because of the large gray economy. This problem was also observed in the report of "Initiative and Civic Action" (ICVA), in which the data received from the trade unions highlighted the problem that many employees (especially in services) work 12 hour shifts and are doing a lot more than stipulated in employment contracts while getting paid only for an 8 hour shift.[67]

According to the latest information from the Labour and Employment Agency of Bosnia and Herzegovina, the number of registered unemployed persons in Bosnia and Herzegovina on 30 November 2011 was 532.442, an increase of 13.424 from November 2010.[68] While the trend of registered unemployment started to decrease during 2007 and 2008, in the period from 2009 to 2011 it started to grow again. This trend is present in both Entities and the Brčko District BiH. Current unemployment (by 30 November 2011) in the Federation of BiH was 368.922, in the Republika Srpska 151.576 and in the Brčko District 11.944).[69] There is a significant black labour market in BiH. The labour market in BiH is also marred by low job creation rates, redistribution of jobs, mobility, and work force flexibility, discrimination on the labour market, etc. Employment is one of the most important segments on the right to work but not the only one. In order to assess the real situation in Bosnia and Herzegovina in terms of exercising right to work we will review other segments of the right to work.

Political instability and slow implementation of economic reforms in Bosnia and Herzegovina significantly contribute to poor exercise of the right to work, as well as poor labour inspection capacities in BiH. Additional problems in terms of realization of the right to work is the application of a provision related to termination of employment due to economic, technical or organisational reasons regulated under Article 87 of the Labour Law in the Federation of BiH and Article 126 of the Labour Law of RS. These provisions state that an employer may terminate the employment contract within the prescribed cancellation period provided that:

1. such termination is justified due to economic, technical or organisation reasons,
2. the employee is not able to perform his/her duties deriving from employment.

The main problem regarding the application of these provisions is the fact that these provisions are broadly defined. Laws and general collective agreements at the Entity level have not precisely regulated this issue, and the provisions are not clearly

[67] ICVA, *Implementation of the European Social Charter through legislation and practice in BiH standards for passing the law on Financial Social Assistance*, 2010. p. 11-12, ibidem.

[68] Labour and Employment Agency of Bosnia and Herzegovina, *Labour market statistics,* available at http://arz.gov.ba/bs/statistika-ba, (accessed on 30.12.2011).

[69] Labour and Employment Agency of Bosnia and Herzegovina *Table overview*, available at http://arz.gov.ba/bs/tabelarni-pregled, (accessed on 30.12.2011)

defined. Finally, the result of these omissions created space for abuse by employers. Another major problem for workers relates to the payment of earned but unpaid wages. Article 68 of the Labour Law of the FBiH and Article 90 of the Labour Law of the RS stipulate that an employee is entitled to a salary that is determined in Collective agreements, Rulebooks, and Employment contracts.

There are many other questions that can be raised in the context of labour rights. We will mention just a few of them: status of the workers on hold, severance pay, functional work of the Committees for implementation of Article 143 in the Federation of BiH, respectively Article 152 in the Republika Srpska, the black labour market, lack of strong trade unions that would be able to protect the interest of its members, insufficient capacities of the labour inspections in BiH as mechanisms for detecting and protecting workers rights.

In order for the right to work to be realized for all citizens of Bosnia and Herzegovina, reform of the labour market and social policy, strengthening of institutions and protection mechanisms are needed. It is necessary to promote already adopted legislation so that the employers and the employees learn about their rights and obligations. It is necessary to ensure the exchange of good practices and experiences regarding employment opportunities for persons that belong to threatened, marginalized, and vulnerable groups, to move employers through amended tax legislation, and to provide tax incentives for employers who respect workers' rights. It is important to publicly promote positive employment examples.

3. RIGHT TO ASSOCIATE IN TRADE UNIONS AND THE RIGHT TO STRIKE

Article 8 of the CESCR:

1. *The States Parties to the present Covenant undertake to ensure:*
   a) *The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
   b) *The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*
   c) *The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.*

The ILO Committee devoted a lot of attention to the right to strike as one of the fundamental rights of workers, thus Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) prohibited derogation by Member States from their obligations under this Convention.[70] Also, in the Digest of decisions and principles of the Freedom of Association the ILO offered its interpretation of the right to strike, mainly linking it to the right of workers to organize:

522. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

523. The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

576. The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).[71]

Having in mind that ILO is an organisation that operates on a tripartite dialogue between governments, employers and employees, there is still lack of consensus on defining the right to strike.

Of the four ILO Conventions dealing with the right of workers and employers to form and join the trade unions, Bosnia and Herzegovina has so far ratified three Conventions (No. 87, 98 and 135). In terms of the application of the ratified conventions, the ILO Committee of Experts has sent 17 individual observations. Also, in connection to the application of ILO Convention No. 87, three recommendations were issued at International Labour Conferences. So far, the ILO has released more observations in terms of the Convention No. 78, Freedom of Association and Protection of the Right to Organize.

As for Convention No. 98, the Right to Organise and Collective Bargaining

70 Article 8 of the Convention

71 ILO, Committee on Freedom of Association, Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) edition, 2006, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf, (accessed on 30.12.2011)

Convention, the Committee of Experts so far released five observations. In the foreground were questions related to the lack of data, thus the Committee requested the Government to provide statistical data on the number and coverage of collective agreements that have been concluded throughout the territory.[72] The importance of encouraging and promoting the development of voluntary negotiations between employers' and workers' organizations was reiterated, and Bosnia and Herzegovina was repeatedly called to indicate any measures taken in this regard. However, besides these general observations there were some specific concerns[73] based on the observations from the Confederation of Independent Trade Unions of Bosnia and Herzegovina and the Confederation of Trade Union of the Republika Srpska as to various forms of pressure and intimidation in recently established private companies to prevent workers from establishing trade unions. The Committee noted that the Government indicated in its report that they could not either influence or ensure the establishment of trade unions in the private sector. Further, it is important to highlight that entire labour laws in the territory of Bosnia and Herzegovina are not in line with the Convention on the Right to Organise and Collective Bargaining. Moreover, the Committee emphasized the necessity of establishing some forms of legislation at the state level, particularly concerning the adoption of the law on Economic and Social Council which would further improve the situation with voluntary negotiations.

In terms of the Convention No. 135, the Worker's Representatives Convention, the ILO Committee of Experts published its first observation/remark in 2010.[74] In this observation/remark the Committee focused on listing provisions on the protection of the worker's representatives that Bosnia and Herzegovina enlisted in its report, and requested a translation of the relevant regulation in order to assess their compliance with the Convention. The Committee stressed the fact that through communication with the Confederation of Independent Trade Unions of BiH and the Confederation

[72] see e.g. ILO, CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Bosnia and Herzegovina (ratification: 1993) Published: 2010, available at http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=11420&chapter=6&query=Bosnia%40ref&highlight=&querytype=bool, (accessed on 30.12.2011), all individual observations can be accessed through http://www.ilo.org/ilolex/cgi-lex/commentplus.pl?Bosnia@ref.

[73] See Report of the Committee of Experts on the Application of Conventions and Recommendations, Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Bosnia and Herzegovina (ratification: 1993), Direct request , CEACR 2009/80th Session, available at http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm? hdroff=1&ctry=0338&year=2009&type=R&conv=C098&lang=EN,
(accessed 30.12.2011)

[74] ILO, CEACR: Individual Observation concerning Workers' Representatives Convention, 1971 (No. 135) Bosnia and Herzegovina (ratification: 1993) Published: 2010, available at http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=11741&chapter=6&query=Bosnia%40ref&highlight=&querytype=bool, (accessed on 30.12.2011)

of Trade Unions of the Republika Srpska they learned about dismissals of trade union representatives without the mandatory approval from the Federal Ministry of Labour. Furthermore, from the same sources the Committee notes that it was aware that although the Labour Law of the Federation of BiH contained provisions on the prohibition of discrimination, it was impossible to prove the breaches of these provisions in court because discrimination often occurred in a hidden manner. The Committee requested the Government of the Federation to comment on the provisions outlined by the trade union. Furthermore, the Committee noted the prohibition of discrimination on the basis of membership and activities in the trade unions under the Labour Law of the Brčko District, and it indicated that the legislation of the Brčko District contains no sanctions against employers for acts of anti-union discrimination. In regard to this it was requested that Bosnia and Herzegovina clarify whether there is or is not protection against acts of anti-union discrimination.

3.1. Legislation of Bosnia and Herzegovina in regard to the right to associate in trade unions and the right to strike

As already mentioned, the right to associate in trade unions and the right to strike is recognized under Article 11 of the European Convention on Human Rights and Fundamental Freedoms. Given that the European Convention is directly applied in Bosnia and Herzegovina and the catalogue of rights enumerated in the Article II/3 of the BiH Constitution directly follows the catalogue of rights from the European Convention, we can conclude that the freedom of peaceful assembly and freedom of association in Article II/3(i) with others includes the right to associate in trade unions and right to strike.

As far as national legislation is concerned, Article 2 of the Law on the Prohibition of Discrimination[75] is a basis for the prohibition of discrimination and explicitly prohibits discrimination based on membership in a trade union or any other association. Paragraph 2 emphasizes that the prohibition of discrimination applies to all public bodies, all natural and legal persons, in the public and private sectors, and in all spheres, such as in employment and membership in professional organisations. As for the Law on Gender Equality of BiH[76] it does not directly list prohibition of discrimination on these grounds, but it emphasizes the particular role of trade unions and associations of employers in ensuring equal protection of the right to work and equal conditions of recruitment, and also in ensuring that there is no direct or indirect discrimination on the grounds of gender among their members.[77]

[75] Law on Prohibition of Discrimination in Bosnia and Herzegovina, "Official Gazette" No.: 59/09.

[76] Law on Gender Equality in Bosnia and Herzegovina-consolidated text, "Official Gazette BiH" No.: 32/10.

[77] Article 14.2 of the Law on Gender Equality in BiH, ibidem.

At the state level, in regard to ensuring the right to associate in trade unions and the right to strike there is also the Law on Work in the Institutions of BiH which admittedly under Article 6 does not directly mention the prohibition of discrimination on the grounds of associating in trade unions. However, Articles 3 through 5 regulate the rights of employees who, at their own discretion, organise themselves in a trade union or become a member of one, and prohibits placing an employee in any disadvantaged position because of membership in a trade union. Trade unions can be established without any prior approval, and any of its lawful activity cannot be permanently or temporarily banned. Employers are prohibited from interfering with the establishment, functioning or managing of the trade union, as well as controlling the trade unions through legal aid or advocacy. Also, this Law defines representative trade unions,[78] which is a trade union that is registered at the level of Bosnia and Herzegovina and confirmed by the BiH Council of Ministers upon a proposal from the Ministry of Justice of Bosnia and Herzegovina. The ILO Committee led discussions with regard to potential problems with the registration and authorization of trade unions applying Convention 98. In some areas only the representative trade union is allowed to act on behalf of the employees, which is problematic. Once confirmed, the representative trade union has the right to: be consulted before adopting general acts concerning the employment status and salaries of its members; observe if the employer is acting in accordance with regulation that protects labour relations; report any violation of regulations to governing inspector; and assist and represent employees, upon their request, in cases of violations of their rights, disciplinary proceedings or proceedings related to damage compensation. Also, the representative trade union is the one that can organise and carry out strikes in order to protect and promote the economic and social interests of the employees.

The Law on Work in the Institutions of BiH regulates the right to strike. Any representative trade union can implement a strike in accordance with the law and other regulations in force, in order to protect and promote the economic and social interests of the employees.[79] Organisation of a strike is permitted provided that the disputable issue was referred to the employer and that 15 days from referring the issue have passed, that from that day disputable issue was not resolved and that the employer was notified in writing, 48 hours in advance, of the strike. Hereby we should point out that it is unclear to which Law on Strike this provision refers to since there is no such a law at the state level. The Law sets out some exceptions to permitting participation in a strike in cases when an employee has reached an agreement on resolving the disputable issue by arbitration, and also if, after consultations with representative trade unions, employer assigns an employee to primary or maintenance service duties

[78] Articles from 92 through 94

[79] Articles 95 through 97

(which potentially, though not necessarily, can be problematic). In the case that an employee acts in contravention to these exceptions or if during a strike the employee intentionally or with negligence causes damage to the employer, such action shall be a serious violation of official duty and therefore could result in the termination of the employment contract without a notice period, and the employee shall be required to pay for the damage in the entire amount. However, if the employee participates in a strike in accordance with the provisions of this Law then it shall not constitute a violation of official duty, nor should he/she be put in a less favourable position than other employees for organising or participating in a strike. Also, this Law prohibits forcing employees to participate in a strike. Finally, it should be noted that Article 102 of the Law imposes a fine for an employer in cases where he/she hinders the right to strike or puts an employee in a less favourable position for organising or participating in a strike. However, it should be noted that certain amounts of these penalties, even though increased by amendments in 2010, are rather symbolic (from 800 to 3.000 KM) which raises questions concerning the effectiveness of this provision.

The Law on Work in the Institutions of BiH also regulates the signing of collective agreements in a written contract between an employee and employer.[80] Provided that they have authorisation from each trade union and employer a trade union or many trade unions may negotiate on behalf of the employee, while on behalf of the employer, one or more employers or association of employers may negotiate.

Also, according to the Law on Civil Service in the Institutions of Bosnia and Herzegovina[81] civil servants have a right to form and to join, but are not obliged to join, a trade union or a professional association in accordance with the law, and are entitled to go on strike in accordance with the law. Again, it is not quite clear to which law these provisions refer, and which law regulates the method of associating with trade unions and how to organise a strike of civil servants in the BiH institutions.

With regard to civil servants at the Entity level and the Brčko District, the right to form and join trade unions and the right to strike is regulated under the Law on Civil Service in the Federation of Bosnia and Herzegovina,[82] the Law on Civil Service in the Republika Srpska[83] and the Law on Civil Service in the Brčko District.[84] As is the case with the Law on Civil Service in the Institutions of Bosnia and Herzegovina, the Law

80 Articles 90 and 91

81 Article 15, paragraph 1 lines h) and i), of the Law on Civil Service in the Institutions of BiH, "Official Gazette BiH" No.: 12/02, 19/02, 8/03, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 50/08, 43/09 and 8/10.

82 "Official Gazette of the FBiH" No.: 29/03, 23/04, 39/04, 54/04, 67/05 and 8/06, changes and amendments from 20.12.2011, in the course of writing this report were not published in the Official Gazette of the FBiH.

83 "Official Gazette of the RS" No.: 16/02, 62/02, 38/03, 42/04, 49/06 and 20/07.

84 "Official Gazette of Brčko District" No.: 28/06, 29/06, 19/07, 2/08, 9/08, 44/08 and 25/09.

on Civil Service in the Federation of Bosnia and Herzegovina does not regulate how strikes can be organised. Specifically, in the same way that is provided under the Law on Civil Service in the Institutions of Bosnia and Herzegovina, the Law on Civil Service in the Federation of BiH recognizes the right of civil servants to join trade unions or professional associations in accordance with the law, and to go on strike in accordance with the law.[85] Of course, without any indication as to which law these provisions relate, the Law on Strike in the Federation of Bosnia and Herzegovina[86]— besides strikes in the Army and members of the Ministry of Interior—directly exclude the members of the administrative agencies and administrative services in the Federation of Bosnia and Herzegovina. The ILO pointed out this problem in the last *Direct request* in relation to ILO Convention No. 87. In the Republika Srpska, the Law on Civil Service in the Republika Srpska in Article 85 paragraph 1 items 7 and 8 recognizes these rights in the same way as two aforementioned laws, in general provisions that recognize the right to strike and right to join and form trade unions in accordance with the law. Under the Law on Strike[87] in the Republika Srpska there are no restrictions or exclusions of members of any department or body in organizing a strike. The right of civil servants to form and join trade unions and to strike in the Brčko District is regulated by the Law on Civil Service in the Brčko District,[88] while the way of organizing strikes in the Brčko District administrative bodies is regulated under the Law on Strike of the Brčko District.[89]

In terms of regulating the right to join trade unions and the right to strike at the entity levels and in the Brčko District it is important to refer to the Labour Law in the Federation of BiH,[90] the Law on Council of Employees of the Federation of Bosnia and Herzegovina,[91] the Law on Strike of the Federation of BiH,[92] the Labour Law of the Republika Srpska,[93] the Law on Strike of the Republika Srpska,[94] the Law on Council of Employees of the Republika Srpska,[95] the Law on Economic-Social Council of the

85 Article 18 paragraph 1 lines h) and i).

86 "Official Gazette of the Federation of BiH" No.: 14/00.

87 "Official Gazette of the RS" No.: 111/08.

88 Article 7 paragraph 1 lines f) and l).

89 "Official Gazette BD" No.: 3/06.

90 "Official Gazette of the Federation BiH" No.: 43/99, 32/00, 29/03.

91 "Official Gazette of the Federation BiH" No.: 38/04.

92 "Official Gazette of the Federation BiH" No.: 14/00.

93 "Official Gazette of the RS" No.: 55/07.

94 "Official Gazette of the RS" No.: 111/08.

95 "Official Gazette of the RS" No.: 26/01.

Republika Srpska,[96] the Labour Law of the Brčko District-consolidated text[97] and the Law on Strike of the Brčko District.[98]

The provisions prohibiting discrimination in the Labour Law in the Federation of Bosnia and Herzegovina,[99] the Labour Law in the Republika Srpska[100] and the Labour Law in the Brčko District[101] directly prohibit discrimination based on membership or non-membership in trade unions. The right to join trade unions as set out in the Labour Law in the Federation of Bosnia and Herzegovina,[102] the Labour Law in the Republika Srpska,[103] and the Labour Law in Brčko District[104] is almost identical to the provision in the Law on Work in the Institutions of Bosnia and Herzegovina. According to these provisions the employees are entitled, at their own discretion, to organise a trade union, and become members of it. Also, employers are entitled, at their own discretion, to form employers' associations and become members of it. An employee i.e. employer may not be discriminated against based on membership or non-membership in the trade union or membership in the employer' association. Trade unions and employers' associations may be founded without any prior approval, and their activities may not be forbidden either permanently or temporarily. Employers or employers' associations are prohibited from interfering with the establishment, functioning, or administration of a trade union, as well as controlling the trade unions through legal aid or advocacy. Also, trade unions are prohibited from interfering with the establishment, functioning, or administration of the employers' associations. In this sense, the provisions of the Labour Law in the Federation of Bosnia and Herzegovina[105] and the Labour Law of the Republika Srpska,[106] that prohibit employers, without prior approval from the competent ministry of labour, to terminate the employment contract of a trade union representative during his/her mandate and six months after having performed his/her duty in the Federation of BiH, and one year in the Republika Srpska, are significant. The Labour Law in the Brčko District under Article 78 prohibits employers from dismissing trade union representatives, without prior consultation with the trade union, during his/her mandate or three months after having performed his/her duty.

96 "Official Gazette of the RS" No.: 110/08.

97 "Official Gazette of BD" No.: 19/06, 19/07 and 25/08.

98 "Official Gazette of BD" No.: 3/06.

99 Article 5 of the Labour Law of the Federation BiH

100 Article 5 of the Labour Law of the RS

101 Article 4 of the Labour Law of BD

102 Articles 9-11

103 Articles 6-9

104 Articles 5-8

105 Article 93

106 Article 131

The ILO Committee in individual observations/remarks in relation to Convention No. 98 expressed its concern regarding these provisions. These provisions, however, do allow dismissal of trade union representatives, and can potentially be misused. It is important to point out that the Labour Law in the Federation of BiH under Article 139 sets forth the possibility that, upon the request of an employee elected to perform a professional function in the trade union, the rights and obligations arising from employment can be put to rest for a period not exceeding four years from the day of election or appointment.

The Labour Law of the Republika Srpska determines who will represent trade unions and employers' associations, and the method of identifying and reviewing their representatives.[107] So, the trade union is considered representative if it was founded and operates on the principles of the trade union, independently of government authorities and employers, and is mainly financed by membership fees and other means.[108] The employers' representative trade union must have in its membership at least 20% of the total number of employees employed by the employer,[109] i.e. a representative trade union in an industry or business must have in its membership at least 20% of employees of that particular industry or business.[110] This law only recognizes representative trade unions at the level of the Republika Srpska, which in its membership have at least 20% of the total number of employed persons in the Republika Srpska according to the data from the Republika Srpska Institute of Statistics.[111] On the other hand, the employers' association is considered representative if it is registered in the Registry in accordance with the law[112] and if it has not less than 20% of employers out of the total number of employers in the industries and businesses, at the level of the Republika Srpska, and at least 20% of employed persons of the total number of those employed in the industries and businesses of the Republika Srpska.[113] The representativeness of the trade unions for employers is confirmed by the employer in the presence of concerned trade union representatives, i.e. a responsible minister proposed by the Committee for examining representation of the trade unions and employers' associations (Representation Committee) if their representation has not been examined within 15 days after a request was submitted or if union representations is not determined under this law.[114] Following the proposal from the Representation Committee,

[107] Articles 142-157

[108] Article 142 of the Labour Law of RS

[109] Article 143 ibidem

[110] Paragraph 1 Article 144 ibidem

[111] Paragraph 2 Article 144 ibidem

[112] Article 145 ibidem

[113] Article 146 ibidem

[114] Article 147 ibidem

a competent minister confirms the representation of the trade union at the level of the Republika Srpska, and representation of the employers' association at the level of the Republika Srpska.[115] The Representation Committee is composed of three representatives from the Government of the Republika Srpska, representative trade union and representative of the employer's association.[116] Of course it is a bit confusing to explain how the trade unions and employers' associations gained their representation in the Representation Committee when they are the ones who have yet to decide on the representation. Although this method of determining representatives is not without the potential for manipulation, with the selection of 9 members of the Committee, the potential for manipulation is minimized.

Entry of the trade unions in the Register, through the Rulebook on the Registration of Trade Unions in the Register,[117] is only regulated in the Republika Srpska. As already raised by the ILO Committee in the last *Direct request* addressed to Bosnia and Herzegovina regarding the implementation of the ILO Convention no. 78, this Rulebook only recognizes associations of trade unions organized at the level of the Republika Srpska.[118] At the level of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brčko District, there are still no rulebooks that would directly regulate the registration of trade union organizations, therefore it is done in accordance with applicable laws on associations and foundations.

The labour legislation also provides another form of organizing workers representing their economic and social rights and interests. These are Employee Councils that can be formed at the request of at least 20% of employees or employer's trade unions in the Federation of BiH, or in the Republika Srpska at least one third of the employees or competent trade union bodies whose members are at least 20% of employees or employer's trade unions. These Councils can be formed by the employer if they employ at least 15 employees (except employees in the Army, police, government authorities and administration services in the Federation of BiH, or the Army, police and judiciary and administration bodies in the Republika Srpska). Special laws, namely the Law on Employee Council in the Federation of BiH[119] and the Law on Worker's Council in the Republika Srpska,[120] regulate the methods and procedures for forming the employee councils and issues related to work and duties thereof. In its last *Direct request* regarding the application of the ILO Convention No. 78, the ILO Committee again expressed

[115] Article 148 ibidem

[116] Article 149 ibidem

[117] "Official Gazette of the RS" No.: 101/06.

[118] Article 2 of the Rulebook on the registration of trade union organisation in the Registry, "Official Gazette of the RS" No.: 101/06

[119] The Law on the Council of Employees, "Official Gazette of the Federation of BiH" No.: 38/04

[120] The Law on the Council of Employees "Official Gazette of the RS" No.: 26/01

its concern about potential legislative privileges of the employee councils over trade unions. On the other hand it is interesting to note that during the analysis of differences in the operations between the councils of employees/workers and trade unions, the ICVA in its report concluded that in essence there is no parallelism in the operation between the councils and trade unions, and that it is in the interest of the employees to act through councils and join trade unions.[121] Since there is no jurisprudence in this regard it is indeed difficult to assess whether it is only a superficial reading of the law (as ICVA states) or if there is some sort of parallelism i.e. one more privileged that the other.

4. RIGHT TO SOCIAL SECURITY

Article 9 of the CESCR:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

The right to social security includes social insurance and social assistance. Access to social security from the perspective of human rights differs from the traditional social economic protections: "the perspective of human rights addresses issues that relate to social security systems, responsibility of the state and benefits in the modern world in which higher salaries cannot be observed as a universal connection with social security."[122] This view was confirmed by the UN Committee on Economic, Social and Cultural Rights in its General Comment no. 19 which is dedicated solely to the interpretation of the right to social security, and for the first time in one place gives an overview of the states' obligations in terms of fulfilling the right to social security.

Noting that the right to social security is of central importance in guaranteeing human dignity for all persons,[123] and that it plays an important role in poverty reduction and prevention of social exclusion,[124] the Committee on Economic, Social and Cultural Rights in its General Comment no. 19 emphasises that:

> *"the right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health*

[121] ICVA, *Implementation of the European Social Charter through legislation and practice in BiH standards for passing the Law on Financial Social Assistance*, 2010, p. 1, ibidem

[122] Lucie Lamarche, "The right to social security in the International Covenant on Economic, Social and Cultural Rights", Audrey Chapman and Sage Russell (ur) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp-Oxford-New York: Intersentia, 2002, p. 89, (89-114).

[123] Paragraph 1 of the General comment No. 19

[124] Paragraph 3 of the General comment No. 19

care; (c)insufficient family support, particularly for children and adult dependents."[125]

Of course, all State parties must take effective measures within their maximum available resources to fully realize the right of all persons, without discrimination, to social security, including social insurance. It is very important to note that the Committee took the position that the measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event, must guarantee all peoples a minimum enjoyment of this human right.[126] In the paragraph 10 of the General Comment No. 19 the Committee emphasised that social security should be treated as social good, and not primarily as a mere instrument of economic or financial policy.

Considering that the elements of the right to social security may vary according to different conditions, the Committee enumerated a number of essential factors that have to be applied in all circumstances. These are:

- **availability**–the social security system must be established under domestic law, sustainable in order to ensure that the right can be realized for present and future generations, while public authorities must take responsibility for the effective administration and supervision of the system;
- **social risks and contingencies**–the social security system should provide for the coverage of the nine principal branches of social security;
- **adequacy** of benefits, whether in cash or in kind, in amount and duration in order that everyone may, with dignity and without discrimination, realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care;
- **accessibility** in a way that among other ensures universal *coverage*, with reasonable, proportionate and transparent *qualifying conditions* for benefits, with contributions that must be *affordable* for all without compromising the realization of other rights, along with *informing* all individuals and organizations on all social security entitlements, with *physical access* to benefits and information particularly for persons with disabilities, migrants, and persons living in remote areas, as well as areas experiencing armed conflict;
- **relationship with other rights** in a way that the right to social security plays an important role, and not the only one, in supporting the realization of many of the rights in the Covenant.

According to the UN Committee on Economic, Social and Cultural Rights,

[125] Committee on Economic, Social and Cultural Rights, The Right to Social Security, General comment No. 19, Adopted on 23 November 2007, UN doc. E/C.12/GC/19 4 February 2008, available at http://www.unhcr.org/refworld/docid/47b17b5b39c.html, (accessed on 30.12.2011).

[126] Paragraph 4 of the General comment No. 19

there are nine principle branches in the social security system that need to be taken into the account:[127]

(1) *health care* – the health care systems have to be established to provide adequate access to health services for all;

(2) *sickness* – cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings, while persons suffering from long periods of sickness should qualify for disability benefits;

(3) *old age* – by national laws prescribe social security schemes that would provide benefits to older persons, starting at a specific age, including non-contributory old-age benefits for all older persons who, when reaching the retirement age could not ensure benefits in any another way;

(4) *unemployment* – in addition to promoting employment, benefits that cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment that are paid for an adequate period of time and at the expiry of that period unemployed worker should be provided with social assistance, as well as cover for other workers, including part-time workers, casual workers, seasonal workers, and the self-employed, and those working in atypical forms of work in the informal economy;

(5) *employment injury* – ensuring the protection of workers who are injured in the course of employment or other productive work and their families provided in the form of access to health care and cash benefits, and which must not be subject to the length of employment or the duration of insurance;

(6) *family and child support* – benefits for families, including cash benefits and social services, without discrimination, that are crucial for realizing the rights of children and adult dependents that are sufficient to cover food, clothing, housing, water and sanitation, or other rights as appropriate;

(7) *maternity* – accorded paid leave to all women including those involved in atypical work, and appropriate medical benefits that cover perinatal, childbirth and postnatal care and appropriate care in hospitals for women and children;

(8) *disability* – provide adequate income support to persons with disabilities in a dignified manner and reflect the special needs for assistance and other expenses often associated with disability, and this support should cover family members and other informal carers;

(9) *survivors and orphans* – ensure the provision of benefits that should cover funeral costs to survivors and orphans on the death of a breadwinner who was covered by social security or had rights to pension, and without discrimination assist them in accessing social security schemes.

[127] General comment No. 19

The Committee emphasizes the obligation of State parties to guarantee that the right to social security is enjoyed without direct or indirect discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status.[128] It should be noted that in comparison to previous General Comments, the enumerated grounds for prohibited discrimination were expanded, but given that this is the last Committee Comment, it implies that the direct prohibitions relate to other rights too. Furthermore, the Committee reiterated that the State parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minorities, refugees, asylum-seekers, internally displaced persons, non-nationals, prisoners and detainees. Thus, in addition to non-discrimination, equality is an important principle guiding the Committee such that positive discrimination (affirmative action) is one possible intervention of the State parties in view of exercising rights, among others the right to social security for persons and groups who traditionally face difficulties in exercising economic, social and cultural rights. State parties should take steps to eliminate factors that prevent persons and groups who traditionally face difficulties in exercising economic, social and cultural rights from making equal contributions to social security schemes and ensure that schemes take account of such factors in the design of benefit.[129]

In terms of the right to social security, General Comment No. 19 sets out minimum core obligations of the State parties that have to be ensured in any possible way utilizing all available resources. The State parties are required to: *(a) to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Is a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies; (b) to ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups; (c) to respect existing social security schemes and protect them from unreasonable interference; (d) to adopt and implement a national social security strategy and plan of action; (e) to take targeted steps to implement social security schemes, particularly those that protect*

[128] Paragraphs 29-30 of the General comment No. 19

[129] Paragraphs 31-39 of the General comment No. 19

disadvantaged and marginalized individuals and groups; (f) to monitor the extent of the realization of the right to social security.[130]

Here it is very important to emphasize the fact that the Committee, in exceptional cases when a State party is not able to meet at least minimum access to the right to social security, "allows" the selection of a core group of social risks and contingencies which implies that all persons within a selected group must have equal access to the social security scheme without discrimination. In the context of Bosnia and Herzegovina, this comment means that all persons with disabilities, regardless of the manner in which they sustained disability (in peace or in war), should have equal access to the social security scheme.

Furthermore, in the context of Bosnia and Herzegovina and question of jurisdiction related to implementation of the Economic, Social and Cultural Rights in general, and specifically social security, it should be noted that the Committee underlined that:

> *"(...) where responsibility for the implementation of the right to social security has been delegated to regional or local authorities or is under the constitutional authority of a federal body, the State party retains the obligation to comply with the Covenant, and therefore should ensure that these regional or local authorities effectively monitor the necessary social security services and facilities, as well as the effective implementation of the system."*[131]

Further, the Committee emphasized the importance of monitoring the effective realization of the right to social security, the establishment of the necessary mechanisms or institutions for such purpose, and the importance of identifying indicators and benchmarks for realizing the right to social security in national strategies and plans of action in order to assist the monitoring process.[132] Any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels.[133]

Bosnia and Herzegovina has also ratified ILO Convention no. 102 on social security (minimum standards) and Convention no. 121 on employment injury benefits. ILO Convention no. 102 prescribes minimum standards that every State, including Bosnia and Herzegovina, must fulfil in terms of providing social security. The minimum standards relate to providing medical care, sickness benefits, unemployment benefits, old-age benefits, family benefits, maternity benefits, invalidity

[130] Committee on Economic, Social and Cultural Rights, The Right to Social Security, General comment No. 19, Adopted on 23 November 2007, UN doc. E/C.12/GC/19 4 February 2008, paragraph 59, available at http://www.unhcr.org/refworld/docid/47b17b5b39c.html, (accessed on 30.12.2011).

[131] Ibidem, paragraph 73

[132] Paragraphs 74-76 of the General comment No. 19

[133] Paragraph 77 of the General comment No. 19

benefits and survivor benefits. In addition, the Convention no. 121 sets out requirements related to employment injury benefits.

4.1. The right to social security legislation in Bosnia and Herzegovina

The social security system in BiH included social insurance, social system, family and child welfare, and veterans care. The right to social security, as well as all previously elaborated economic, social, and cultural rights, does not belong to the right that is directly guaranteed under the Constitution of Bosnia and Herzegovina. Also, given the complexity of the state, social security is almost exclusively the responsibility of the Entities and the Brčko District. Exceptions apply to social security matters that are regulated under the Law on the Work in the Institutions of Bosnia and Herzegovina and Civil Service Law in the Institutions of Bosnia and Herzegovina, which solely relate to the employees within the institutions and public companies in Bosnia and Herzegovina.

The FBiH Constitution guarantees the right to social and health protection (social security segment)[134] while the realization of the social policy and social security protection fall under responsibility of both the Entity and Cantons.[135] The RS Constitution defines in more detail the right to social security by stating in Article 43:

> *"The right of employed persons and of members of their families to social security and social insurance shall be regulated by law and collective agreements.*
>
> *The right to relief during temporary unemployment shall be guaranteed, under conditions specified by law.*
>
> *Citizens who are partially disabled shall be guaranteed the training for a suitable job and are provided conditions for their employment, in accordance with law.*
>
> *The Republic shall ensure the assistance and social security to citizens incapable to work and unprovided for".*

A list of entity legislation which provides access to the social security system (including members of vulnerable groups) is given below, and certain provisions of these regulations in accordance to the aforementioned nine branches of social security will be elaborated later.

The following are laws that pertain to social security that are applicable in the territory of the Federation of BiH: Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children (Official Gazette FBiH number: 36/99, 54/04, 39/06, 14/09); Law on Contributions (Official Gazette FBiH number: 35/98, 54/00, 16/01, 37/01, 1/02, 17/06, 14/08); Law on Pension and Disability

[134] Section II, Article 2.

[135] Section III, Article 2 of the Constitution of the FBiH.

Insurance (Official Gazette FBiH number: 29/98, 49/00, 32/01, 73/05, 59/06); Law on the Records of Policyholders and Beneficiaries from Pension and Disability Insurance (Official Gazette FBiH number: 42/04 and 15/05); Law on the Claims in the Privatization Process on the Basis of Payment Differences for Beneficiaries from Pension and Disability Insurance (Official Gazette FBiH number: 41/98, 55/00, 27/02); Law on Organization of Pension and Disability Insurance of the Federation of Bosnia and Herzegovina (Official Gazette FBiH number: 49/00, 32/01 and 18/05); Law on Types and Percentages of Physical Disabilities (Official Gazette FBiH number: 42/04 and 48/04); Law on Placing Children in Foster Families (Official Gazette SR BiH number: 9/78); The Family Law of the Federation of Bosnia and Herzegovina (Official Gazette FBiH number: 35/05, 41/05); Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina (Official Gazette FBiH number: 15/05); Law on Mediation in Employment and Social Security of Unemployed Persons (Official Gazette FBiH number: 55/00, 41/01, 22/05, 9/08); Law on Health Protection (Official Gazette FBiH number: 46/10); Law on Health Insurance (Official Gazette FBiH number: 30/97, 7/02 and 70/08).

The following laws pertaining to social security are applicable in the territory of the Republika Srpska: Law on Protection of Civil Victims of War–consolidated text (Official Gazette RS number: 24/10); Law on Child Protection (Official Gazette RS number: 4/02, 17/08 and 01/09); Law on Contributions–consolidated text (Official Gazette number: RS 31/09, 1/11); Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities–consolidated text (Official Gazette RS number: 54/09); Law on the Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers from the Defensive-War of the Republika Srpska (Official Gazette RS number: 46/04, 53/04, 20/07, 55/07, 59/08, 118/09); Law on Pension and Disability Insurance (Official Gazette RS number: 134/11); Law on the Right to Retirement of Certain Categories of Insured Persons (Official Gazette RS number: 33/08); Law on Reserve Pension Fund of the Republika Srpska (Official Gazette RS number: 73/08 and 50/10); Family Law (Official Gazette RS number: 54/02, 41/08); Law on Displaced Persons, Returnees and Refugees in Republika Srpska (Official Gazette RS number: 42/05); Law on Social Protection (Official Gazette RS number: 5/93, 15/96, 110/03, 33/08); Law on Health Protection (Official Gazette RS number: 106/09); Law on Health Insurance (Official Gazette RS number: 18/99, 51/01, 70/01, 51/03, 57/03, 17/08, 1/09, 106/09); Law on Employment of Foreign Nationals and Stateless Persons (Official Gazette RS number: 24/09); Law on Employment Mediation and the Rights During Unemployment (Official Gazette RS number: 30/10).

The following laws pertain to social protection in the Brčko District: Law on Child Protection of Brčko District (Official Gazette BD BiH number: 1/03, 4/04, 21/05, 19/07, 2/08); Law on Social Protection of Brčko District (Official Gazette BD

BiH number: 1/03, 4/04, 19/07, 2/08); Law on Employment of Foreign Nationals (Official Gazette BD BiH number: 15/09, 19/09 and 20/10); Law on Employment and the Rights During Unemployment (Official Gazette BD BiH number: 33/04, 19/07 and 25/08); Law on Health Protection of Brčko District Bosnia and Herzegovina (Official Gazette BD BiH number: 38/11); Law on Health Insurance of Brčko District Bosnia and Herzegovina (Official Gazette BD BiH number: 1/02, 7/02, 19/07, 2/08 and 34/08); Family Law of Brčko District (Official Gazette BD BiH number: 23/07).

4.1.1. Social Protection

Social protection is governed by the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children FBiH,[136] the Law on Social Protection of the Republika Srpska,[137] and the Law on Social Protection of the Brčko District.[138]

In the Federation of BiH, the aforementioned laws govern the bases of social protection of citizens and their families, establishment and work of social protection institutions and disability associations, the basic rights of civil victims of war and their families, the bases of protection of families with children, and funding. Given the decentralized structure of the FBiH, the Law stipulates that the competent cantonal authorities shall further regulate the area of social protection, protection of civil victims of war and families with children.[139] The fact that cantons were given the responsibility to regulate this particularly important area means that citizens of the FBiH cannot exercise the right to social protection equally in all cantons, thus leading to unequal positions among the citizens of the FBiH. The beneficiaries of social protection are: children without parental care, educationally neglected children, educationally uncared for children, children with problems in development caused by their family situations, persons with disabilities and persons with physical or psychological problems, materially unsecured person and persons unfit for work, elderly persons without family care, persons with socially unacceptable behaviour, and persons and families in need of social protection, who, due to extraordinary circumstances, require appropriate forms of social protection.[140] Social protection *rights guaranteed under the Law* on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children of the FBiH are: financial and other material assistance, training

[136] "Official Gazette of the FBiH" No.: 36/99, 54/04, 39/06, 14/09.

[137] "Official Gazette of the RS" No.: 5/93, 15/96, 110/03, 33/08.

[138] "Official Gazette of the BD BiH" No.: 1703, 4/04, 19/07, 2/08.

[139] Article 8 of the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children FBiH

[140] Article 12 of the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children FBiH

for work and living, placement to a different family, placement to the institutions of social protection, social and other professional services, and assistance in the house.[141]

In the Republika Srpska, social protection is governed by the Law on Social Protection, which defines the rights of social protections, basic institutions of social protection and funding of activities related to social protection. Article 3 of the Law stipulates that:

> *"Social protection is provided to citizens who are unable to work, who have no living means or relatives who are legally obliged and able to provide for their subsistence, as well as persons, who, due to special circumstances are in need of social protection."*

Similar to the Federation of BiH, the Law on Social Protection of the RS specifies who the beneficiaries of social protection are: children–without parental care, with physical and psychological problems, whose development was hindered by a family situation, and who are educationally neglected and uncared for; and adults–those who are materially unsecure and unfit for work, elderly persons without family care, and disabled persons with socially unacceptable behaviour and who, due to extraordinary circumstances, require social protection.[142] Due to the centralized set–up of the Republika Srpska, unlike the Federation of BiH where responsibilities related to social protection are divided and governed by the cantons, the main responsibility for social protection lies with the Republika Srpska itself:

> *"Governs the social protection system, sets basic rights and social protection beneficiaries, provides funds for the implementation of social protection development function, establishes and guides the work of the social protection institutions of wider significance and ensures that, within the economic and social policy, achieves optimal social protection development."*[143]

Unfortunately, due to the lack of a comprehensive legal framework for ensuring equality in exercising the right to social protection, the situation on the ground when it comes to the realization of this right is quite diverse. The ability of citizens throughout BiH to achieve the right to social protection depends on whether they reside in the Republika Srpska or in the Federation and its cantons. This problem is particularly pronounced when it comes to allowances related to social protection where, for example, the amount/percentage of the financial assistance in the Republika Srpska is resolved in the Law on Social Protection of the RS,[144] and the amount of the financial assistance in the Federation of BiH is left to the cantons to decide.[145] This system

[141] Article 19 of the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children FBiH

[142] Article 10

[143] Article 9, of the Law on Social Protection of the RS

[144] Article 22

[145] Article 27 of the Law on Principles of Social Protection, Protection of Civil Victims of War and

creates differences in the amount of financial assistance provided to persons from canton to canton. When it comes to civil victims of war and persons with disabilities that are not related to the armed conflict this problem was partially solved. According to the Economic, Social and Cultural Rights Committee Recommendation[146] from 2005:

> *"The Committee encourages the State party to promote the adoption of the proposed Law on Amendments to the Law on Social Protection, Civilian War Victims, and Families with Children, which is currently in the parliamentary procedure in the F BiH and it provides for the transfer of the budget for the social protection of civilian war victims and persons with disabilities not related to armed conflict from the cantons to the Federation, in order to eliminate inequalities resulting from the diverging availability of funds in the cantons. It also requests the State party to ensure that the authorities of the Federation of Bosnia and Herzegovina extend this budgetary transfer to other categories of social protection."*[147]

The aforementioned recommendation was partially met with changes and amendments to the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children in the FBiH from 2006, which provided for the transfer of the budget for the social protection of civil victims of war and persons with disabilities not related to armed conflict from the cantons to the Federation. However, the question of beneficiaries of other categories of social protection and the issue of ensuring equality amongst beneficiaries at the level of the Federation of BiH and at the level of BiH still remains. It is necessary to harmonize regulation across BiH, between the cantons and the Federation of BiH, and between the Federation of BiH and the Republika Srpska so that all citizens throughout Bosnia and Herzegovina can enjoy equal treatment and equal rights in terms of rights from the field of social protection.

4.1.2. Pension-Disability Insurance

The question of rights arising from pension-disability insurance is resolved by provisions of the Law on Pension and Disability Insurance RS,[148] Law on Pension and Disability Insurance FBiH,[149] and Law on the Records of Policyholders and Beneficia-

Protection of Families with Children FBiH

146 Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by states parties under articles 16 and 17 of the Covenant: Bosnia and Herzegovina – Concluding observations, Adopted on 25 November 2005, UN doc. E/C.12/BiH/CO/1 24 January 2006, paragraph 40, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.BIH.CO.1.En?Opendocument, (accessed on 20.12.2011)

147 Paragraph 40

148 "Official Gazette of the RS" No.: 134/11.

149 "Official Gazette of the FBiH" No.: 29/98, 49/00, 32/01, 73/05, 59/06.

ries from Pension and Disability Insurance,[150] Law on the Claims in the Privatization Process on the Basis of Payment Differences for Beneficiaries from Pension and Disability Insurance FBiH,[151] Law on Organization of Pension and Disability Insurance of the Federation of Bosnia and Herzegovina FBiH,[152] Law on the Right to Retirement of Certain Categories of Insured Persons RS[153] and Law on Reserve Pension Fund RS.[154]

In BiH, there is a system of mandatory pension and disability insurance in force that, based on employment and the principle of intergeneration solidarity, tries to ensure insurance for all citizens in the event of: old age, disability, loss of working ability, and the death of the insured person, in order to provide social security for policyholders and members of their families. Legal solutions in terms of determining policyholders and beneficiaries who have a right to pension-disability insurance are similar in the Federation of BiH and the Republika Srpska. In both entities mandatory insurance is provided to: employed persons, self-employed persons, farmers, and persons performing religious duties.[155] In the Federation of BiH, elite athletes and beneficiaries have a right to adequate employment during the period of retraining or additional training and also have the right to mandatory insurance.

The right to pension-disability insurance is acquired in the event of:

1) age – old age pension,
2) disability – disability pension. Disabled persons have the right to a pension and to retraining or additional training, placement in another position or another appropriate job, as well as the right to benefits based on the utilization of the right to retraining, additional training or deployment to another position, or based on one's waiting for employment in another job;
3) in the event of death of the insured or beneficiary of personal pension – family pension.[156]

In addition to the mandatory insurance, there is a possibility of voluntary insurance. In the Republika Srpska, the possibility of having voluntary insurance was given under conditions laid out in the Law, while in the Federation this possibility is broadly defined by a provision that states that "persons who are not insured under mandatory insurance may be provided with the voluntary pension and disability insurance."[157]

[150] "Official Gazette of the FBiH" No.: 42/04 and 15/05.

[151] "Official Gazette of the FBiH" No.: 41/98, 55/00, 27/02.

[152] "Official Gazette of the FBiH" No.: 49/00, 32/01 and 18/05.

[153] "Official Gazette of the RS" No.: 33/08.

[154] "Official Gazette of the RS" No.: 73/08 and 50/10.

[155] Article 10 of the Law on Pension and Disability Insurance of the RS and Article 11-12 of the Law on Pension and Disability Insurance of the FBiH

[156] Article 40 of the Law on Pension and Disability Insurance of the RS and Article 21 of the Law on Pension and Disability Insurance of the FBiH

[157] Article 1 of the Law on Pension and Disability Insurance of the FBiH

The FBiH Law provides that persons who are employed in countries that have not signed an international agreement, and persons who turned 15 years of age and have general health ability can be provided with voluntarily insurance.[158]

The right to a pension due to age, i.e. the right to the old-age pension, is acquired when a person meets certain criteria pertaining to age and years of service. In the FBiH, one must be 65 years of age with at least 29 years of service, or have 40 years of service regardless of the age.[159] In the RS, one must be 65 years of age with at least 15 years in service, or be 60 years of age with 40 years of service.[160] In the RS there is a distinction as to women: upon request, a woman is entitled to old-age pension when she reaches 58 years of age or has 35 years of service.[161]

In view of rights related to pension insurance, the UN Committee on Economic, Social and Cultural Rights recommended the adoption of an inter-Entity agreement on pension rights guaranteeing access to pension benefits for returnees who moved from one Entity to the other.[162] According to the Second Periodic Report on the implementation of the International Covenant on Economic, Social and Cultural Rights which was submitted for consideration to the UN Committee on Economic, Social, and Cultural Rights by the BiH Ministry of Human Rights and Refugees in mid-2010, this recommendation was not implemented. More specifically, a system in which a pension is paid by the insurance carrier on whose territory the last pensionable years were earned has not been established, and the beneficiaries of the pension insurance (particularly persons who were internally displaced during the armed conflict in BiH) are not guaranteed full access to their pension rights. This was partially confirmed in the judgment of the European Court of Human Rights in Strasbourg in the case *Karanović vs. Bosnia and Herzegovina* from 20 November 2007.

> *"After non-enforcing the Decision of the Human Rights Chamber's (the Chamber)the Karanović case was put before the European Court of Human Rights , in the application of three pensioners, internally displaced persons, Đ. Kličković, A. Pašalić and D. Karanović who, after returning from the Republika Srpska to the Federation of BiH, requested a transfer from the Pension Fund of the Republika Srpska (RS Fund) to the Pension Fund of the Federation of BiH (Federation Fund), and further requested, that in accordance with this, they are paid*

158 Articles 17 and 18 of the Law on Pension and Disability Insurance of the FBiH

159 Article 30 of the Law on Pension and Disability Insurance of the FBiH

160 Article 41 of the Law on Pension and Disability Insurance of the RS

161 Article 42 of the Law on Pension and Disability Insurance of the RS

162 Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by states parties under articles 16 and 17 of the Covenant: Bosnia and Herzegovina – Concluding observations, Adopted on 25 November 2005, UN doc. E/C.12/BiH/CO/1 24 January 2006, paragraph 42, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.BIH.CO.1.En?Opendocument, (accessed on 20.12.2011).

pensions from the Federation Fund. Today, Bosnia and Herzegovina is facing the complex issue of how to execute the judgment. Specifically, in this case, deciding on individual application, for the first time in the jurisprudence of the European Court in cases against Bosnia and Herzegovina, the state was ordered, with the aim of eliminating the consequences of human rights violations, to systemically solve this problem through national legislation."[163]

Unfortunately, neither BiH nor its Entities have complied with the order from the judgment of the European Court of Human Rights in the *Karanović* case. Specifically, entity legislation has not been amended so that pensions are paid by the insurance carrier (respectively the pension-disability fund) on whose territory the last pensionable years were earned.

In addition to the basic legal requirements, there is some question as to whether or not the pension system in Bosnia and Herzegovina, as it is now, truly fulfils its basic purpose, which is to provide social security and to protect people that have completed their working lives from poverty. The Report on Pension Reform in Bosnia and Herzegovina,[164] which was published by the International Labour Organisation in 2009, identified the following basic problems in relation to the pension system in BiH: limited coverage and low compliance, inadequate levels of pension benefits, concern for the financial sustainability of the pension system, and limited administrative capacity and governance among the social security organisations. Given that BiH has ratified the ILO's Social Security Minimum Standards Convention No. 102, it should ensure a minimum rate of 40% of the average wage after 30 years of contribution in old-age benefits. Although the minimum legal pension in the FBiH should not be below 60% of the average pension, and in the RS the minimum legal pension should not be less than 50% of the average pension, the actual amount of the average pension is far from sufficient to maintain the family of the pensioner in health and decency.[165] This is supported by the data on the average pension paid out in October 2010 by the Pension Fund of the FBiH and Pension Fund of the RS, where the average pension in the FBiH for the month of November 2011 was 351.79 KM,[166] and in RS 320.80 KM (this was the most recent set of relevant data in the course of writing this

[163] Bičakčić E. (2008). *Structural defects of the pension system: Lessons learned from the case Karanović against BiH*. Published at http://arhiva.pulsdemokratije.net/index.php?id=992&l=bs, (accessed on 15.12.2011)

[164] International Labour Organisation (2009). The Report on Pension System in Bosnia and Herzegovina: first assessment. Available at: http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_168789.pdf, (accessed on 15.12.2011)

[165] Ibidem, p. 9

[166] Available at: http://www.fzmiopio.ba/images/statistika/strrasbos112011.pdf (accessed on 15.12.2011).

report).[167] Considering that the consumer price index (which depends the purchasing power of pensioners) in November 2011 increased by 3.8% compared to the same period in 2010, the price of food and non-alcoholic beverages increased 5.3%, and the price of housing, water, electricity, gas and other fuels is 3.5% higher than in 2010,[168] we can easily conclude that the average amount of a pension in any of the Entities is not sufficient for a decent life.

The right to a pension in the event of a disability, i.e. a disability pension, is provided for persons who lose the ability to work, lose the ability to perform activities which he/she has insured, or who lose earning capacity.[169]

In the event of the death of an insured person or the beneficiary of an old-age or disability pension, the following persons are entitled to a family pension:

1) a widow or a widower;
2) a divorced spouse, if the court, in a decision, established a right to receiving support;
3) a child born in wedlock or out of wedlock, or an adopted child or step-child;
4) father and mother, stepfather and stepmother, foster parent of the insured or the beneficiary of a personal pension who the insured or the beneficiary of a personal pension was serving until his/her death;
5) a child without both parents or a child that has one or both parents who are fully and permanently unable to work, who the insured or the beneficiary of a personal pension was serving until his/her death.[170]

4.1.3. Unemployment

The Law on Employment, Mediation and Rights during Unemployment[171] and the Law on Mediation in Employment and Social Security of Unemployed Persons of the FBiH[172] govern the issue of insurance during unemployment and the realization of the right to compensation in the case of unemployment. In the event of contract termination, one is entitled to financial compensation as long as the contract of the unemployed person was not terminated upon his/her request, consent or because he/

[167] Available at: http://www.fondpiors.org/latinica/vijest/403/penzija-za-novembar (accessed on 15.12.2011).

[168] Available at: http://www.bhas.ba/saopstenja/2011/CPI_2011M12_001_01-bh.pdf (accessed on 30.12.2011).

[169] Article 49 of the Law on Pension and Disability Insurance in the RS and Article 22 of the Law on Pension and Disability Insurance in the FBiH

[170] Article 70 of the Law on Pension and Disability Insurance in the RS and Articles 60-61 of the Law on Pension and Disability Insurance in the FBiH

[171] "Official Gazette of the RS" No.: 30/10

[172] "Official Gazette of the FBiH" No.: 55/00, 41/01, 22/05, 9/08.

she quit, and as long as the unemployed person paid unemployment contributions for at least 8 months continuously in the past 12 months, or 12 months with interruptions in the last 18 months.[173] In the FBiH, the amount of compensation that will be paid to the unemployed person during the unemployment period, over a period not exceeding 12 months, is based on the length of paid contributions, and the average monthly wage in the canton. In the Republika Srpska, the amount of compensation will be based on the paid contributions in the last three months prior to unemployment. The problem that arises is that often companies employ workers that do not pay contributions, which raises the possibility that workers who lose their job will not be able to exercise their right to unemployment benefits. Another issue is unregistered workers (although recently the work inspection reports point to considerable decrease in the number of unregistered workers).[174] Unregistered workers not only do not qualify for unemployment benefits in the event of losing work, they have no right to pension, disability or health insurance.

5. RIGHT TO FAMILY PROTECTION (MATERNITY PROTECTION AND CHILD EXPLOITATION)

Article 10 of the CESCR states:

The States Parties to the present Covenant recognize that:

1. *The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
2. *Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
3. *Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

[173] Article 23 of the Law on Employment in the RS and Article 29 of the Law on Mediation in Employment and Social Security of Unemployed Persons in the FBiH

[174] E.g. see 2010 Labour Report-Republic Administration for Inspections of the Republika Srpska, p. 29 available at http://www.inspektorat.vladars.net/index.php?option=com_docman&task=doc_download&gid=82&Itemid=115&lang=sr-cyr (accessed on 25.12.2011).

5.1. Right to family protection

Bosnia and Herzegovina is a signatory to: the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography; ILO Maternity Protection Convention No. 103; ILO Underground Work (Women) Convention No. 45; ILO Night Work (Women) Convention Revised No. 89; ILO Night Work of Young Persons Convention Revised No. 90; ILO Minimum Age Convention No. 138; ILO Workers with Family Responsibilities Convention No. 156; ILO Worst Forms of Child Labour Convention No. 182; and ILO Maternity Protection Convention No. 183 (as the result of the denunciation of the ILO Maternity Protection Convention No. 103).

5.1.1. Right to family protection legislation in Bosnia and Herzegovina

The catalogue of rights in the Constitution of BiH, Article II/3, lists the right to private and family life, and the right to marry and to found a family, but does not include the right to family protection. The right to family protection in the context of maternity protection and the prohibition of child exploitation is mainly regulated at the entity level.

5.1.1.1. Maternity protection

At the level of Bosnia and Herzegovina, compensation for maternity leave and maternity protection in general is governed by the provisions of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina,[175] and the Law on Work in the Institutions of Bosnia and Herzegovina.[176] At the entity level, such protections can be found in the Labour Law of FBiH,[177] the Labour Law of the RS,[178] the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children of the FBiH,[179] and the Law on Child Protection of the RS.[180]

The Law on Work in the Institutions of Bosnia and Herzegovina specifically provides for the protection of women and maternity. Articles from 34 through 43 prescribe rights related to the following issues:

- Maternity leave
- Breastfeeding in case one returns to work before the maximum allowed period for maternity leave expires

[175] "Official Gazette of BiH" No: 50/08 and 35/09.

[176] "Official Gazette of BiH" No.: 26/04, 7/05, 48/05 and 60/10.

[177] "Official Gazette of the FBiH" No.: 43/99, 32/00 and 29/03.

[178] "Official Gazette of the RS" No.: 55/07.

[179] "Official Gazette of the FBiH" No.: 36/99, 54/04, 39/06, 14/09.

[180] "Official Gazette of the RS" No.: 4/02, 17/08 and 01/09.

- Extended maternity leave in case of stillbirth
- Use of maternity leave benefit

Also, Article 35 of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina states:

> *"An employee in the BiH Institutions shall be entitled to remuneration during maternity leave in accordance with the regulations governing this field according to the place of payment of the contribution per each employee."*

In the context of maternity protection, particularly important is Article 42 of the Law on Work in the Institutions of Bosnia and Herzegovina, which concerns the entitlement to maternity leave benefits. In accordance with this Article, in the Institutions of Bosnia and Herzegovina, raised was a question on determining maternity leave benefit pursuant to the Article 35 of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina related to residence of the woman/childbearing woman, specifically the place of payment contribution. Due to the existence of different legal provisions pertaining to maternity leave in the FBiH and the RS, application of this Article in practice has led to disparate treatment of mothers/childbearing women based on their place of residence. Mothers/childbearing women employed in the Institutions of Bosnia and Herzegovina, with residence in the Federation of BiH, are brought in a less favourable position as compared to their counterparts who reside in the Republika Srpska. Specifically, the application of Article 35 of the Law on Salaries and Remunerations in the Institutions of BiH leads to discrepancies in the payment of benefits to women employed in the Institutions of BiH depending on whether they reside in the FBiH or in the RS. The application of this Article was assessed in the case U-12/09 before the Constitutional Court of BiH. Twenty-three members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and five delegates of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina filed a request with the Constitutional Court to review the constitutionality of Article 35 of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina. The case U-12/09 states:

> *"The applicants allege that, following the entry into force of the challenged law and challenged provision, the Ministry of Finance and Treasury of Bosnia and Herzegovina issued an Instruction to terminate payment of salary reimbursement from the BiH budget to women employees on maternity leave residing in the Federation of BiH, which until then had been paid on a regular basis. At the same time, salary reimbursement is completely paid from the BiH budget funds to women employees residing in the Republika Srpska, but at the expense of the Public Fund of the mentioned Entity. In the applicants opinion, the application of the challenged provision gives rise to discrimination and segregation of women employees within the same institution as employees from the institution at the same level of authority are prevented from equal enjoyment of the right originating from the labour relations. The employer, BiH Institutions, pay a salary reimbursement to women employees residing in the RS, while women employees residing in the Federation of*

BiH do not receive a salary reimbursement or only receive a percentage depending on the respective canton's regulation, as the BiH Institutions interpret this provision so that such women employees (residing in the FBiH) acquire their right to salary reimbursement in accordance with the cantonal regulations."[181]

With regard to this case, the Institution of the Ombudsmen sent a Special Report containing recommendation to the Parliamentary Assembly of BiH, the Council of Ministers of BiH and the BiH Ministry of Finance and Treasury. In the opinion of Ombudsmen, the mentioned BiH institutions should urgently take action to eliminate discriminatory provisions from the Law on Salaries and Remunerations in the Institutions of BiH related to the right of salary reimbursements during maternity leave.

On 28 May 2010, the BiH Constitutional Court adopted a decision in the case U-12/09 by accepting the request to review the constitutionality of the Article 35, and holding that this Article is inconsistent with Article II/4 of the Constitution of Bosnia and Herzegovina:

"The Constitutional Court holds that the challenged provision of the Article 35 of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina is inconsistent with the Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with the Article 1 of Protocol No. 12 to the European Convention, Articles 1, 2 and 11 of the UN Convention on the Elimination of All Forms of Discrimination Against Women as well as Article 26 of the International Covenant on Civil and Political Rights and Article 10 of the International Covenant on Economic, Social and Cultural Rights since it leads to a differential treatment of women employees in the institutions of Bosnia and Herzegovina and the Constitutional Court finds no objective and reasonable justification for such differential treatment. As a result of the aforementioned, the Constitutional Court concludes that the legal grounds for taking the challenged decision of the Council of Ministers ceased to exist as it was adopted on the basis of the challenged provision of the Law on Salaries and Remunerations in the Institutions of Bosnia and Herzegovina."[182]

Although the decision of the BiH Constitutional Court was adopted in May 2010, at the time this report was written, competent institutions at the level of BiH have not taken a single visible step in resolving this issue. This is best illustrated by the fact that so far the Council of Ministers of BiH has not adopted nor forwarded to parliamentary procedure proposed changes and amendments to the challenged law.

Both entity Labour laws have parts highlighting the protection of women and maternity protection. Legal solutions in terms of realizing the rights for childbearing women and mothers are very similar. Thus Article 52 of the Labour Law of FBiH (LL FBiH) corresponds to Article 76 of the RS Labour Law (LL RS) stipulating that a woman may not be assigned to work requiring particularly hard manual work nor underground work with the exception of women performing management positions

[181] Paragraph 8, case U-12/09, available at: http://www.ccbh.ba/bos/odluke/povuci_pdf.php?pid=303276, (accessed on 10.11.2010).

[182] Paragraph 38, ibid.

who periodically must enter underground parts of mines. Article 53 of the LL FBiH corresponds to Article 77 of the LLRS stating that employers may not refuse to employ a woman due to her pregnancy, or terminate her employment contract because of her condition or for using maternity leave. Both laws set out that during pregnancy and confinement and care of the baby, the woman shall be entitled to maternity leave for the duration of one year without interruption, and for twins or any subsequent children, 18 months without interruption.[183] The difference that appears in the provisions of mentioned laws is in the article that stipulates that a woman may, upon her written request, use a shorter maternity leave period: the LL FBiH states "but no shorter than 42 days after confinement,"[184] while LL RS states "but not before 60 days after birth have passed."[185] However, in practice the application of the aforementioned labour law articles, in both entities, was questioned. ICVA publication "Implementation of the European Social Charter through legislation and practice in BiH-II"[186] provides examples of violations of the rights of pregnant women and mothers prescribed under law.

> *"When hiring, particularly young women, employers often ask questions about woman's plans to have birth, family situation and their "serious" relationships. Noted was trend, especially in trade and services, that women are hired on fixed-term contracts, and when leave for maternity leave they lose jobs. In this way employers avoid hiring and work of women that may use their maternity leave right and by doing so they severely violate law and remain unpunished.*
>
> *Available information point to layoffs of pregnant women and mothers in particular by private employers. Women are exposed to different pressure to return to work after maximum of 60 days.[187] The trade unions confirm that women, due to pressure or fear of losing their jobs return from maternity leave after 1-2 months. Also, many women return to work a long before expiration of the maternity leave because of insufficient and discouraging compensations.[188]*

Under Article 84 of the LL RS, during maternity leave, the employed woman is entitled to maternity compensation in the amount of the average of the last three salaries paid to her. In case of unemployment, a woman is entitled to a maternity benefit in the amount of the average salary in the RS. Salary compensation to an employer who is obliged to pay during maternity leave is done through the Public Fund for

183 Article 79 of the LL of the RS and Article 55 of the LL of the FBiH

184 Article 55 of the LL of the FBiH

185 Article 80 of the LL of the RS

186 ICVA (2010) "*Implementation of the European Social Charter through legislation and practice in BiH*– II", available at: http://www.icva-bh.org/userimages/ESP%20II.doc, (accessed on 10.11 2010).

187 http://www.slobodnaevropa.org/Content/Article/1331314.html.

188 ICVA (2010) Implementation of the European Social Charter through legislation and practice in BiH-II", p. 21-22, available at: http://www.icva-bh.org/userimages/ESP%20II.doc, (accessed on 10.11.2010).

child protection of the Republika Srpska. Article 93 of the Law on Principles of Social Protection, Protection of Civil Victims of War and Protection of Families with Children in the FBiH states:

> *"Pregnancy allowance as compensation for the working mother during her absence from work due to pregnancy, giving birth to a child, and care for the child, is determined in the percentage of salary received in the period of six months prior to delivery, valued on the basis of salary increases in the canton in that period.*
>
> *Percentage from paragraph 1 of this Article is determined by the cantonal legislation."*

As is obvious in the aforementioned Article, constant problems pertaining to the realization of rights in the Federation of BiH arise due to its decentralization and the lack of conformity among laws between the FBiH and the RS, within the FBiH (between cantons, and between cantons and FBiH), and the lack of a comprehensive law in this field at the state level. In order to illustrate the problem, we will mention examples of cantonal solutions regarding the amount of compensation for maternity leave as presented by ICVA in the aforementioned publication:

"– *Canton Sarajevo legislation determines maternity allowance to 60% of the average salary in Canton Sarajevo. However, Canton Sarajevo adopted a Decree (Official Gazette of Canton Sarajevo no. 13/08) where real average net salary of the Canton is decreased by certain percentage (coefficient) in order to get a modified 'average net salary' that would be used for determining financial and other material benefits and which is 28.24% less that a real net salary in the Canton. In practice this means that women in Canton Sarajevo receive compensations in the amount of 43% of the real average salary in Canton Sarajevo. We are not aware if other cantons have adopted 'decrees' by which reduce the amount of average salary for calculation of social benefits.*

– *Zenica-Doboj legislation stipulates compensation of 80% of last 6 salaries of employed mother (payment obligation of the Canton)..*

– *West-Herzegovina canton stipulates 70% of the average monthly salary in the past six months. Contributions for health and pension-disability insurance shall be borne by the employer with whom the woman-mother is employed, and this is an exception in relation to other cantons.*

– *In Tuzla Canton at the end of 2006 a new law came into force where a maternity leave should be paid in the amount of 90% of personal income earned average salary in the period of 6 months before birth, but it cannot be below 30% of the average salary in the Canton in that period. Payment contributions are borne by the employer, but Canton will reimburse the cost.*

– *Una-Sana Canton foresees compensation in the amount of 50% of the employed women in the past six months. Amount of compensation is determined for each woman-mother separately, but the amount cannot be less that 50% of the average monthly salary in the*

Canton in that period. (Payment contributions are borne by the employer while the Social Welfare Centre, after receiving funds from the competent Ministry, will reimburse cost)".[189]

As one might notice from the aforementioned cantonal provisions regarding compensation for maternity leave, there is a significant difference amongst laws in the cantons and in the Republika Srpska. Unfortunately, again this results in discrimination against women on maternity leave based on the territory in which the woman exercising the right to maternity benefits resides (canton/entity). Therefore, there is a need to urgently harmonize legislation in the territories of Bosnia and Herzegovina in relation to maternity leave in order to remedy discrimination against women who exercise this right in different cantons/entities, and in accordance with the provisions of the Law on the Prohibition of Discrimination in BiH.

5.1.1.2. Prohibition of child exploitation

According to Article 15 of the LL of the FBiH and Article 14 of the LL of the RS, in order to enter into an employment contract one must be 15 years of age and be healthy enough to enter into a contract. Persons between 15 and 18 years of age cannot perform jobs where there is a risk of sustaining injuries or endangering their health. In addition, the LL of the FBiH under Article 36 and LL of the RS under Article 51 prohibit night work of minor employees, i.e. persons under 18 years of age. Family Law of the FBiH and Family Law of the RS prohibit exploitation of children in all forms (from sexual and other violence to economic exploitation of children). Thus, the RS Family Law provides for the revocation of parental rights of any parent who: implements physical or psychological violence against the child, sexually abuses a child, exploits the child by forcing him/her to work excessively or to perform work inappropriate for his/her age, leads a child to any form of socially unacceptable behaviour, etc.[190] The Family Law of the FBiH sets forth the duties of parents to their children, and states that parents are obliged to protect a child, among other things, from: robberies, thefts, prostitution, begging, all forms of juvenile delinquency, violence, injuries, economic exploitation, sexual abuse and all other asocial phenomenon.[191]

In Concluding observations dated 21.09.2005, and upon reviewing a Bosnia and Herzegovina report, the Committee on the Rights of the Child expressed concern at the information that:

"(...) significant number of children, especially Roma, are living or working on the streets, that the majority of these children are under 14, that most of them do not attend school and nearly half of them appear to be ill. The Committee notes with concern that the work

[189] ICVA (2010) "*Implementation of the European Social Charter through legislation and practice in BiH*- II", available at: http://www.icva-bh.org/userimages/ESP%20II.doc, (accessed on 10.11.2010).

[190] Article 106 of the Family Law of the RS

[191] Article 134 of the Family Law of the FBiH

performed by these children is often harmful and exploitative and many of them are compelled or forced to work."[192]

The Ministry of Human Rights and Refugees of BiH, in its 2nd through 4th Reports delivered to the Committee, states that the State faces difficulties in resolving the issue of forced child labour. In this case, the Ministry presents facts only as an observer to the developments in the field, and not as institution that should insist on resolving this problem. In its Report to the Committee, the Ministry presents devastating statistics regarding the economic exploitation of children in Bosnia and Herzegovina. According to the Multiple Indicator Cluster Survey (MICS) from 2006, which the Ministry uses in its Report, almost 6% of children between the ages of 5 and 14 are involved in some form of child labour (boys 7% and girls 4%). The same data indicates that 5% of children of the same age are involved in some form of family business. The Report states that about 6% of pupils who attend school are involved in some form of child labour (9% in rural areas, 2% in urban environments).[193] Unfortunately, although in its aforementioned concluding observations from 2005 the Committee expressed concern regarding the exploitation of children, especially those who are begging, and gave its recommendation for solving this issue, the Ministry in its 2009 Report to the Committee states that the problem of children in the streets still is significant and there are still a series of violations of child rights and child labour laws (although any form of child labour is prohibited under law, and such conduct constitutes a criminal offence). The Ministry, further, states in relation to economic exploitation and begging in the streets:

"As we have reported, this problem is usually related to Roma population, even though the phenomenon of forced labour and begging in the streets of children who are not members of Roma population has become more common. For example, in November 2008, according to data from the Federal Police Administration, 121 violations related to begging have been recorded. In relation to November 2007 when the number of offences against public peace and order by begging of people of all age groups increased by 50 or 70.4%. At the level of Federation of Bosnia and Herzegovina, 888 juveniles prone to begging have been recorded, mostly aged between 7 and 14-277; between 15 and 16-230, between 17 and 18-192, and up to 7 years of age-100 children. In some cantons, such as Sarajevo Canton, we may say that the statistics increased. Namely, the main problem is

[192] Paragraph 65, Committee on the Rights of the Child, Review of the report that State parties submit under Article 44 of the Convention-Concluding observations: Bosnia and Herzegovina, adopted on 03.06.2005, UN doc. CRC/C/15/Add.260 21.09.2005, available at: http://www.ombudsmen.gov.ba/materijali/preporuke/preporuke%20Un%20tijelima/04%20CRC%20Zakljucna%20razmatranja.pdf, (accessed on 10.11.2010)

[193] Ministry of Human Rights and Refugees BiH (2009). Combined Second, Third and Fourth Periodic Report of Bosnia and Herzegovina in its implementation of the Convention on the Rights of the Child. p. 46, available at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-BIH_2_4.pdf, (accessed on 10.11.2010).

that begging is still a major source of income for Roma families who are socially excluded and extremely poor and this is their way of survival and struggle with extreme poverty. Having this in mind, tightening of sanctions cannot provide desired results."[194]

Unfortunately, the problem of child exploitation in recent years has been relatively ignored, although concrete action on the prevention of juvenile delinquency was taken after a series of events that resulted in the death of a child. However, it is obvious that economic exploitation of children is not on the agenda of priorities of authorities in Bosnia and Herzegovina, since there is still no established effective system of child protection and no prosecution of parents or other persons who exploit children for monetary gain. Reports and studies carried out by non-governmental organisations on child exploitation indicate any improvement, on the contrary:

"Data from the research carried out by non-governmental organisation "Zemlja djece" from Tuzla say that between 100-200 children, of the age 7-16, on daily basis are exposed to economic exploitation in bigger urban environments. Out of surveyed children of the age between 7-16, 75% does not attend school and 25% has never been to school, not they know how to read or write. Conditions under which these children live are extremely difficult. These children live in abandoned and destroyed buildings, improvised settlements. Almost 90% of these children have no health insurance due which some 50% of them do not feel well or are sick. About 30% are malnourished or anaemic. In most cases, neither they nor their families are covered by the system of social protection and security."[195]

The problem of economic survival involves the question of the state's ability to provide basic conditions for employment, and because of the inability to function at minimum standards of social protection and security, we can conclude that the State has failed to fulfil its obligations arising from the adopted international documents, primarily the CESCR and Convention on the Rights of the Child. There is a need for a systematic approach to the problem of child exploitation throughout Bosnia and Herzegovina, one that coordinates the economic and social policies of all governments in the state.

[194] Ibidem, p. 47

[195] ICVA (2010) "Implementation of the European Social Charter through legislation and practice in BiH – II", available at: http://www.icva-bh.org/userimages/ESP%20II.doc, (accessed on 10.11.2010).

II
Human Rights in Legislation: Civil and Political Rights

Given the fact that substantial changes have not occurred in relation to the state of affairs in 2008. when the previous Report was published, certain amendments and normative changes which have been made can be viewed at:

http://www.ljudskaprava.ba or at: **http://opservatorij.wordpress.com** in the section "PRAVO".

III
Human Rights: Special Topics

PROBLEMS REGARDING CONSTITUTIONAL FRAMEWORK IN BIH AND ITS (NON) IMPLEMENTATION

1. INTRODUCTION

Even fifteen years after the war ended in Bosnia and Herzegovina (BiH), the country did not succeed to provide basic citizens rights, in accordance with the obligatory international human rights standards and democratic relations. A primary reason for this situation is the fact that the Constitution of the BiH, as part of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement)[1], is not being implemented and interpreted in a way that would enable development of the society to that end. Further, there have been no changes to constitutional provisions which, obviously, are not in accordance with the international conventions in the field of human rights that Bosnia and Herzegovina is obliged to fulfil.

In an effort to end a perennial war and reach agreement between different political options, the Constitution of the BiH incorporated certain solutions that emphasize protection of the interests of constituent peoples while neglecting the interests of other peoples and rights of all citizens, which is a basic principle of modern democratic society. Moreover, this system does not even provide equality of all members of constituent peoples on the entire territory of BiH. Furthermore, selective and inconsistent interpretations of constitutional provisions by certain political elites violate the basic principles proclaimed in constitution, which prevents development of BiH as a democratic society.

[1] The General Framework Agreement for Peace in Bosnia and Herzegovina, signed on 14.12.1995 in Paris, contains 11 Annexes from which the Annex 4 is the BiH Constitution, available on the Internet page of the Office of High Representative for BiH, http://www.ohr.int/dpa/default.asp?content_id=380

This text provides a brief overview of basic characteristics of the constitutional set up of BiH, i.e. the structure and functioning of the key governmental institutions and a few consequences resulting from such system by analyzing government formation after the last general elections (2010) and the current issues in the field of judiciary.

2. CHARACTERISTICS OF THE CONSTITUTIONAL SYSTEM IN BIH

The Dayton Agreement, before all, had priority to end the perennial war in BiH, without defining its causes and the character. Solutions contained in the Agreement are the result of compromise between warring parties. The International Community tried to lay foundation for constituting the BiH as a modern European democratic state that functions in accordance with law and which should ensure highest standards of human rights. It was expected that the BiH Constitution, that represents only one part of the Agreement (Annex 4) and gives basis for further structuring of a democratic government, would in the meantime advance through prescribed amendment procedure by democratically elected authorities, and as such would not serve as long term solution.

The Constitution of BiH reaffirms international-legal continuity of the Republic of Bosnia and Herzegovina under current name of Bosnia and Herzegovina, with the modified internal state structure. In accordance with Article I/3 of the Constitution, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). Further, distribution of responsibilities between the BiH institutions and the entities was set. As a starting point, an assumption of responsibility in favour of the entities was incorporated, while the BiH institutions were given a limited number of express responsibilities. The Constitution leaves a possibility of expanding the responsibility of BiH institutions on three grounds: when entities agree on transfer of certain responsibilities, when there is a need to comply with the implementation of Annexes 5 through 8 of the Agreement or when it is necessary to preserve the sovereignty, territorial integrity and political independence of the BiH.[2] Based on the Dayton Agreement another territorial unit was created – District Brčko BiH.[3]

[2] Article III/5 of the Constitution of BiH.

[3] In accordance with Article V of the Annex 2 of the Dayton Agreement, parties have agreed to binding arbitration of the disputed portion of the Inter Entity Boundary Line in the Brcko area. On 05.03.1999, the Arbitral Tribunal issued the Final Award establishing Brčko District under the exclusive sovereignty of Bosnia and Herzegovina. Based on this decision the Supervisor for Brčko District passed a Statute of Brčko District that came into force on 09.03.2000 ("Official Gazette of Brčko District", no.1/100). More on the issue available on http://www.ohr.int/ohr-offices/brcko/ (visited on 11.11.2011). In order to end the authorities of the Arbitral Tribunal,

The organization of the entities the FBiH and the RS is regulated by their Constitutions dated before signing of the Dayton Agreement. Those are two conceptually different documents, noting that the Constitution of the FBiH adopted in 1994 had established federal structure with ten cantons, while on the other hand the Constitution of RS was adopted in 1992 as the "constitution of a separatist entity claiming to be independent state".[4] Therefore, the Constitution of BiH envisages obligation that within three months from its entry into force entities amend their respective constitutions and ensure their conformity with BiH Constitution.[5]

But, even fifteen years after, the uniqueness of the legal system has not been ensured through aforementioned conformity of the entity Constitutions with the BiH Constitution. Moreover, neither the Constitution of the BiH is implemented consistently and is often interpreted in accordance with the interests of certain political elites. Also, adequate steps have not been taken towards the improvement of constitutional system in accordance with the modern democratic principles. Aforementioned has negative effect on efficient state functioning and fulfilment of international obligations, especially on those related to the Euro-Atlantic integration process.[6]

The main obstacle to the functioning of the state in accordance with democratic principles and human rights standards is the fact that BiH Constitution focuses on the protection of collective interests at the expense of the individual rights, which is reflected in the structure and functioning of government authorities, primarily at the state level, but also at the entity level. Inconsistent implementation and different interpretations of constitutional provisions by certain political actors contributes to such situation, which results in inadequate protection of the interests of the constituent peoples.

2.1 Structure of the Government institutions and a method of election under the BiH Constitution

As already mentioned in the structure and functioning of government institutions, the Constitution of the BiH favours representation and protection of collective interests of the constituent peoples over citizens' representation. This system excludes

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the BiH Constitution, in prescribed procedure, was amended with the Amendment I to the BiH Constitution ("Official Gazette BiH", no.25/09).

4 *Opinion on the Constitutional situation in Bosnia and Herzegovina and the powers of the High Representative adopted by the Venice Commission*' no. *CDL-AD (2005) 004* Paragraph 4 and 5 Venice, 11.03.2005. available at http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-bos.asp (accessed on 01.10.2011).

5 Article XII/2 and Article III/3.b) of the Constitution of BiH

6 European Commission, *Bosnia and Herzegovina 2011 Progress report*, Brussels, 13.10.2011, no. SEC(2011)1206, available at http://www.dei.gov.ba/dokumenti/?id=8562 (accessed on 10.11.2011).

protection of interests of the "Others" – non-constituent peoples and national minorities, and fails to provide full equality of all members of constituent peoples, as the ethnic representation ties with entity belonging. Equality of all members of constituent peoples is not even ensured in the whole state territory despite that fact that this principle is guaranteed under the Constitution of the BiH and confirmed by the Constitutional Court of BiH.

The mentioned constitutional solution has enabled systemic discrimination, so the European Court of Human Rights in decision in the case *Sejdić and Finci v. BiH*[7] has found that provisions of the Constitution of BiH dealing with elections of the members of the BiH Presidency and delegates of the House of Peoples of the Parliamentary Assembly of BiH are discriminatory, because they prevent the members of the "Others" to be represented in those bodies. In addition, noted was discrimination in relation to the possibility of electing members of the constituent peoples from the territory in which they are not a majority to mentioned bodies, respectively Serbs that reside outside of the RS territory, and Croats and Bosniaks with residence outside of the FBiH.

Such election set up within the constitutional and election systems violates the international standard that ensure general and equal election rights that are guaranteed under the Constitution of the BiH, while integral expression of will, equally by all citizens and by all constituent peoples, was prevented. Despite the fact that quota system in filling certain power structures is accepted in multiethnic states,[8] the same one does not function in a way that it is expected that citizens vote primarily according to their ethnicity as it is the case in BiH. In addition to the European Court in the *Sejdić and Finci* case, many other relevant international bodies have pointed out to these shortcomings.[9] However, despite this, there were no changes made to the mentioned constitutional arrangements that are contrary to the International human rights standards although the BiH Parliamentary Assembly has initiated certain activities in this direction.[10] It is essential to mention that problem in implementing the judgment

[7] AP no. 27996/06 and 34836/06 from 22.12.2009, available at http://www.mhrr.gov.ba/ured_zastupnika/novosti/?id=1008 (accessed on 10.10.2011). More on the judgment in Edin Hodžić and Nenad Stojanović publication, *New-old constitutional engineering* (ANALITIKA Centre for Social Research, Sarajevo 2011) available at www.analitika.ba (accessed on 15.09.2011).

[8] E.g. Belgium and Switzerland.

[9] UN BiH and UN OHCHR, *Compilation of recommendations of the UN Human Rights Bodies, Bosnia and Herzegovina*, p. 5-8, *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative by the Venice Commission, op.cit.*

[10] The Parliamentary Assembly of BiH established Joint *Ad Hoc* Committee of both Houses for the implementation of Judgment of the European Court of Human Rights in the case Sejdić and Finci vs. BiH (Conclusion on the appointment of the committee published in the "Official Gazette of BiH", no. 81/11 from 11.10.2011). The task of the Committee is to prepare proposed amendments to the BiH Constitution and submit them into parliamentary procedure by 30.11.2011, further by 31.12.2011 the Committee shall prepare Proposed Law on Changes and

of the European Court of Human Rights arises due to conflict of two constitutional concepts: Dayton concept which favours collectivity through constituent peoples and the European Convention that insists on citizens' equality and prohibition of discrimination of all kinds.

2.1.1 The work of governmental institutions in BiH and protection of collective interests

The concept of protecting the interests of constituent peoples is reflected through appropriate representation and presentation of those peoples in the governmental institutions in the BiH. In addition, the concept includes certain protective mechanisms in decision making in BiH representative bodies. However, these mechanisms do not always function in accordance with their purpose and often turn into their opposite – blocking the decision-making process.[11]

It is, above all, the mechanism of protection of vital national interest of constituent peoples in decision-making process in the House of Peoples of the BiH Parliamentary Assembly.[12] This mechanism has been established in order to ensure that no decision of vital national interest is taken in contravention to interests of any of the constituent peoples. Namely, within the parliamentary procedure each of the caucuses of the constituent peoples in the House of Peoples may, by the majority vote of the delegates in the respective caucus, declare any proposed decision to be destructive of a vital national interest of the respective people. The majority of each caucus of constituent peoples must agree with this in order for the proposed decision to be rejected. If any of the caucuses oppose the objection, then the positions shall be harmonized within a joint commission of all caucuses. In the event that process of harmonization fails, the matter shall be referred to the Constitutional Court of BiH for a review of "procedural regularity"[13]. It is important to mention that BiH Constitution does not give a definition of vital national interest. Therefore, it is left to the Constitutional Court of BiH to interpret this term on a case-by-case basis.[14] On the other hand, attempt to define vital national interest that is made in entity constitutions did not give expected results because determination of such interest was done extremely extensive.

Amendments to the Election Law of BiH. However, reaching of a minimum consensus is still questionable. Even if there is a consensus reached, it seems that those will be only a minor changed that would formally but not substantially comply with the judgment.

11 Also see *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative by the Venice Commission, op.cit.*

12 This mechanism was incorporated to decision making process in entity and cantonal representative bodies, and Mostar City Council.

13 Article IV/3.e) and f) of the Constitution of BiH

14 Steiner, Ademović, *Constitution of Bosnia and Herzegovina Commentary* (Konrad Adenauer Stiftung, Sarajevo 2010), p.629.

Besides the mentioned mechanism of protecting the interests of constituent peoples in decision-making process in the Parliamentary Assembly of BiH, the Constitution of BiH provides a system of protecting entity interest through so called entity voting where in addition to simple majority, required is a certain number of votes from each entity.[15] Namely, in both Houses of the Parliamentary Assembly of BiH, as a regular way of decision making, the rule is established so that majority of present and voting is required to adopt a decision with a provision that the majority must include at least one third of the votes from each entity. If the entity voting requirement is not met, the Speaker and two Vice-Speakers of the House shall attempt to reconcile the views. If they fail, then a new vote shall take place in the session of the House. This time decision shall be considered as adopted if majority of present vote, provided that dissenting votes do not include two-thirds or more from each entity.

This mechanism is particularly used in decision-making process in the House of Peoples where practically only three delegates out of 15 in the House can, without any explanation and without any criteria, block the decision-making process, as very often happens and practically it becomes used instead of mechanism of protection of vital national interest.[16] Aforementioned ways of deciding is very often used for the purpose of blocking the very same process that have negative consequences, not only for the members of certain constituent peoples, but also for all citizens of BiH, because it blocks decision-making on important reforms which, above all, are necessary for BiH to its European path.

The equality of both, the constituent peoples and individuals can not be achieved in entities in a way that is provided under the BiH Constitution. In fact, the entity's constitutions, despite the intervention of the Constitutional Court of BiH and the High Representative are still not consistent with the Constitution of BiH, although it is a strict constitutional obligation. This also applies to the implementation of the Decision of the Constitutional Court of BiH from the year 2000[17] in public known as the Decision on constitutionality of peoples throughout the territory of BiH.

Specifically, the entities have only partially fulfilled their obligations from the mentioned decision.[18] For example, the established Council of Peoples of RS is not

[15] Article IV/1, IV/2 and IV/3.d) of the Constitution of BiH

[16] The problem of the voting was also pointed out in a study, Decision making process in the Parliamentary Assembly of Bosnia and Herzegovina, Konrad Adenauer Stiftung, Representation office in Bosnia and Herzegovina Sarajevo, May 2009), p. 88 – 90 and p. 93. Namely, out of 260 rejected proposals and draft laws in the period 1997 – 2007, 156 were not adopted because of insufficient support of MP's from one of the entities. On the other hand, in covered period, the institute of protecting the vital national interest was used only four times.

[17] Partial Decision number U-5/98 "Official Gazette BiH", no. 23/00 from 14.09. 2000, also available at web site of the BiH Constitutional Court: www.ccbh.ba/bos/odluke/index.php?src=2

[18] In some parts the same was done by the High Representative, although it was not done in consequent and symmetric way in both Entities. See, Kasim Trnka, *Constitutional Law,* second

equal to the House to the National Assembly as is the case with the House of Peoples towards the House of Representatives in FBiH Parliament. In the FBiH, legislative power is exercised by both, the House of Representatives and the House of Peoples unlike in the RS where Council of Peoples decides only on issues related to vital interest of constituent peoples.[19]

Unlike the Constitution of BiH, the entity constitutions contain the definition of vital national interest which is referred to extremely broadly and practically left to arbitrary assessment of political elites.[20] Namely, entity constitutions stipulate that the vital national interest include, along with the enumerated issues, all other issues if 2/3 of one of the constituent peoples' caucus deems so.[21] This practically means that anything can be declared as a vital interest of constituent people.

Additional problem arises due to the fact that prescribed procedure for protection of vital national interest under the RS Constitution is not respected by the Constitutional Court of RS, which in its Rules of Procedure stipulates that a decision on the merits which approves a vital national interest requires a two-third majority of the members of the Council for Protection of Vital Interest before this Court, which has seven judges.[22] This was done contrary to explicit constitutional provision which stipulates that votes of only two judges are enough for the Court to decide on the vital national interest.[23] This deliberate violation of the constitutional provisions by the institutions that should uphold the Constitution and ensure the constitutionality of legal acts brings into question equality of Bosniaks and Croats in Republika Srpska. Therefore, it is really rare that mentioned Council adopts request for protection of vital national interest.[24]

Within the organization of executive power, in the RS, beside a strong function of the President, with regard to election and authority, established are two Vice-Presidents of RS, but they are not entrusted with any authority, unlike in the FBiH where on most important issues the President decides in consent with both Vice-Presidents.[25]

changed and amended edition, (Sarajevo, Faculty of Public Administration Sarajevo 2006), p. 300-305, 314-320 and 326-327.

19 Kasim Trnka, et.al., *Constitution of Federation of Bosnia and Herzegovina, Constitution of Republika Srpska, European Charter of Local-Self Government, Commentary* (Civil Society Promotion Centre, 2004), p.134-138.

20 Decision making process in the Parliamentary Assembly of Bosnia and Herzegovina, *op.cit., p. 94.*

21 Amendment XXXVII to the FBiH Constitution' "Official Gazette FBiH", no.16/02 and Amendment LXXVII to the RS Constitution, ("Official Gazette of RS", no. 21/02).

22 Article 52 Rules of Procedure of the RS Constitutional Court ("Official Gazette of RS", no. 29/05).

23 Amendment LXXXII to the RS Constitution ("Official Gazette of RS, no. 21/02).

24 Decision making process in the Parliamentary Assembly of Bosnia and Herzegovina, *op.cit.,* p. 94.

25 Kasim Trnka, et.al., *op.cit.*, p.153-161.

Therefore, mentioned examples show that there is no political will, particularly by the RS, to ensure equality of constituent peoples throughout BiH. Practice of the Constitutional Court of RS proves that primacy is given to protection of interest of the constituent people that makes majority of population of that entity. This favours ethnic homogenization and block all attempts to establish equality of all peoples across the state which is contrary to the above decision of the Constitutional Court of BiH according to which "… recognition of the constituent peoples and constitutional principle that lies behind-the principle of collective equality, impose an obligation on entities not to discriminate, primarily, those constituent peoples who, in reality, are in a minority position in appropriate entity". Further, the Constitutional Court of BiH finds that "…despite territorial arrangement of the Bosnia and Herzegovina by establishing two entities, this territorial arrangement can not serve as constitutional legitimacy for ethnic dominance, national homogenization or the right to maintain the effect of ethnic cleansing".[26] The significance of this decision is that with its full implementation ensured would be equality of all members of constituent peoples throughout the territory of BiH, which would contribute to promotion of individual human and civil rights.

This constitutional and legal framework that gives primacy to collective interests, and selective application of certain provisions concerning the protection of those interests; have had negative impact on the forming and functioning of government at state and entity level, and led to problems in the functioning of the judicial authorities.

2.2 The formation of the legislative and executive authorities in the BiH

The presidential and the parliamentary elections in the Bosnia and Herzegovina were held on 3 October 2010. The election results made significant changes compared to previous elections. Namely, this time it was obvious that a significant number of people left the circle of ethnic divisions and gave vote of confidence to multiethnic option through the Social Democratic Party BiH (SDP BiH) which in total achieved best election results[27], but resulted in great difficulties in forming government. National parties, which so far were leading the government, could not cope with the new election results. Again, they insisted on concept of the "legitimate representatives of the constituent peoples" in which only the national parties are exclusive owners of that legitimacy, even though the Constitution of BiH does not recognize such category. This was the stumbling block in forming both the legislative and the executive power, especially in the FBiH and at the state level. Instead of seeking a way within the existing constitutional

[26] Decision number U-5/98, *op.cit*., paragraphs 59 and 61.

[27] Central Election Commission BiH, www.izbori.ba.

framework and acting in the interest of all the citizens of the BiH, the constitutional provisions concerning ethnic representation were more rigidly interpreted.

This situation resulted in enormous delays in government formation at the level of the FBiH, and the total blockade of the formation of the Council of Ministers of the BiH. Delay of more than a year is contrary to all democratic principles which require that government is formed soon after publication of final election results. This, before all, is the obligation of those political parties that have received greatest confidence from citizens.

2.2.1 Government formation in the FBiH

Delays in the government formation occurred primarily in the FBiH. Reason behind is behaviour of political parties with national prefix, primarily HDZ BiH and HDZ 1990 which showed no readiness to respect the will of the citizens expressed during last elections and act in accordance with democratic principles and principles of the rule of law, i.e. to act in accordance with constitutional and legal provisions.

In accordance with the constitutional provisions, the House of Peoples of the FBiH Parliament shall be convened for the first time no later than twenty days after the cantonal legislature is elected,[28] and they shall be formed within ten days after the results of the election have been promulgated.[29] According to this, the House of Peoples had to be formed on 02.12.2010 but it did not happen. In addition to delays in formation of the cantonal legislative bodies, the main cause of the crises were blackmails of two HDZ, who did not want to fill seats in the House of Peoples and appoint delegates from three cantons in which they have electoral majority[30] due to their opinion that they were the only legitimate representatives of Croat people hence all Croat seats should belong to them.[31] This situation was rather worrying because a deadline for the FBiH budget adoption was approaching.[32] Without adopting the

[28] Article IV/A.2.10 of the FBiH Constitution.

[29] Article V/2.5. of the FBiH Constitution

[30] Posavina Canton, West-Herzegovina Canton and Canton 10.

[31] *Radio Sarajevo, 23.12.2010 "Two HDZ's are only legitimate representatives of Croat people"*, after the session of the HDZ 1990 Main Board in Vitez, "a meeting between presidencies of HDZ 1990 and HDZ BiH was held during which confirmed was earlier agreement between the two parties and further implementation of the agreement was agreed for all authority levels. According to Dragan Čović, as of today there shall be no new appointments, at any level, without consent from the presidencies of both parties. These parties remain at position that there shall be no authority formed without their participation, because they are, according to their opinion, only legitimate representatives of Croat people. Available at http://www.radiosarajevo.ba/novost/39958dva-hdz-a-jedini-legitimni-predstavnici-hrvatskog-naroda (accessed on 17.10.2011).

[32] The Law on Budget in Federation of Bosnia and Herzegovina ("Official Gazette FBiH", no. 19/06, 76/08, 05/09, 32/09, 09/10, 51/10, 36/10 and 45/10) stipulates that the budget for following fiscal year has to be adopted by 31. December of the current year, and in case that the budget is not adopted before an new fiscal year, the Parliament is obliged to adopted a Decision

budget there would have been a full financial and social collapse of this entity, and in particular, the vulnerable categories of citizens whose survival depends on social benefits from the budged would be threatened.

Lengthy negotiations that in the end were led under the auspice of the OHR had no positive outcome.[33] Therefore, the parties gathered around the SDP platform, those that have majority in the House of Representatives and the House of Peoples started forming the federal authorities.[34] Namely, this move was not in conflict with the FBiH Constitution,[35] nor with democratic principles by which parties that have simple majority in the parliament have an obligation towards citizens to form the government.

As a result, on 17.03.2011 a constitutive session of the House of Peoples of FBiH was convened and was attended by most delegates which presented a sufficient number to adopt valid decisions. During the session, among others, adopted was a Decision on appointing a President and Vice-Presidents of FBiH as well as a Prime Minister, Deputy Prime-Minister and ministers in the FBiH Government.[36]

Immediately after this session, previous FBiH President Borijana Krišto and Deputy Prime-Minster Vjekoslav Bevanda sent a request to the Constitutional Court of FBiH to determine the constitutionality of the inaugural session of the House of Peoples of FBiH and certain acts passed by the House. However, without waiting for decision from the Constitutional Court of the FBiH on the aforementioned matter, the Central Election Commission BiH (CEC) at its session held on 24.03.2011 adopted a decision by which, among others, determines that elections for House of Peoples of the FBiH Parliament were not conducted in all ten cantons in accordance with

on Temporary Financing, while the budget for current year must be adopted at the latest on 31 March.

33 *Dnevnik.ba 16.03.201* "Čović: The situation in BiH will destabilize, Tihić and Hadžić: Two HDZ's demanded all Croat posts", http://static1.dnevnik.ba/novosti/bih/od-16-sati-nova-runda-pregovora-izme%C4%91u-tihi%C4%87-i-lagumd%C5%BEije-te-%C4%8Dovi%C4%87-i-ljubi%C4%87 (accessed on 01.10.2011).

34 "**SDP and SDA are forming the government: All BiH citizens became hostages of irresponsible and unconstitutional politics of two HDZ's"**, SDP BiH and SDA informed today that, after two HDZ's refused the principle on division of Croat positions in legislative and executive authorities, they will form the Government in Federation of BiH with other platform parties. These parties, in separate press releases, state that this was necessary "in order to prevent damages of not adopting the budget and cease a many month old blockade by two HDZ's" 06.03.2011, internet portal 24sata.info, http://www.24sata.info/mobile/vijesti/politika/57819-SDP-SDA-formiraju-vlast-Svi-gradjani-BiH-postali-taoci-neodgovorne-neustavne-politike-dva-HDZ-.html (accessed on 20.09.2011)

35 Article IV/A 6.19 of the F BiH Constitution stipulates: "Other decisions shall be taken by a simple majority in each House except as otherwise provided in the Rules of that House or in this Constitution".

36 Appointment Decisions published in "Official Gazette of FBiH", no. 12/11.

the provisions of the Election Law of BiH, therefore no conditions were met for its constitution.

After this CEC's move, a sharp reaction came from the OHR who passed an Order to temporarily suspend certain decisions of the CEC adopted at its 21st session on 24.03.2011, and any proceedings concerning said decisions. The OHR has established "that until the Constitutional Court of the Federation of Bosnia and Herzegovina pronounces itself on the matter, it is imperative to preserve the stability and the functioning of the institutions, to provide legal certainty, and to ensure the smooth functioning of the authorities of the Federation of Bosnia and Herzegovina for the benefit of all its citizens". OHR further said that with mentioned decisions by the CEC, this body, *inter alia*, "touches upon issues which arise under the Constitution of the Federation of Bosnia and Herzegovina and therefore may be subject to the jurisdiction of the Constitutional Court of the Federation of Bosnia and Herzegovina and therefore go beyond the Election Law of Bosnia and Herzegovina". After this Order from the OHR, requests that were sent to the Constitutional Court of FBiH were withdrawn, therefore the Court could not pronounce itself on the constitutional matter, and the OHR decision remained unchanged.

2.2.2 Establishing the State level authority

Abovementioned reasons for problems in forming the authority in Federation BiH also reflected at the state level. Again, the main Croat parties challenged the legitimacy of the elected member of the BiH Presidency from the Croat people, SDP candidate Željko Komšić.[37] Due to delays in formation of the House of Peoples of the FBiH Parliament, the House of Peoples of the BiH Parliamentary Assembly was only formed on 09.06.2011.

The same problem arose with the appointment of the Chairman of the Council of Ministers of BiH where beside Croat parties, strong support to the same politics came from representatives from SNSD,[38] a party with the best election results in RS.

[37] "We condemn and reject the harsh oppression of the electoral will of Croat people in Bosnia and Herzegovina declared at the last General Election in October 2010, where for second consecutive time Bosniak votes disabled election of legitimate Croat member in the Presidency of Bosnia and Herzegovina.", Resolution of Croat Peoples Assembly, 19.04.2011 in Mostar, available at HDZ 1990, http://www.hdz1990.org/vijesti/rezolucija-hrvatskog-narodnog-sabora/ (accessed on 01.10.2011).

[38] Dnevnik.ba: "Majkić: Position of CoM Chairman belongs to legitimate Croat representatives", 23.05.2011, - "Majkić reminded of a joint position of SNSD, SDS, HDZ 1990 and HDZ BiH that post of Chairman of the Council of Ministers should belong to somebody from Croat people." "The post of the Chairman of the Council of Ministers belongs to representatives of Croat people, to those that have the legitimacy of Croat people", said Majkić and added that election of ministers and deputy ministers should be an agreement between political actors". http://www.dnevnik.ba (accessed on 01.10.2011).

Namely, Slavo Kukić, a SDP candidate for the Chairman of the Council of Ministers of BiH, did not receive required number of votes in the House of Representatives of the BiH Parliamentary Assembly. On the session held on 29.06.2011 he gained support of simple majority (21 vote) but did not get necessary entity vote.[39] Such outcome of the vote was expected, having in mind the Opinion of the Commission for preparing elections of Council of Minsters who by most votes was not in favour of Slavo Kukić, respectively the Commission did not give recommendation to the House of Representatives for his appointment.[40] Among the reasons for withdrawing the support to this candidate following justification was given "there is no will of majority of Croat people for his candidacy, therefore he has no legitimacy to represent Croat people as Chairman of the Council of Ministers", and that there was outvoting of Serb member of the BiH Presidency when appointing a candidate. They expressed "particular dissatisfaction with the position of Mr. Kukić by which "entity voting" should be abolished from the House of Representatives and moved to House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina".

Meetings among six political parties whose representatives are members of Collegiums of both Houses of the BiH Parliamentary Assembly continued but without success. The Constitution and law have no solution for such situation and they do not foresee a possibility of snap elections. Having this in mind the only possibility is that current Council of Ministers continues to work in technical mandate, until the next elections that would be in three years, which will certainly create difficulties in passing laws and making necessary decisions in Parliamentary Assembly of BiH because there is a different ratio of political power in these two bodies. Such situation will further hamper progress in necessary reform processes.

Such irresponsible behaviour of the elected representatives of citizens of Bosnia and Herzegovina directly violates, above all, basic political rights, rights of citizens to participate in exercising power, and will adversely affect the state on its path to EU and NATO because of the failure to implement key reforms necessary for this progress. Above mentioned was also stated in Peace Implementation Council Steering Board Communiqué from 07.07.2011.[41]

[39] Article IV,3.d) of the BiH Constitution.

[40] Committee for Preparation of Election of the Council of Minsters of BiH, Opinion on the candidacy of *Slavo Kukić for the post of the Chairman of the Council of Ministers of Bosnia and Herzegovina*, dated 24.06.2011 available at http://www.parlament.ba (accessed on 01.10.2011).

[41] Beside other, the Communiqué of the Peace Implementation Council from 07.07.2011 emphasizes: "The PIC SB is gravely concerned at the fact that political leaders in BiH seem so little troubled by these consequences, and it calls upon them to put the interests of the country and its citizens first and to engage in serious dialogue, in a spirit of compromise and in accordance with the requirements of the General Framework for Peace (GFAP) to enable the appointment of a broad based state-level government without further delay. The political leaders should act in a way that inspires the young generation rather than disenchant them." Available at: www.ohr.int (accessed on 01.10.2011).

It is obvious that will of citizens expressed in last elections was fully neglected which is contrary to all democratic principles. In the very negative context advantage was taken from all weaknesses and vagueness of the constitutional framework, while democratic principles that ought to be observed and used to overcome these ambiguities are completely ignored. This showed unwillingness to give up the constant primacy of individual national interest that needs to be protected only by "legitimate representatives" of that people against the protection of interests of democratic, European state and its citizens.

2.3 Influence of the constitutional framework on the independence of judiciary

Characteristics of the constitutional framework prevent the functioning of judiciary in accordance with the democratic principles and the rule of law. The rule of law, among other, as fundamental pre-requisite for successful functioning of democratic society, entails judicial independence and human rights protection.[42] No state that has no independent judiciary is able to guarantee basic rights of individuals and protect them from arbitrary government. [43]

Relevant international standards require that domestic system of judicial independence must be guaranteed at the highest level, in the constitution itself.[44] Basic aspect of judicial independence implies independence from legislative and executive authority, to the extent permitted by the nature of the legal system and legal traditions of individual countries.[45] Besides appointment of judges, the system of financing

[42] *Opinion no. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges*, 23.11.2001

[43] Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone is entitled to "a fair and public hearing within a reasonable time before independent Court". According to Venice Commission "independence of the judiciary has both an objective component, as an indispensable quality of the Judiciary as such, and a subjective component as the right of an individual to have his/her rights and freedoms determined by an independent judge. Without independent judges there can be no correct and lawful implementation of rights and freedoms". Venice Commission, *The Report on the independence of the judicial system, Part I: Independence of Judges*, adopted on 82nd Plenary session in Venice on 12-13.03.2010 no. CDL-AD(2010)004.

[44] *Recommendation R (94) 12 of the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges* (principle I.2.a) from 13.10.1994. Also see, *Basic Principles on independence of judiciary* (UN 1985).

[45] Venice Commission, *Judicial Appointments*, adopted by the Sub-commission on the Judiciary in Venice on 14.03.2007, no. CDL-JD(2007)001rev, paragraphs 4-5. It is desirable that every country establishes independent body, which will be in charge of appointments and dismissal of judges. According to *Opinion 1 (2001)* CCJE, "every decision relating to a judge appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria".

judiciary has direct influence over judicial independence. Although in many countries financing of judiciary, as well as other institutions, is subject to political decision, it is necessary to keep the independence of judiciary as much as possible.[46]

In BiH there are basic prerequisites for exercising judicial independence, but there is a lack of democratic ambient. Although judicial independence is not mentioned explicitly in the BiH Constitution, the overall constitutional concept suggests so. Thus, the 15 most important international documents on human rights set in Annex 1 of the BiH Constitution are directly applied, while general rules of international law constitute binding source of constitutional law. The judicial independence is guaranteed under Article II of the Constitution, which deals with human rights and fundamental freedoms, including, particularly, European Convention on protection of human rights and fundamental freedoms which is directly applied and has priority in relation to domestic laws. However, in Bosnia and Herzegovina there are many obstacles on the path towards strengthening judicial independence and establishing better mechanisms in human rights protection. Problems that were highlighted above regarding the functioning of legislative and executive branches are also present in the context of the judiciary. Specifically, in addition to deficiencies in the constitutional framework, even the implementation of relevant provisions do not go in favour of protecting human rights of all citizens, but preference is given to collective and territorial interests. In support, the European Commission 2011 BiH Progress Report states that the independence of judicial system is not yet ensured which represents an issue of serious concern, and as the key challenge to proper functioning of the overall judicial system emphasized was its complexity of four separate judicial systems.[47]

2.3.1 High Judicial and Prosecutorial Council of BiH

Establishment of the High Judicial and Prosecutorial Council of BiH (HJPC),[48] responsible for the selection of judges and prosecutors and disciplinary measures against them, significantly contributed to the independence of the judiciary in the BiH. Thus, the selection of judges and prosecutors was put under jurisdiction of the independent body recruited from judicial and state institutions, while criteria for exercising judicial functions are the same for judges and prosecutors in BiH.[49]

[46] Therefore, the Venice Commission recommends: "Decisions on the allocation of funds to courts must be taken with the strictest respect for the principle of judicial independence and the judiciary should have an opportunity to express its views about the proposed budget to parliament, possibly through judicial council". Venice Commission, *The Report on the independence of the judicial system, Part I: Independence of Judges*, adopted on 82nd Plenary session in Venice on 12-13.03.2010 no. CDL-AD(2010)004, paragraph 55.

[47] European Commission, Bosnia and Herzegovina 2011 Progress report, op.cit. footnote 6

[48] HJPC was established in 2004. See, Law on the HJPC, ("Official Gazette of BiH", number 25/04, 93/05, 15/08 and 48/07), available at http://www.hjpc.ba/ (accessed on 16.10.2011).

[49] *Id.*

Although there are certain problems related to the structure and functioning of the HJPC,[50] most complaints in this regard are unfounded and represent an attempt of certain political circles to nullify positive results of previous reform which aimed at establishing independent and efficient judiciary. First of all, there is a request to establish high judicial and prosecutorial council at the entity level, whereby the jurisdiction of the HJPC BiH would be limited to the Court and Prosecutors Office of BiH.[51] As the main argument for this initiative mentioned was a view that the judiciary is the sole responsibility of the entities.[52] Not only that this is incorrect and a restrictive interpretation of the BiH Constitution, but it also ignores the fact that the entities have consented to the establishment of HJPC at the state level in accordance with the Article III item 5 of the BiH Constitution.[53]

Further, an attempt to restore responsibilities in the field of judiciary to the entity level is visible from the new draft Law on Courts of Republika Srpska, where certain law regulated responsibilities of the HJPC are being transferred to the Ministry of Justice.[54] Instead of working on improvement of judiciary, this attempt seriously undermines the system that provides minimum guarantee for the protection of an independent and efficient judiciary.

2.3.2 Financing

The way of financing judiciary represents one of the key elements in judicial independence. The importance of ensuring financial means to judicial institutions[55] was mentioned by European Commission reiterating that "independence, efficiency, impartiality, accountability, and professional judiciary" cannot be fully achieved without them, and requested competent authorities to "agree on a set of possible

[50] For example, a question arises whether it is proper for the prosecutor's and judicial council to be together, and should prosecutors and attorneys select judges who will be arbiter in cases where they act.

[51] See Conclusions from the 4th extraordinary session of the National Assembly of the Republika Srpska, no. 01/610/10, 13.4.2011, conclusion no. 20.

[52] *Id.* Conclusion no. 9 Also see speech of the President of the Republika Srpska, Milorad Dodik on the 4th extraordinary session of the National Assembly of Republika Srpska, 13.4.2011, available at http://www.predsjednikrs.net/index.php?option=com_content&view=article&id=8128%3A----4----&Itemid=190&lang=rs (accessed on 01.10.2011)

[53] Agreement on transferring certain responsibilities of the Entities through the establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina ("Official Gazette FBiH", no. 16/04).

[54] For example, Articles related to judicial administration. See draft Law on Courts of Republika Srpska from June 2011, Articles 54 and 56. Further, see Opinion of the HJPC on the draft Law, available at http://www.hjpc.ba/ (accessed on 06.10.2001).

[55] European Commission 2011 Progress Report on BiH states that financial means allocated to courts and prosecutor's offices in 2010 were close to 0.79% of the GDP. Op.cit. footnote 6

measures to streamline budgetary competences in respect of the constitutional order of BiH".[56]

By the Constitution determined state structure and division of responsibilities between the state and the entities, makes the realization of the principles of judicial independence real difficult. Concretely, the judiciary is financed from fourteen different sources[57] that do not provide the same level of required funding.[58] Therefore the European Commission emphasized the need for harmonisation of budgetary procedures and streamlining of competences amongst the fourteen responsible authorities.

In addition to these objective reasons, the financing of judicial institutions is conditioned by the political will of the legislative and executive bodies from certain levels of authority. This situation directly affects the efficiency of the courts and prosecutor's offices at all levels, which in turn has possible negative consequences on the independence of these institutions.

Therefore, in order to enhance judicial independence and in terms of funding, it is necessary to consider possibilities offered by the existing constitutional framework and find solutions that will provide a consistent system of financing the entire judiciary in BiH. To the advantage of the said goes a Draft Law on Prosecutor's offices in FBiH which foresees funding of all prosecutor offices in FBiH from the FBiH budget.[59] Unfortunately, it appears that primary obstacle to the adoption of this law is unwillingness of the cantonal authorities to transfer responsibility in this field to federal level.[60]

2.3.3 Constitutional judiciary

The constitutional judiciary is the key mechanism for achieving the principle of constitutionality and legality as well as protection of human rights, which is separate from the regular judicial system. Its structure and functioning must be in accordance with the highest principles of the rule of law. Namely, the principles outlined in the preceding text are to be respected in the framework of the constitutional judiciary, i.e. it is necessary to ensure full independence of these institutions from a variety of

56 European Commission, Recommendations from the second meeting of the "Structured dialogue on justice between the EU and BiH" held on 10-11.11.2011 in Sarajevo, available at http://www.pravosudje.ba (accessed on 27.12.2011).

57 At the Entity level, Brčko District and ten cantons in FBiH.

58 The financing of judiciary currently depends on the economic strength of canton or Entity.

59 Draft of this Law was discussed at First thematic conference of justice sector institutions in BiH, on the Law on Prosecutor's Offices in Federation of Bosnia and Herzegovina, held on 28.10.2011, organized by USAID and Federal Ministry of Justice.

60 The initiative for the adoption of the uniform Law on Prosecutor's Office in the FBiH as well as the procedure for its adoption from 17.02.2012, according to the Action plan announced by the Federation Minister of Justice, was welcomed and supported by the European Commission within the recommendations from the second meeting of the structured dialogue on justice between the EU and BiH. Op.cit footnote 56

political influences. Unfortunately, problems that were identified in respect of other authorities are also present in the structure and work of constitutional courts in BiH. Concretely, it is about the constitutional framework as well as interpretation of certain provisions concerning the structure and appointments to the constitutional courts.

The method of selection of the judges at the Constitutional Court of BiH and the entity constitutional courts is problematic from the point of independence of judiciary and fundamental democratic principles. While the HJPC selects judges of the regular courts, the constitutional court judges are elected by entity parliaments, based on the proposal from entity president. While this is not uncommon in other countries, in the Bosnia-Herzegovinian context, such system of electing judges exposes the constitutional judiciary to direct danger from political influence.

2.3.3.1 Constitutional Court of BiH

A typical example for the aforementioned is the way of appointing judges to the BiH Constitutional Court. Primarily, problematic is the fact that national judges of this Court are appointed by the House of Representatives of FBiH and the RS National Assembly.[61] More troubling is the practice that BiH Constitutional Court judges are exclusively selected from the three constituent peoples. Although the Constitution does not mention ethnic, but only entity, belonging of judges, it is common practices that from the FBiH elected are Bosniaks and Croats, while Serb judges are elected from RS.[62] Moreover certain provisions from the Rules of the BiH Constitutional Court explicitly refer to the ethnicity of judges. E.g. is it stipulated that the President of the Constitutional Court is elected by rotation of the judges from among the constituent peoples in Bosnia and Herzegovina[63], and that president and vice-president of the BiH Constitutional Court cannot be from the same constituent peoples.[64]

This procedure is not in accordance with basic democratic principles and rights guaranteed under Bosnia-Herzegovinian Constitution. Specifically, under current Rules of the Constitutional Court, persons who do not declare themselves as members of one of the constituent peoples cannot perform duty of the Court president, while possibility of being appointed as judge of this court remains questionable.[65] Also, placing emphasis on the ethnicity of judges of the Constitutional Court calls into

61 Four judges from FBiH and two judges from RS. See Article VI/1.a) of the Constitution of BiH.

62 Lejla Balić, "Constitutional practice in BiH-review of the selection of judges of the Constitutional Court of BiH", Yearbook of the Faculty of Law in Sarajevo, LII – *2009*, p. 13-24.

63 Article 87 Rules of Constitutional Court of BiH, ("Official Gazette BiH", no. 60/05).

64 Article 90.3 Rules of Constitutional Court of BiH. Also see, Article 42.2 which stipulates that: "a session of the plenary Court shall be adjourned if no judges from one of the constituent peoples are present. If the same situation occurs again without a justified reason, the next session shall be held".

65 Christian Steiner and Nedim Ademović, Commentary to the Constitution of Bosnia and Herzegovina, (Sarajevo, Konrad Adenauer Stiftung e.V., 2010), p. 626-627.

question their independence. There is a legitimate concern that some judges, when deciding, will represent interests of the constituent peoples to whom they belong, at the expense of other citizens.[66]

2.3.3.2 Entity Constitutional courts

Some aspects of functioning of the entity constitutional courts are problematic in terms of independence of judiciary and fundamental democratic principles. In addition to flaws in the procedure, stipulated in constitutions of FBiH and RS, many problems arouse in the implementation of certain provisions.

Hereby we will mention the actual example from the FBiH, where due to obstructions to appointments of judges to the FBiH Constitutional Court, this court works in incomplete composition. This situation is partly caused by the fact that deadlines for initiating process of appointment of judges of the FBiH Constitutional Court are not defined. This has left the possibility of delaying the procedure for filling in the vacancy in the FBiH Constitutional Court, which resulted in blockade of the courts' work in its full composition.[67] Of course, these shortcomings in the constitutional framework can not be an excuse for delaying the appointment process.

In addition, there are also intentional obstructions to the prescribed method of appointment of judges by certain public office holders. The attempt of the former president of the FBiH Borjana Krišto, who on two occasions tried to bypass the legal procedure and propose candidate who was not on the HJPC list is a blatant example of such obstruction.[68] Instead of proposing one candidate that meets the HJPC criteria set in the law, the president gave a priority to a candidate that failed to meet professional evaluation but was politically suitable. This situation is partly due to the fact that criteria to serve as a judge of constitutional courts are widely set which in return leaves space for manipulation, respectively favouring candidates on political grounds rather than their level of expertise.[69]

2.3.4 Denying the legitimacy and legality of certain judicial institutions at the state level

Recently certain political circles have increased open attacks against the judiciary. The Court and the Prosecutor's Office of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council, whose legitimacy and constitutionality was

66 This is the exact position of certain politicians. See text under 1.3.4.

67 See Article 28 of the Law on Procedure before the Constitutional Court of Federation of Bosnia and Herzegovina. ("Official Gazette of FBiH", no. 6/95 and 37/03).

68 HJPC Opinion from 05.02.2011, available at http://www.hjpc.ba/pr/preleases/1/?cid=4983,2,1 (accessed on 18.10.2011).

69 Article C 2.5(1). FBiH Constitution stipulates: "All judges of all the Courts of the Federation shall be distinguished jurists of the highest moral standing".

challenged,[70] found themselves under a lot of pressure. These attacks are based on the contention that there is no constitutional basis for these state institutions, because the judiciary is the sole responsibility of the entities.[71] Moreover, the Court and Prosecutor's Office of BiH are blamed for processing only persons of Serb nationality and therefore are not legitimate.[72]

Thus, alleged interests of one constituent people and one entity are used for political purposes yet again. There is an attempt to create impression, amongst citizens, that independence and legitimacy of judicial institutions and their decisions depend on the ethnicity of judges, prosecutors and defendants. Hence, for example, the BiH Constitutional Court decisions that confirm the constitutionality of the Court and Prosecutor's Office of BiH are not respected because the judges from one of the constituent people voted against them.[73] Herewith, the concept of "outvoting" is introduced in judicial decision making. The Decision of the Constitutional Court is not legitimate if majority judges vote in favour, but only if judges from certain people vote for it. Therefore, the factors that threaten the independence and legitimacy of judiciary are presented as their basic condition.

The issue of the legitimacy of the Court and Prosecutor's Office of BiH was considered by the RS National Assembly, and the decision that citizens of this entity will, through referendum, declare themselves on the support to these state institutions was made.[74] From the beginning it was clear that such referendum would be

70 This was also mentioned in the European Commission, BiH 2011 Progress report, where it was stated that "political pressure and verbal attacks on the judiciary have intensified", in particular by political representatives from Republika Srpska who "have challenged the legitimacy and the role of the High Judicial and Prosecutorial Council, the Court and the Prosecutor's Office of BiH". Op.cit. footnote 6.

71 Conclusions of the RS National Assembly, no. 01/610/11, 13.04.2011

72 Speech of the President of Republika Srpska, Milorad Dodik, on 4th extraordinary session of National Assembly of Republika Srpska, 13.04.2011, available at http://www.predsjednikrs.net/index.php?option=com_content&view=article&id=8128%3A----4----&Itemid=190&lang=rs (visited on 01.10.2011).

73 "The BiH Constitutional Court Decision from 28.09.2001 on the constitutionality of the Law on Court of BiH, was adopted by three foreign judges and two Bosniak judges, while all four Serb and Croat judges deemed the law as unconstitutional. Those are Law Faculty professors – PhD Snežana Savić, PhD Vitomir Popović, PhD Zvonko Miljko, and Mirko Zovko, current president of the Constitutional Court of Republika Srpska. The Decision was adopted contrary to established views of the judges from the members of two out of three constituent peoples, only two votes from the Bosniak judges and three votes from foreign judges. Could such decision be considered legitimate having in mind the legal arguments from the Serb and Croat judges?" Speech of the President of Republika Srpska, Milorad Dodik, on 4th extraordinary session of National Assembly of Republika Srpska, 13.04.2011 available at http://www.predsjednikrs.net/index.php?option=com_content&view=article&id=8128%3A----4----&Itemid=190&lang=rs (accessed on 01.10.2011).

74 National Assembly of Republika Srpska, Decision on Referendum, no. 01-611/11 ("Official Gazette of RS", no. 45/11).

not only contrary to the BiH Constitution but to the RS Constitution and the Law on Referendum too,[75] because it dealt with the question that is not within the jurisdiction of the RS National Assembly. Moreover, the formulation of a referendum question was inappropriate, because it openly suggested that the Court and Prosecutor's Office of BiH are unconstitutional institutions.[76] Almost two months later, the RS National Assembly passed a decision to annul the decision on the referendum.[77] The fact that both decisions were made at the initiative of the President of the RS,[78] points to the conclusion that there was no genuine intention to hold a referendum, but that the right of citizens to declare themselves on this important question was abused for political purposes. The Decision on cancelling referendum came after a meeting between Milorad Dodik and Catherine Ashton, the High Representative of the European Union for Foreign Affairs. Shortly after this meeting, a "structured dialogue" on the judiciary in BiH, under auspices of EU had begun.[79]

Such attacks against judicial institutions at the state level have negative impact on the work of these institutions, particularly having in mind the fact that process of judicial reform is not completed. Namely, although the Court and Prosecutor's Office of BiH covered a certain gap in the legal system, they do not constitute an adequate response to the need for existence of the supreme judicial instance, which would made legal practice even and thus ensure equal position of all citizens throughout the country. This is one of the issues that will be considered in the process of the structured dialogue, and it is expected that the EU will insist on the implementation of the international democratic standards in the judiciary.

[75] Article III/3.(b) Constitution of BiH, Articles 70.5. and 77 of the RS Constitution, Article 2 of the Law on Referendum ("Official Gazette of RS", no. 41/10).

[76] The question on which citizens should respond was: "Do you support laws imposed by the international community's High Representative in BiH, especially the Law on Court and Prosecutor's Office of BiH and their unconstitutional verification in the Parliamentary Assembly of BiH?"

[77] Decision of the RS National Assembly no. 01-868/11 ("Official Gazette of RS" no. 61/11 from 01.06.2011).

[78] Free Europe, "RS Assembly supported the referendum on the Court and Prosecutor's Office of BiH", 14.04.2011, available at http://www.slobodnaevropa.org/content/republika_srpska_ce_odrzati_referendum/3556606.html (visited on 26.11.2011); Free Europe, "With guarantees from EU we shall reconsider the referendum decision", 12.05.2011, available at http://www.slobodnaevropa.org/content/dodik_rs_referendum/24099602.html?s=1 (accessed on 26.11.2011).

[79] See Southeast European Times, "Dodik cancels referendum after talks with Ashton", 16.05.2011, available at http://www.setimes.com/cocoon/setimes/xhtml/bs/features/setimes/features/2011/05/16/feature-01 (accessed on 26.11.2001).

3. CONCLUSIONS AND RECOMMENDATIONS

Constitutional and the legal framework that gives priority to the protection of the collective interests through entity belonging, adversely affect the protection of interests and rights of all the citizens in the BiH. This has prevented the functioning of the BiH institutions in accordance with democratic principles and human rights standards that are binding for the country.

On the other hand, the Constitution of BiH, despite the aforementioned limitations provides an opportunity for strengthening the rule of law and protecting the interests all citizens and their individual rights. However, these opportunities are not sufficiently exploited. This is also true for other annexes of the Dayton Agreement which provide opportunities to meet the diverse interests of citizens and peoples, but because of the existing constellation of political relations are far from being used. Namely, instead of seeking space within the existing constitutional framework and acting in the interest of all citizens of BiH, the constitutional provisions that concern ethnic representation are more rigidly interpreted.

Shortcomings in the constitutional framework and the way of its interpretation have a negative impact on all aspects of government functioning. Concretely, this problem has manifested in the government formation at state and entity level, and has directly influenced the functioning and independence of judiciary.

These shortcomings need to be taken into consideration in further talks on constitutional changes, and try to advocate for the key position of citizens and protection of their individual human rights, without neglecting the mechanisms of protection of collective rights, but in accordance with democratic principles that would reflect the multiethnic character of Bosnia and Herzegovina.

CONSTITUTIONAL JUDICATURE IN BIH – PROBLEMS AND PERSPECTIVES

1. INTRODUCTION

Bosnia and Herzegovina (hereinafter BiH) is a state with a system of an asymmetric distribution of responsibilities between different levels of government and within its two Entities. It does not have clearly connected judicial system. In such a system, given the disintegrating politics of certain political entities, the constitutional judicature is, or could be, the cohesive element that could hold together the existing conflicting and particularistic views consolidating them into one functional system. Earlier appeals and proposals made by different sides, mainly offered solutions that would require significant systemic changes and reaching political consensus, which has been almost unimaginable in these circumstances. Primarily this refers to calls from a part of the Bosnia-Herzegovinian (hereinafter BH) public, professional in particular, to establish a Supreme/Appellate Court of BiH, to act as a supreme judicial body that would ensure the uniformity of jurisprudence of ordinary courts, and thus the equality of citizens before the law. Notwithstanding the potential importance of the suggested changes for future progress of BiH, it is realistic to expect them with change of political climate which is present in BiH since the outbreak of the conflict and declaration of independence, with more or less pronounced differences in its public and practical articulation. In the meantime, we believe that the constitutional judicature represents a mechanism with which it is possible to achieve the desired aims with regard to "rounding off" of the BH judicial and state system in general, and their efficient functioning in accordance with the rule of law, without the need to wait for possible changes in political discourse of the ruling parties and agreement on the most complex issues, such as changes to the Constitution of BiH.

However, to accept and implement this kind of solution, it is necessary to address the existing dilemmas and restraints. Avoiding indulging in interpretation of

certain subjective stands and volitions, as the most important following issues occur: 1. the scope of jurisdiction of the Constitutional Court of BiH and the method for election of judges, 2. (non)existence of sufficient authority of the Constitutional Court of BiH with regard to the enforcement of its decisions by responsible institutions and authorities, 3. conflict of competencies between the Constitutional Court of BiH and the High Representative, 4. the role of the European Court of Human Rights in the system of constitutional judicature in BiH.

2. SCOPE OF JURISDICTION OF THE CONSTITUTIONAL COURT OF BIH AND METHOD FOR ELECTION OF JUDGES

The Constitutional Court of BiH is an independent state body which performs the function of constitutional judiciary within the framework of the established rights and duties under the BiH Constitution. It is constituted as a court which functions out of the system of the regular judiciary and performance of ordinary judicial function. In general, the BiH Constitution defines a number of conceptual principles intended to guarantee both the form and development of the established social and political system. The Constitution also represents the act of institutionalization of the system. The jurisdiction of constitutional courts mainly includes the following groups of tasks: the review of the constitutionality of laws, the control of constitutionality, and legality of by-laws, the protection of citizens rights guaranteed under the constitution, resolving disputes related to jurisdiction of the government and the courts or in complex countries between states and unions, and trials of the highest officials of the state for violations of constitution and laws, resolving election disputes etc. There are two types of solutions which were adopted with minor variations in all the existing systems. The basic question of procedure, instituting proceedings, is possible, in one system, only if there is a concrete dispute, and the right to institute proceeding belongs only to an interested party. In another system, however, it is possible to institute proceedings against an act even without a single dispute (general control) and without a request of an interested party - *ex offo*. In terms of legal effects of the decisions there is the abolition of disputed acts *erga omnes* (more often), or only the exclusion of application to particular case. The jurisdiction of the Constitutional Court of BiH implies abstract and concrete review of constitutionality, resolving disputes between the Entities, BiH and Entities, between institutions of BiH and appellate jurisdiction.

2.1. Constitutional judiciary as the protector of constitutional order

Determining inconsistencies of a constitution on one hand and legal acts on the other is the basic function of a constitutional court. The elimination of inconsistencies is not a purpose in itself but serves to further development and strengthening of democratic principles, and subsequently the rule of law. The constitutional court represents a body which ensures that socio-political community, in regulating social relations, remains within the range of constitutional powers, respectively contributes to achievement and advancement of these constitutional principles. These powers legitimise the work and decisions of the constitutional court and at the same time set limits to its actions.

The Constitutional Court of BiH, in contrast to ordinary courts, owning to its jurisdiction to decide on the constitutionality of legal acts, appears, in certain way, in parallel to the legislator, as the subject in creating the law. In fact, its most important function in the current system of separation of powers is to ensure the exercise of legislative power in accordance and within the limits of the BiH Constitution.

The BiH Constitutional Court conducts this task through an abstract review of the constitutionality of acts. The BiH Constitutional Court's function of ensuring consistency of the legal system with the Constitution of BiH is achieved primarily through an abstract review of constitutionality of the provisions of Entity constitutions and laws as well as deciding on disputes of different administrative-territorial levels of authorities and institutions within the State. Regarding the provision from the BiH Constitution stating that the jurisdiction of the BiH Constitutional Court, include, but are not limited to aforementioned situations[1], the Rules[2] and jurisprudence of the Constitutional Court of BiH[3] show that in interpretations and application of this provision the Constitutional Court also reviews the constitutionality of state laws, respectively general legal acts.

The possibility of submitting a request for the review of constitutionality is limited-it may be referred only by a member of the Presidency, the Chair of the Council of Ministers, the Chair, or a Deputy Chair of either House of the BiH Parliamentary Assembly, a qualified number of representatives/delegates of the legislative bodies of the State, Entity and District Brčko BiH. The jurisprudence of the Constitutional Court of BiH shows that a number of these cases compared with the total

[1] Article VI/3.a) Constitution of BiH, available at: www.ccbh.ba/bos/p_stream.php?kat=83&pkat=85 (accessed on 24.10.2011).

[2] Article 19 paragraph 1 Article 22 paragraph 1 Rules of the Constitutional Court of BiH, available at: www.ccbh.ba/bos/p_stream.php?kat=83&pkat=84 (accessed on 24.10.2011).

[3] Decision of the Constitutional Court of BiH U-58/02 from 27.06.2003, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=23106 (accessed on 26.10.2011).

number of cases before the Court is negligible, because the requests for the abstract review of constitutionality are below 1% of the total number of cases before the Court, which on average represents less than 20 of such cases per year.[4]

When the Constitutional Court responds to the request for review of constitutionality, its decisions can be twofold: the act is in conformity or the act is in non-conformity with the Constitution, entirely or partially.

When the Court adopts a decision on conformity then, in justification part, it shall give interpretation of the disputed act in accordance with the Constitution. However, if there are several possible interpretations of constitutionality of an act, (e.g. some leading to establishing incompatibility, and others suggesting that the act is in conformity with the Basic act i.e. the Constitution), it is desirable to give preference to the latter so that the number of acts declared unconstitutional is reduced. This practice is present in the German model of constitutional judicature although some authors[5] advise caution in its application, because constitutional court should not, with broad interpretation, change the authentic will of the legislature. The possibility that the Court independently determines the will of the legislature is reduced if the legislature provides an authentic interpretation, which is not the case in BiH.

If a decision establishes incompatibility of an individual act with the Constitution, the Court may, partially or entirely, quash the general act or some of its provisions.[6] German legal dogmatic parts from the assumption that an unconstitutional law is, in principle, invalid from the beginning (*ex tunc*). Most other countries follow a different model, originating from the Austrian system of constitutional judicature, where unconstitutional law is invalid from the moment of pronouncement of the Court's decision (*ex nunc*). The Rules of the Constitutional Court of BiH apply both models and stipulate that the Court shall, in case of the decision granting a request, decide on its legal effect – *ex tunc* or *ex nunc*. The difference in the legal effect has a practical aspect because a retroactive effect of the decision results in all relations and acts being based on an unconstitutional law, having no legal basis, and therefore not applicable.

Pursuant to the Rules of the Constitutional Court of BiH, the quashed act shall cease to be in force on the first day following the date of publication of the Court's decision in the Official Gazette. However, these provisions of the Rules of the Constitutional Court determine that the Court in its decisions also decides on their effect, so the meaning of the provision that the act shall cease to be in force on the first day of publication is not quite clear. Bearing in mind the jurisprudence of the Constitutional Court of BiH, it is not clear from decisions whether the concrete decision has

[4] This figure does not reflect the actual number of cases in which the Court actually considered the issue of the constitutionality of the act, because it included a significant number of claims filed by unauthorized persons.

[5] Papier Hans Jorgen, Problems of Enforcing Constitutional Court Decisions, Almanac, 2003.

[6] Article 63 paragraph 2 of the Rules of the Constitutional Court of BiH.

a legal effect *ex nunc* or *ex tunc,* although the wording part suggests that the decision has mainly *ex nunc* legal effect. The Court, exceptionally, may grant a time limit for harmonization of the acts with the Constitution, which shall not exceed six months. In case that incompatibility is not removed within the given time-limit, the Court shall, by its further decision, declare that the incompatible provisions cease to be in force.[7]

The Constitutional Court of BiH is given the jurisdiction to decide on any dispute that arises under the Constitution of BiH between the Entities, between BiH and one or both Entities, or between institutions of BiH, including decisions on the constitutionality of decisions taken by an Entity to establish a special parallel relationship with a neighbouring state which some authors consider to be political power of the Court.[8] In this way the Constitutional Court of BiH is constituted as the highest arbiter in resolving, in principal, political conflicts between BiH and the Entities.

The Constitutional Court should certainly not be only the arbiter in conflicts of constitutionality, but an active player in its achieving, and should also participate in the elimination of causes and occurrences of the unconstitutionality of acts. In this regard it would be desirable to introduce a possibility of initiating proceedings by the Court itself (so-called *ex officio* proceedings), but also a possibility of giving the initiative to all subjects (so-called *actio popularis*), which were known in the system of constitutional judicature in the former Yugoslavia, and are still foreseen in Republika Srpska[9] and the Republic of Croatia.[10] In this way the Constitutional Court could act beyond the initial request, e.g. in cases of reviewing a disputed provision if it considers that other provisions of an act are also unconstitutional. Further in cases of launching initiatives all interested parties would have an opportunity to contribute to practical realization of the principle of constitutionality.

Also, this would solve the problem of the so-called identical cases, i.e. cases when unconstitutionality of one act should apply to all identical acts. This means that they would be null and void even if they are not specifically mentioned, which would prevent coexistence of acts declared unconstitutional and acts not yet declared unconstitutional. Acting in this way the Constitutional Court of BiH could be a state body that provides unity and functionality of the system.

It is important to mention that the system of constitutional judicature in BIH recognizes, in addition to the Constitutional Court of BiH, constitutional courts of

[7] Article 63 of the Rules of the Constitutional Court of BiH.

[8] Sokol, Smerdel, *Constitutional Law*, Faculty of Law Zagreb, Zagreb, 2006, p. 419.

[9] Article 4 paragraph 1 and paragraph 3 of the Law on Constitutional Court of the Republika Srpska, "Official Gazette RS" no.: 104/11, available at: www.narodnaskupstinars.net/latn/?page=133&kat=10&vijest=3280 (accessed on 10.12.2011).

[10] Article 38 of the Law on Constitutional Court of the Republic of Croatia, "Official Gazette" no.: 99/99, 29/02 and 49/02, available at: www.zakon.hr/z/137/Ustavni-zakon-o-ustavnom-sudu-Republike-Hrvatske (accessed on 17.11.2011).

the Entities. The Entity constitutional courts are independent in respect to the Constitutional Court of BiH and are the protectors of the Entity constitutions and laws, and indirectly the Constitution of BiH with regard to the constitutional obligation of compliance of the Entity constitutions with the state Constitution.[11] It should be noted that the Constitutional Court of BiH is not a "supreme" constitutional court. However, bearing in mind its possibility of reviewing conformity of provisions of the Entity constitutions with the Constitution of BiH and practice of "re-reviewing" decisions of the Entity constitutional courts, the supremacy of the BiH Constitutional Court is implicitly established.[12] As there is no clear demarcation of functions between the State and Entity constitutional courts, the Constitution of BiH does not address the issue of the so-called parallel unconstitutionality/illegality which is known in complex states. This happens if an act in question is simultaneously in contravention to the Constitution of BiH and Entity constitution. Specifically, in cases of a positive conflict of jurisdiction, the question of which constitutional court would have the priority in deciding, that is to review of constitutionality, and whether there is a "right to appeal" against the decisions of the Entity constitutional courts, arises. Some authors believe that this "appeal" is not possible, because they interpret that the Rules of the Constitutional Court of BiH suggest all possible legal remedies before ordinary courts, while it is not possible to submit a legal remedy against the decisions of the Entity constitutional courts.[13] On the other hand, the Constitutional Court of BiH has taken a position that it has the right to review decisions of the Entity constitutional courts in those cases where they apply Entity constitutions in a manner not consistent with the Constitution of BiH.[14]

Given the current dilemma, it would be desirable that the Rules of the Constitutional Court of BiH expressly regulate the aforementioned situation, to ensure the realization of the principle of legal certainty perceived as predictability of the legal form.

2.2. The appellate jurisdiction of the Constitutional Court

The constitutional-legal systems of "new" countries formed after political revolutions, in East Europe at the end of XX century introduced a model where the highest level of human rights protection and fundamental freedoms, and widespread possibility of their realization dominates. The emergence of this new model

[11] Yet until now Entity constitutions are not fully harmonises with the Constitution of BiH. For more: Kasim Trnka, *Constitutional Law – second revised edition*, Sarajevo, Faculty of Public Administration Sarajevo, 2006, p. 300-305, 314-320 and 326-327.

[12] See e.g. Decision of the Constitutional Court of BiH no.: U-39/00 from 04 and 05.05.2001, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=22572 (accessed on 11.12.2011).

[13] Nurko Pobrić, Constitutional Law, "Slovo" Mostar, 2000, p. 479.

[14] Decision of the Constitutional Court of BiH no.: AP-2821/09 from 26.03.2010; available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=275171 (accessed on 12.10.2011).

of constitutional judicature has determined the trends used today. On a global scale, it reinforces the mechanisms for protection of individual rights, and the protection of the constitutional and legal system is beginning to be realized through individualisation of the constitutional control form. The legislature of most Eastern European countries, including BiH, introduced the so-called concentrated "Austrian model",[15] characterized by mechanisms of broad constitutional control, with the establishment of special bodies-courts and the right to individual constitutional appeals.

In Bosnia and Herzegovina, human rights and fundamental freedoms, their realization and protection, are basic principles on which the entire constitutional system is based. The provision of the BiH Constitution on the primacy of the European Convention on Human Rights and Fundamental Freedoms over all other laws of BiH,[16] as well as a list of international documents on human rights protection enumerated in Annex 1 as an integral part of the BiH Constitution, underlines the above, and directly effects the function of the constitutional judiciary.[17] The constitutional provision which provides that human rights and fundamental freedom cannot be diminished by higher laws or derogated under an ordinary procedure of amending the constitution is very explicit.[18]

Appellate jurisdiction of the Constitutional Court of Bosnia and Herzegovina represents a novelty in the system of constitutional judicature, and implies introduction of individual constitutional action,[19] i.e. an opportunity to review legal acts if they are in violation of the appellant's rights and freedoms.

Today, the cases initiated by individual appeals represent the majority (around 99%, of cases before the Court). For example, out of 5076 cases filed in 2011, there were more than 5000 appeals. Violations were found in only 4-5% of the received appeals.

The appeal is a type of an extraordinary legal remedy of subsidiary character, because it is admissible only if protections through effective regular legal remedies fail,[20] and if formal requirements under the Rules of the Constitutional Court of BiH

[15] This model is applied in e.g. Albania, Montenegro, Croatia, Hungary, Rumania, Russia, Slovenia, Serbia, etc.

[16] Article II/2 of the Constitution of BiH.

[17] Although the Constitution of BiH, except for the primacy of the European Convention, does not explicitly declare on the relation between international and national law, certain authors support the idea of supremacy of international law (generally accepted law).

[18] Article X/2 of the Constitution of BiH.

[19] In reference to linguistic meaning of the constitutional action see: Steiner, Ademović, *Constitution of BiH Commentary*, Konrad Adenauer, Sarajevo, 2010, p. 642, available: www.ustavnareforma.ba/files/articles/20070327/10/bs.Steiner_i_Ademovic_Ustav_BiH_Komentar,_20.04.2010..pdf (accessed on 07.10.2011).

[20] See e.g. Decision of the Constitutional Court of BiH no.: U-29/02 from 27.06.2003, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=23271 (accessed on 11.10.2011).

are met.[21] Among others, this implies standing to sue and standing to be sued legal standing of the parties in procedure. In terms of standing to sue, the Constitutional Court of BiH from its establishment has changed its stances moving towards even more extensive range of parties authorized to file an appeal. Until recently it has been thought that the German Federal Constitutional Court provided the widest range of options regarding the right for filing an appeal, whereby, apart from physical persons, municipalities and federations of municipalities had right to file an appeal for violation of certain constitutional rights.[22] However, the Constitutional Court of BiH, although it initially followed the European Court jurisprudence and recognized physical and legal persons as active participants,[23] by its subsequent and current practice has expanded this right to the level of absurd and recognized the right for an appeal to public legal persons, public institutions, state bodies, administrative-territorial units, and even the government itself! For example, as standing to sue appellants, seeking protection of their human rights, we have Pension-Disability Fund of the RS,[24] the Federation BiH Government,[25] or the State itself.[26]

Establishing mechanisms for the realization of human rights rests on the idea of protecting people on the territory of a country from arbitrary and unlawful treatment by the state, i.e. its bodies (in theory known as "freedom from"), allowing for the free action ("freedom for"), constituting negative and positive obligations of the state towards individuals, and private-legal persons in limited number of cases. Since the state is obliged to protect the human rights of individuals, the aforementioned implies that the state is the subject which at final instance appears before institutions for human rights as standing to be sued, or defendant. Perhaps this is the reason why other systems, national or international, do not provide a possibility for public-legal subjects to refer to violation of "their" human rights.

Without limiting the right to file an appeal, the Constitutional Court of BiH has opened the area for risky situations, such as consideration of allegations of human rights violation of the executive bodies committed by the judicial authorities who have correctly applied the law, but the executive authority is not satisfied with the

21 Article 16 of the Rules of the Constitutional Court of BiH.

22 Pobrić, ibid.

23 Decision of the Constitutional Court of BiH no.: AP-96/01 from 10.05.2002, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=22877 (accessed on 11.10.2011).

24 Decision of the Constitutional Court of BiH no.: AP-1357/10 from 15.09.2011, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=379986 (accessed on 11.10.2011).

25 Decision of the Constitutional Court of BiH no.: AP-2328/10 from 08.06.2011, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=371139 (accessed on 11.10.2011).

26 Decision of the Constitutional Court of BiH no: AP-695/07 from 17.04.2008, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=116018 (accessed on 11.10.2011).

text of the law though they proposed it to the legislative body.[27] Also, it also raises the question how the Court decision could be executed in a situation when a body of public authority succeeds in proving human rights violation. It is not clear who is responsible for the execution of such a decision and who pays possible compensation to whom.

Because of this, we believe that the Constitutional Court of BiH, with such practice, does not make "corrections of arbitrary decisions"[28] or correctly interprets the norm of the BiH Constitution. On the contrary, in this way the Court unjustifiably opens the door to an unnecessary influx of cases, which prevents it from being effective in its appellate function.

When deciding on an appeal, the BiH Constitutional Court first decides on the admissibility, and takes a decision on the merits. With the decision on merits, an appeal might be accepted or rejected in whole or in part. The appeal is granted when the violation of the Constitution is established, i.e. when the Court establishes a violation of the Constitution and laws of BiH or incompatibility as to the existence or the scope of a general rule of public international law pertinent to the decision of the Constitutional Court.[29]

When reviewing the validity of judgments of ordinary courts, the Constitutional Court of BiH is consistent in practice by stating that it is not the task of the Court to review conclusions of ordinary courts in terms of facts and application of the substantive law, but to "*examine whether there was a violation or disregard of constitutional rights…, and whether the application of law was, possibly, arbitrary or discriminatory*".[30] However, regardless of this distancing that the BiH Constitutional Court at least nominally sets, the reality is different.[31] To establish whether, in concrete

[27] Decision of the Constitutional Court of BiH no. AP-2328/10, ibid. The Decision states that the applicant-the Government of the FBiH, explaining alleged violation of his rights to a fair trial and property from the Article II/3.e) and k) of the Constitution of BiH "*points out that unlike in the Federation of Bosnia and Herzegovina in the Republika Srpska applied is a one-year statute of limitation for the monetary claims arising from the employment, and as such the Constitutional Court in its practice supported this position of ordinary courts in the Republika Srpska*". In response to this allegation, the Constitutional Court of BiH stressed that "*applicant's reference to the jurisprudence in the Republika Srpska, in cases related to the status of limitation for financial claims, is not relevant in this case, given the different legal solutions that regulate the underlying legal issue*".

[28] Steiner, Ademović, ibid, p.698.

[29] Article 61 of the Rules of the Constitutional Court of BiH.

[30] See e.g. Decision of the Constitutional Court of BiH no.: AP-657/07 from 16.07.2009, par. 6, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=211948 (accessed on 12.10.2011) and Decision of the Constitutional Court of BiH no: AP-893/08 from 12.10.2011, par. 6, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=382776, par. 14 (accessed on 28.12.2011).

[31] Regardless of the formal definitions and different views on whether the Court in certain cases

cases, there are violations of certain individual rights, the BiH Constitutional Court simply has to begin the process of assessing facts and/or application of positive law. Based on this the Court adopts a conclusion on possible violations, whereby in these cases it *de facto* assumes the role of the supreme/appellate Court.

This statement is not criticism (what some authors attribute to the Court's work), but, rather a positive assessment of the conduct that ultimately aligns the practice of ordinary courts. We believe that the Constitutional Court should even more openly and actively take this role, at least until the establishment of the supreme/appellate court at the state level.

The Constitutional Court, in determining violation of the appellant rights, can establish improper conduct of bodies, and even provide guidance for the future proper conduct of the state authorities,[32] i.e. point to certain unconstitutionality of a specific general act or its provision.[33]

In these cases, the question of compliance with these decisions for the further conduct of competent bodies and their impact on resolving other similar cases when interested parties have not initiated a proceeding before the Constitutional Court arises. Although it is clear that, in BiH, the court jurisprudence has no binding character, and having in mind the diverse judicial system, we believe that these decisions of the Constitutional Court have features of abstract interpretation and as such represent the source of law.

Therefore, in order to ensure legal certainty, equality of citizens before the law and the system stability, ordinary courts in their work should be guided by presented legal opinions and interpretations.

2.3. (In)active role of the ordinary courts in referring requests to the Constitutional Court of BiH

The reason for establishing constitutional judicature in general rests on providing a harmonized legal system, and thus eliminating any dilemma about which law is in conformity with the Constitution, i.e. which law should be applied. This function of the

in which it considers decisions of ordinary courts goes beyond the scope of its jurisdiction, it appears that there is no significant difference on whether it occasionally enters the assessment of fact finding and law application in the decisions of the ordinary courts. See more the Centre for Investigative Reporting, *The limits of jurisdiction of the Constitutional Court of BiH,* published on 30.01.2009, available at: www.cin.ba/Stories/P20_CCourt/?cid=884,2,1 (accessed on 12.10.2011).

[32] See e.g. Decision of the Constitutional Court of BiH no.: AP-1785/06 from 30.03.2007, par. 87-90, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pr=TWFrdG91Zg==&pid=70082 (accessed on 13.10.2011).

[33] See e.g. Decision of the Constitutional Court of BiH no.: U-38/02 from 19.12.2003, par. 62-69, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=23216 (accessed on 13.10.2011).

Constitutional Court gets its special significance in BiH, where there is no unity of the judicial system, and no supreme/appellate court at the state level that would primarily deal with the harmonisation of court practice and harmonisation of interpretations of legal acts in concrete cases.

Ordinary courts apply positive legislation. Should, during a specific case, a question of the constitutionality of the act be risen, then this question can be forwarded to the competent constitutional court. Thus, the court, as an institution, may appeal as an authorized applicant for the review of the constitutionality. The request only refers to an act relevant for the decision in particular court proceeding. The ordinary court shall suspend the proceedings until the Constitutional Court makes a decision.

As both, the Constitution of BiH and Entity constitutions provide the possibility of referring a matter of constitutionality of acts by ordinary courts,[34] in practice there is a dilemma as to which constitutional court has the jurisdiction to deal with such requests. Although the Constitution of BiH defines that the Constitutional Court of BiH deals with issues referred by any court in BiH concerning whether the law, on whose validity its decision depends, is compatible with the Constitution of BiH, the European Convention for Human Rights and Fundamental Freedoms, or 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,[35] the Constitutional Court of BiH, in order to ensure the constitutional principle of the rule of law, in practice, has taken the stand that ordinary courts should refer requests for the review of constitutionality of a particular act to the Entity constitutional court.[36]

Having these options available, initiating proceedings to review the constitutionality, ordinary courts could directly affect the protection and realization of the principle of the constitutionality, especially if we consider the number of regulations, and the need to solve the cases quickly and efficiently. However, the past practice of the Constitutional Court of BiH shows insignificant number of cases referred by ordinary courts. The reason for this situation might be the fact that the Constitutional Court of BiH, which highly restrictively interprets the provision in the Constitution of BiH, has the jurisdiction to resolve issues that are referred by any court in BiH.

Also, one of the reasons might be lack of knowledge of the ordinary courts regarding this possibility, i.e. the reasons and ways of referring requests for the review of constitutionality. As an illustration, the Municipal Court's in Sarajevo request was

[34] Article VI/3(c) of the Constitution of BiH, Article IV/C.3.10(4) of the Constitution of the FBiH, Article 115 of the Constitution of the RS and Article 4 of the Law on Constitutional Court of RS.

[35] Article VI/3(c) of the Constitutional Court of BiH.

[36] Decision of the Constitutional Court of BiH no.: AP-1603/05 from 21.12.2006, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=61612 (accessed 08.12.2011).

referred to the Constitutional Court of BiH to establish *"the existence or non-existence of the violation of the Peace Agreement in the case of the Municipal Court in Sarajevo… for which the exemption of the trial judge was requested"*.[37]

We believe that courts, despite the current practice of the Constitutional Court of BiH, should definitely use more options provided to them under the Constitution of BiH, which would, consequently, on the one hand lead to the harmonization of legislation, as well as jurisprudence, and on the other hand, interested parties would reach the final decision in the process much quicker.

2.4. Selection of judges – norm and practice

In general, there is no uniform system of selection and composition of constitutional courts, i.e. bodies reviewing constitutionality. During the selection, there is an attempt to apply the principle of representation of different professional and political groups. In this way the independence of the bodies reviewing the constitutionality is ensured. As a consequence, judges of the constitutional court may not be career judges, but are persons with different law career, and may be selected by various state bodies. Here it should be noted that the selection of constitutional court judges is often dominated by political or party affiliations,[38] certainly more than in the selection of ordinary court judges.

The Constitution of BiH provides that the Constitutional Court has nine members, out of which six judges of the Constitutional Court of BiH are selected by the Entity legislative bodies, and remaining three judges are selected by the President of the European Court of Human Rights after consultations with the Presidency.[39] To be selected as a judge of the Constitution of BiH, the judge needs to be a distinguished jurist of a high moral standing, but not with a pre-bench experience.[40]

The Rules of the BiH Constitutional Court stipulate that judges shall act in his or her own capacity[41] to achieve the principle of the Court's independence. Interesting is the procedure for the selection of judges by the Entity legislature, and not the State legislature: who, with their own decision could have ensured the election of judges

[37] Decision of the Constitutional Court of BiH no.: U-8/11 from 15.07.2011, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=381038 (accessed on 09.11.2011).

[38] An example of this is the USA, where the elected Supreme Court judge is close to the party that has the majority in the Senate and from which the President comes.

[39] Article VI/1(d) of the Constitution gives possibility that the Parliamentary Assembly of BiH provides by law a different method of selection of the three foreign judges.

[40] For recommendations also see at Human Rights Centre of the University of Sarajevo, *Overview of selected conclusions and recommendations from the Annual Human Rights Report for 2008,* available at: www.hrc.unsa.ba/hrr2008/PDFS/Pregled_izabranih_zakljucaka_i_prijedloga_izvjestaj_2008.pdf (accessed on 26.10.2011).

[41] Article 83 of the Rules of the Constitutional Court of BiH.

from both Entities, especially having in mind the jurisdiction of the Constitutional Court to review constitutionality of laws adopted by the Parliamentary Assembly of BiH.[42] It should be noted that other bodies, i.e. professional organisations and groups have no influence over the selection of judges of the Constitutional Court of BiH. Although this method of selection is not unknown in Europe, the question arises whether the same is optimal for BiH, having in mind its specific social circumstances, and the often inappropriate political influence.

The absence of the precisely defined criteria for the election of judges goes in favour of inappropriate political influence, which the Office of the High Representative insisted upon before. Specifically, the current method for the selection of judges is the subject of considerable controversy and criticism, given the fact that the candidates who were appointed as judges were politically exposed persons, and the political selection has degraded the reputation of the Constitutional Court. Publishing vacancy and carrying out the selection procedure, which is not a formal requirement, represents an attempt to disguise the already reached political agreement.

The Constitution of BiH does not mention the principle of ethnic representation of constituent peoples as a requirement for the selection and performance of the function of a judge in the Constitutional Court of BiH. This means that domestic judges are elected on entity criteria[43], rather than on ethnic criteria. Although it was stated that the judges are selected from the Entity the current practice shows that domestic judges were selected based on the ethnic principle of equal representation. The Rules of the Constitutional Court of BiH highlighted ethnic representation[44] by stipulating that "the President of the Constitutional Court shall be elected by rotation of the judges from among the constituent peoples of BiH."[45] Considering the mentioned practice, some authors believe that in this case we have emergence of a constitutional tradition *secundum constitutionem*, i.e. a custom which determines that judges are elected based on ethnic belonging.[46] This is valid until departure from this practice by the legislature of both Entities. It should be noted that such practice of electing judges prevents the election of those who are not members of any constituent people to be President of the Constitutional Court of BiH. The European Commission in its recommendations

42 More in Steiner, Ademović, ibid, p.626.

43 Perhaps the reason for such procedure of selection of judges is inherited selection procedure of judges in the former Yugoslavia, where each of the republics and autonomous provinces appointed two, i.e. one judge to the Federal Constitutional Court. More: The constitution of SFRY-Expert explanation, the Institute for Political Studies, Faculty of Political Science Belgrade, Belgrade, 1975, p. 556.

44 Article 42 paragraph 2 and Article 90 of the Rules of the Constitutional Court of BiH.

45 Article 87 of the Rules of the Constitutional Court of BiH.

46 More: Lejla Balić, *Constitutional tradition in BiH – review of the selection of judges of the Constitutional Court of BiH*, Year Book of the Faculty of Law in Sarajevo, Sarajevo, 2009.

reminds of a need to change the Rules of the Constitutional Court of BiH in terms of eliminating these discriminatory provisions.[47]

The consequence of the systems that recognize life-term selection of judges, i.e. until the age of seventy, is that the elected judges often represent political and social values of their earlier authorities and perform their duties in spite of the changed social circumstances.[48] Unlike these systems, in e.g. Germany, Italy, France, Spain, Serbia, and Croatia,[49] there is a limitation of the mandate for the constitutional court judges. The BiH Constitution opted for the first mentioned system, so the members of the Constitutional Court of BiH are elected to serve as judges until the age of 70.[50] This system has its advantages which are primarily reflected in strengthening the status and independence of the court. In addition certain, authors emphasize the advantage of this solution as ensuring the continuity of jurisprudence.[51]

Although these arguments have some merits, it is also necessary to consider the advantages of other systems. Specifically, the limitation of the term of judges improves the ability to follow the dynamics of the legal and social system, and progressive interpretation of the law, while the necessary continuity is ensured through partial renewal of the judges of the constitutional court. Limiting the mandate could affect the positive competitiveness of judges in performance of their functions, especially having in mind that performing the duty of a judge of a constitutional court represents the highest step in the legal career. Periodic renewal of the composition of the constitutional court would also contribute to reducing discrepancies between ruling structures and the court, which could result in stronger support from the authorities in implementation of the constitutional court decisions.

It is clear from the aforementioned that it is necessary to urgently amend the discriminatory provisions of the Rules of the Constitutional Court of BiH that stipulate representation of only constituent peoples in the Court's composition. Certainly it would be advisable to consider complaints related to the prescribed criteria for the election of judges, as well as the method and procedures of election, and possible advantages of limiting their mandate.

47 Recommendations from the European Commission from the second meeting of the structured dialogue on justice between EU and BiH, held in Sarajevo on 10 and 11.11.2011. Available at: www.pravosudje.ba (accessed on 14.12.2011).

48 Examples are the USA and Austria.

49 In Germany the Federal Constitutional Court judges are elected for a term of 12 years, or until the age for compulsory retirement. The same mandate period is provided for the judges of the Constitutional Court in Italy. In France, the mandate of the members of the Constitutional Council is 9 years, as well as judges of the Constitutional Courts of Spain and Serbia, while in Croatia the mandate of the Constitutional Court judges is 8 years.

50 Article VI/1.(c) of the Constitution of BiH.

51 Steiner, Ademović, ibid., p. 628.

3. IMPLEMENTATION OF DECISIONS OF THE CONSTITUTIONAL COURT OF BiH

The existence of the constitutional judiciary system is a consequence of adopting the principle of constitutionality arising from the acceptance of the principle of legality and the fact of existence of a written constitution. In support of the principle of legality, the legal theory accepts the principle of constitutionality which appears as an expression and guarantee of the entire political system. Accordingly, all state bodies are obliged to uphold and protect the constitution.

Constitutional courts are one of the most important pillars of the primacy of law and, in general, the constitution. Their role is different in different countries, depending on the historical and political circumstances under which they emerged. In this regard, the solutions relating to the enforcement of decisions of these courts vary. Core transformation of the regimes, from a totalitarian to a democratic, requires, in addition to the establishment of relevant institutions and procedures, significantly developed democratic consciousness, legal culture and well defined mechanisms regulating mutual relations between constitutional courts with other branches of government, as well as with ordinary courts. Lack of the mentioned elements in the transition countries, including BiH, is a cause of many problems that the bodies of constitutional control in these countries face. One of the most obvious examples is a failure to comply with the constitutional court decisions.

Currently, all courts in BiH face the problem of inefficient enforcement of court decisions, as is the case with the Constitutional Court of BiH. Two sets of problems arise in the interaction between the bodies in charge of control of constitutionality and other state bodies: non-implementation of the constitutional court decisions that relate to changes of laws that were found unconstitutional and non-implementation of decisions where, in appellation, violation of rights in a concrete case was established.

Incorporating constitutional courts into a classic model of power-sharing causes a hidden and sometimes open conflict with both executive and legislative authorities, caused by the authority/jurisdiction entrusted to the Constitutional Court, which relates to the possibility of putting legal documents out of force. Decisions on non-conformity of a certain provision, or an act, with the Constitution generally does not cause major difficulties in terms of implementation since such acts or a provision is repelled. However, when courts decide to point out what the meaning of the relevant constitutional principle implies in terms of a certain norm, including giving instructions to the legislature on eliminating inconsistencies i.e. gaps in the legal regulation that has led to violation of constitution and guaranteed rights, then such decision unfortunately does not always constitute the basis for adoption of the act that

would be in accordance with an adequate application of these principles.[52] Another problem is the interaction and coordination of the work between constitutional courts and ordinary courts, which should in an ideal situation, jointly, fulfil the function of human rights protection.

Regardless of whether a constitutional court is part of the regular judicial system or acts outside of it, situations of conflict of jurisdiction arising from the understanding of activities of constitutional court as interference with the jurisdiction of ordinary courts of either general or special jurisdiction are inevitable. These situations, also, occur in countries with a long tradition of constitutional judicature and interaction between different parts of judicial system (e.g. Germany), and are particularly pronounced in legal systems of the "new" democracies including BiH.[53] Within its appellate jurisdiction, the Constitutional Court of BiH when establishing infringement of the law in a particular case may revoke decisions and acts of ordinary courts and administrative bodies and simultaneously order review of these decisions and acts. Also, it is possible that the Court in its decision calls for a change of practice so that it can be in accordance with the interpretation of certain provisions that are subject to review in a particular case in order to avoid further situations of violation of rights of individuals guaranteed under the constitution. In practice, however, there is often competition in the field of law that hampers the implementation of constitutional court decisions by bodies whose primary duty is to implement these decisions.[54]

Decisions of the Constitutional Court of BiH are final and binding, as prescribed under the Constitution of BiH[55] and the Rules of the Constitutional Court of BiH,[56]

[52] An example of this is the resolution of cases of "old foreign currency savings" in BIH where, unsuccessfully, on several occasions the legislator was advised on ways how to solve problems that could be consistent with the protection of human rights guaranteed under the Constitution of BiH and Protocol 1 of the European Convention on Human Rights. More: *Human Rights Report in BiH 2008*, Human Rights Centre of the University in Sarajevo, 2009, p. 234 – 238.

[53] Former Yugoslavia was the first socialist country that has established a system of constitutional judicature.

[54] Example is the Decision of the Constitutional Court no. AP-1785/06 from 30.03.2007, available at: http://www.ccbh.ba/bos/odluke/povuci_html.php?pr=TWFrdG91Zg==&pid=70082 (accessed on 20.12.2011). In this Decision the Court by starting from the principles of legal certainty and rule of law points to the obligation of the courts in the Entities to, when adjudicating upon criminal offences of war crimes, apply the Criminal Code of Bosnia and Herzegovina and other relevant laws and international documents applicable in Bosnia and Herzegovina, and to follow the jurisprudence of the Court of BiH, as the State Court. Although the above Decision of the Constitutional Court of BiH expressly indicates directions for the court conduct, which would be consistent with mentioned constitutional principles, current situation shows that it still not the case, as also pointed in the European Commission 2011 Progress Report for BiH, p12, available at: www.pravosudje.ba (accessed on 20.12.2011).

[55] Article VI/5 of the Constitution of BiH.

[56] Article 74 paragraph 1 of the Rules of the Constitutional Court of BiH.

while failure to enforce them constitutes a criminal offence subject to sanction under criminal legislation. Specifically, the Criminal Code of BiH prescribes a criminal offence *Failure to enforce decisions of the Constitutional Court of BiH, Court of BiH, Human Rights Chamber or the European Court of Human Rights*,[57] committed by "an official person in the institutions of Bosnia and Herzegovina, institutions of the entities and institutions of the Brčko District of Bosnia and Herzegovina, who refuses to enforce the final and enforceable decision of the Constitutional Court of Bosnia and Herzegovina, Court of Bosnia and Herzegovina or Human Rights Chamber or the European Court of Human Rights, or if he prevents enforcement of such decision, or if he prevents the enforcement of the decision in some other way."[58] This provision sanctions, inter alia, the refusal to enforce the decision of the Constitutional Court of BiH, which in fact constitutes the failure of a responsible person to act when there is an obligation of enforcement, i.e. acting.

Although laudable is intention of the legislator to ensure enforcement of these decisions through criminal legislation, thus recognizing their indisputable importance in the protection of individual and social goods and values, it is noted that this mechanism has remained without significant impact in the field of enforcement of decisions of the Constitutional Court of BiH and prosecution of persons responsible for their enforcement, including representatives of the legislative authority.

First of all, noted is inconsistency between the provision of the Article 239 of the Criminal Code of BiH and Article 74 of the Rules of the Constitutional Court BiH. Specifically, while the Rules talk about the duty of respecting decisions of the Constitutional Court of BiH by all competent authorities and any natural and legal person, the Criminal Code BiH only mentions the official person in the institutions of BiH, Entity or BD BiH as possible perpetrator of this criminal offence. In this regard, it would be desirable as soon as a possible to initiate amendments of the mentioned provision of the Criminal Code of BiH, to incriminate the failure to enforce, i.e. preventing enforcement of decisions of courts by ant natural or legal person. From the aspect of constitutional

[57] Entity Criminal Codes prescribe criminal offence *Failure to implement Court decisions,* whereby incriminated is a failure to implement decisions of the ordinary and constitutional courts within the Entity (Article 351 of the CC FBiH, "Official Gazette FBiH", no.: 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11; and Article 371 of the CC RS, "Official Gazette RS", no.: 49/03, 108/04, 37/06, 70/06, 73/10), while in Brčko District BiH, in addition to a failure to implement decisions of the ordinary courts in the District, incriminated is failure to implement decisions of the Human Rights Chamber and the Constitutional Court of BiH (Article 345 of the CC BD BiH, "Official Gazette BD BiH", no.: 10/03, 45/04, 6/05, 21/10). It is unclear why failure to implement decisions of the Human Rights Chamber and the Constitutional Court of BiH was introduced to the Criminal Code of BD, given that the proceedings in these cases are the prerogative of the Prosecutor's Office, i.e. the Court of BiH.

[58] Article 239 of the Criminal Code of BiH, "Official Gazette BiH", no.: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

judicature, this seems particularly justified in relation to decisions arising from individual appeals. Very often, the initial dispute is between natural and legal persons, and ultimately direct practical enforcement depends on them, thus by incriminating their failure to enforce or obstruction could be preventive, and as well have the effect of strengthening the authority of the Court. Simultaneously, the perpetration of this criminal offence by an official person, who as such has the obligation to uphold and promote constitutionality and legality, should certainly constitute an element of qualification, i.e. the basis for imposing a serious sanction against the offender.

However, it is questionable whether and what could be achieved with such an amendment, i.e. extending the circle of responsible persons when the past practice clearly indicates that neither of the existing provisions is still used. Pursuant to the Rules of Procedure of the Constitutional Court of BiH, in the event of a failure, or a delay in the enforcement or informing the Court about the measures taken, the Constitutional Court BiH renders a ruling in which it establishes that the decision of the Constitutional Court of BiH has not been enforced, and then transmits the ruling to the competent prosecutor for,[59] which in this case is most often the Prosecutor's Office of BiH. Usually, the prosecutor treats these rulings as a report, i.e. report on the committed criminal offence, based on which he/she passes an order on conducting or non-conducting an investigation. Only a negligible number of investigations end with charges. According to the available information, in over seven years since the existence of the criminal offence, only three judgments were rendered. The prevailing scenario in ending an investigation upon rulings of the Constitutional Court of BiH on failure to enforce decisions is an order of non-conducting or suspending investigation. Reasons for this can be different. Without getting into political speculations, which some authors cite as a possible motive for the sluggishness of the judiciary in relation to these cases that often imply processing of high-level government officials, usually the problem is in identifying official persons responsible for the (non) enforcement of decisions of the Constitutional Court of BiH and/or proving quilt, i.e. difficulties in establishing the intent of the persons for perpetration of this criminal offence,[60] which is especially pronounced in the decisions related to the unconstitutionality of a legal regulation.

The first mentioned problem seems to be somewhat grounded. Namely, in certain situations, when a decision requires modification of the existing or adoption of a new regulation, it is uncertain who actually should be marked as a suspect or potentially accused person taking into the account the processes of political decision-making. Generally speaking, it is possible to expect problems in reaching political

[59] Article 74 paragraph 6 of the Rules of the Procedures BiH.

[60] More Centre for Investigative Reporting, *Politicians above the Constitution*, published on 30.01.2009, available at: www.cin.ba/Stories/P20_CCourt/?cid=885,2,1 (accessed on 23.11.2011).

consensus when amending or adopting regulations that concern most important and/or have significant implications on the budget. The above has its particular weight and almost reaches the level of certainty in circumstances such as those on BiH. Although the aforementioned needs to be kept in mind when suggesting solutions and leaving space for their realization, it certainly cannot and must not be the ground for relieving the government representatives from liability.[61] However, the identification of responsible persons may encounter special problems. This is when one collective or more different government bodies have been indicated in the decision for taking necessary actions. For example, if it is necessary to adopt a particular law, then the draft will usually be made by a competent ministry, and it must be adopted by the Council of Ministers, i.e. government. Then, it is sent for consideration to a competent legislative body. In the event that the proposed law is made, but not adopted in the legislative body, it would be reasonable to question who should, upon the ruling on failure to enforce the decision be prosecuted: all representatives of the legislature or one of the Houses, speakers of specific Houses, representatives of certain political parties or leaders of these parties, a government that did not produce satisfactory proposal, or perhaps all of them together? However, although present and important, it is evident that these problems do not occur in all cases in which the Constitutional Court decisions have not been enforced, and that sanctioning of those responsible is still missing.

The problem of determining the intent in the criminal offence of non-enforcement of the Constitutional Court of BiH decisions is, we believe, unwarranted, given that the Court's decisions are final and binding, so it is logical to assume the existence of intent of the subjects responsible for their enforcement, especially in case of authority bodies.

In terms of the aforementioned dilemma it is certainly necessary as soon as possible to open a dialogue within the professional community, and particularly between the Constitutional Court of BiH, the Prosecutor's Office of BiH and the Court of BiH, to answer some controversial questions, and possibly provide suggestions for the improvement of existing mechanisms for ensuring the enforcement of Constitutional Court of BiH decisions.

However, the enforcement of court's decisions, including the Constitutional Court of BiH, is not just a legal issue, but also a socio-political problem.[62] The authority

[61] As an example of a decision that had political implications, we cite the Decision of the Constitutional Court of BiH no.: U-5/98 from 2000 on the constitutionality of the peoples, because the Entities, two years after the adoption of mentioned Decision, adopted the amendments to the Entity constitutions and with pressure from the international community. Decision available at: www.ccbh.ba/bos/odluke/index.php?src=2 (accessed on 23.11.2011).

[62] The Constitutional Court of BiH in its press release in connection with enforcement of decisions on 13.04.2011 stated: "*In the period from 2008 to 2011, the Constitutional Court of BiH decided on a total of 10.292 cases. Of this number, the Constitutional Court decided on*

and the role of the Court depend primarily on the readiness, not only of relevant State bodies, but also the overall community to accept and enforce Court decisions. In this case the relation between the court and the community and in general moral-political side, of both constitutionality and legality, and court decisions is assessed.[63]

4. COMPETITION OF AUTHORITY OF THE CONSTITUTIONAL COURT AND THE HIGH REPRESENTATIVE

The High Representative in BiH is the "final authority" regarding the interpretation of the Dayton Agreement,[64] and his decisions are final and binding for authorities in BiH. In addition, the Conclusions from the Peace Implementation Conference[65] also introduced the so-called Bonn powers of the High Representative.[66] In practice

the merits in 1.256, which is more than 12% of the total number of cases. Less than 88% of cases were resolved as inadmissible due to certain reasons. Out of total number of merit decisions the Constitutional Court of BiH found a violation of the Constitution in 865 cases, which is more than 8% of the total number of cases. In other cases the Constitutional Court dismissed the appeal/request. When it comes to enforcement, the Constitutional Court does not enforce its own decisions. However, the Constitutional Court, ex officio monitors the enforcement of its decisions. In the period from 2008 until now the Constitutional Court of BiH passed 34 rulings on failure to enforce decisions (three in 2008, 19 in 2009, eight in 2010 and four in 2011). Thus, in the period of more than three years the Constitutional Court of BiH, by ruling, has established that in 3.9% of cases decisions were not enforced. In other words, every 25th decision was not implemented. Moreover, in 49 cases the time-limit for implementation has not yet expired, and in 25 decisions, there are justified reasons for non-enforcement (applicants' death, the absence of essential data for enforcement, lack of ability to enforce decision due to changed circumstances, etc.). The biggest number of these rulings on failure to enforce decision of the Constitutional Court of BiH, actually 28, were adopted because the competent courts and other competent bodies have not enforced the decisions of the Constitutional Court of BiH whereby established was a violation of applicants rights under Article II/3.e) of the Constitution of BiH and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in respect of the right to make a decision within a reasonable time, therefore, competent bodies were ordered to, as soon as possible, finalize the procedures that were the subject of appeals, or that the authorities pay a certain a certain non-pecuniary damage to the applicants because of a failure to make a decision within a reasonable time. In remaining six decisions the Constitutional Court considers that there is no serious political or legal issue that would be an obstacle to the system of enforcing decisions of the Constitutional Court of BiH." Available at: www.ccbh.ba/bos/press/index.php?pid=4995&sta=3&pkat=125&kat=123 (accessed on 24.11.2011).

63 More: Jovan Đorđević, *Constitutional Law-new revised edition*, Belgrade, 1986.

64 Article 5 Annex X of the Dayton Agreement.

65 Peace Implementation Conference held in Bonn on 09 and 10.12.1997.

66 Although the right of the High Representative is limited to Annex X the provision of the same Agreement where the High Representative was given the power to monitor, coordinate, and promote the civilian implementation of the whole Peace Agreement resulted in extending these powers to all non-military agreements under the other Annexes. More: Steiner, Ademović, ibid., p. 726.

the Bonn powers (i.e. making binding decisions and measures to ensure implementation of the Peace Agreement throughout BiH and smooth functioning of common institutions) imply the right of the High Representative to undertake measures against persons holding public office (civil servants and elected officials), the right to pronounce and change laws, and the right to suspend the validity of certain provisions or regulations in their entirety. [67]

Given the above, and bearing in mind the previously presented functions of the Constitutional Court of BiH concerning the protection of constitutionality and the protection of human rights, the question on the relation between the Constitutional Court of BiH and decisions of the High Representative for which there are allegations that are inconsistent with the Constitution of BiH, was raised particularly on human rights violations resulting from these decisions.

In the first case, the basic question is the character of the institution of the High Representative and nature of his acts, as well as the jurisdiction of the Constitutional Court of BiH in terms of reviewing their constitutionality. Specifically, although in theory, in this case, this is considered as laws in substantive-legal terms, the dilemma remains whether they are also laws in formal legal term, since the fulfilment of both of these aspects is necessary for determining each act as law, and consequently for the review of the constitutionality of the law by the Constitutional Court of BiH. The practice of the Constitutional Court of BiH shows that the Court has reviewed the constitutionality of the laws that were enacted by decisions of the High Representatives, and were not adopted by the Parliamentary Assembly of BiH, considering them to be laws in both substantive-legal and formal legal term. Specifically, when making decision on the admissibility of the request for review of constitutionality of such laws, the Constitutional Court has explained the "special" political circumstances in BiH and the position of the High Representative as follows: "*Such a situation amounts to a sort of functional duality: an authority of one legal system intervenes in another legal system, thus making its functions dual. The same holds true for the High Representative: he has been vested with special powers by the international community and his mandate is of an international character... the High Representative – whose powers under Annex 10 to the General Framework Agreement, the relevant resolutions of the Security Council and the Bonn Declaration as well as his exercise of those powers are not subject to review by the Constitutional Court – intervened in the legal order of Bosnia and Herzegovina substituting himself for national authorities. In this respect, he therefore acted as an authority of Bosnia and Herzegovina and the law which he enacted is in the nature of a national law and must be regarded as a law of Bosnia and Herzegovina.*"[68] Therefore, the Consti-

[67] Since the introduction of the Bonn Powers the High Representatives in BiH have passed more than 900 decisions. Decisions are available at: www.ohr.int (accessed on 21.12.2011).

[68] Decision of the Constitutional Court of BiH no.: U-9/00 from 03.11.2000, par. 5, available at:

tutional Court of BiH held that: *"when the High Representative intervenes into the legal system of Bosnia and Herzegovina, substituting the domestic authorities, he acts as an authority of Bosnia and Herzegovina, and the laws enacted by him are, by their nature, domestic laws of Bosnia and Herzegovina, whose conformity with the Constitution of Bosnia and Herzegovina can be examined by the Constitutional Court."*[69]

Therefore, the Constitutional Court has elegantly bypassed consideration of who is authorized to issue laws, arguing that "should not do it", considering that the characterization of the act by its name and publication are the sufficient basis for determining an act of the High Representative as law of BiH, subject to the examination of constitutionality. Such a simple explanation of the Constitutional Court is certainly not enough for resolving complex issues of organisation of BiH and the position of the High Representative in the legal system of BiH. Additionally, although the Constitutional Court has never challenged the constitutionality of the act of the High Representative, it is uncertain what would happen and who would be responsible for the implementation of a possible Court decision that would establish the unconstitutionality of the act – the law of the High Representative.

In connection to the decisions of the High Representative to remove civil servants and elected officials, not denying the seriousness of the reasons for their issuance, it must be noted that the High Representative acts as the political representative of the international community in BiH and as such does not constitute an independent authority. There is no right to appeal against these decisions and they are usually without a time limit and mostly remain in force until the High Representative lifts the ban. In this respect the question arises whether the decisions made by the political authority, which directly relate to the exercise of rights of individuals, can stay out of judicial control *"or at least the minimum of due process"*. The Venice Commission has also addressed this issue and recommended *"setting up an independent panel of legal experts which would have to give its consent to any such decision"* suggesting that this body should be composed of international legal experts, as long as the judicial system in BiH is not able to effectively and independently cope with powerful individuals who act contrary to the Peace Agreement.[70]

The Constitutional Court BiH when considering the appeals filed against decisions of the High Representative on the removal of certain individuals from office, initially rejected these appeals due lack of jurisdiction of the Constitutional Court of

www.ccbh.ba/bos/odluke/povuci_html.php?pid=22416 (accessed on 09.11.2011).

69 Decision of the Constitutional Court of BiH no.: U-26/01 from 28.09.200, par. 13, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=22860 (accessed on 09.11.2011).

70 See European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitutional Situation in BiH and the Powers of the High Representative*, from 11 and 12.03.2005, available at: www.venice.coe.int/docs/2005/CDL-AD(2005)004-bos.asp (accessed on 13.11.2011).

BiH[71] or because these appeals were premature.[72] However, deliberating on the appeal of Milorad Bilbija and Dragan Kalinić,[73] though without prejudice to legal force of such decisions of the High Representative, the Constitutional Court of BiH took different position by establishing that there is *"a positive obligation of the State to ensure respect for fundamental human rights enshrined in the Constitution of BiH or arising from international treaties, however, the source of their legal force is in the Constitution of BiH, as it is in the present case the individual's right to an effective legal remedy"*. Although the Constitutional Court of BiH established that there is no effective legal remedy available within the existing legal system of BiH against individual decisions of the High Representative concerning the rights of individuals, it also noted that BiH has not *"undertaken the activities to ensure legal remedy"*. The Court noted that BiH was *"obliged, through Steering Board of the Peace Implementation Council and Security Council of the United Nations...to point to the alleged violations of constitutional rights of individuals...and thus ensure the protection of constitutional rights of its citizens"*. Reacting to this Court Decision the High Representative issued an Order where *"any step taken by any institution or authority in BiH in order to establish any domestic mechanism to review the Decisions of the High Representative...shall be considered as an attempt to undermine the implementation of the civilian aspects of the General Framework Agreement for Peace in BiH, and shall be treated in itself as conduct undermining such implementation"*.[74] Also, the Order demands an express prior consent of the High Representative in any proceeding instituted before any court in BiH which challenges or questions one or more of these decisions,[75] and declare that the provisions of the Order are not *"justiciable by the Courts of BiH or its Entities or elsewhere, and no proceedings may be brought in respect of duties in respect thereof"*.[76]

The European Court of Human Rights, in consideration of the application of Dragan Kalinić and Milorad Bilbija, has declared it as inadmissible, because it is incompatible *ratione personae*, concluding that "*removals from office ordered by the High Representative pursuant to his "Bonn powers" are, in principle attributable to the*

[71] See e.g. Decision of the Constitutional Court of BiH no.: U-37/01 from 02 and 03.11.2001, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=22807 (accessed on 14.11.2011).

[72] See e.g. Decision of the Constitutional Court of BiH no.: AP-905/04 from 30.11.2004, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=27717 (accessed on 14.11.2011).

[73] Decision of the Constitutional Court of BiH no.: AP-953/05 from 08.07.2006, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=59440 (accessed on 14.11.2011).

[74] Article 2 of the Order on the Implementation of the Decision of the Constitutional Court of BiH in the Appeal of Milorad Bilbija et al. no. AP-953/05 of the High Representative from 23.03.2007, available at: www.ohr.int/print/?content_id=39398 (accessed on 17.11.2011).

[75] Article 3, ibid.

[76] Article 4, ibid.

United Nations and that BiH could not be held responsible for such removals"[77] Following this position of the European Court, the Constitutional Court of BiH again changes its practice by dismissing the subsequently filed appeals against the decisions of the High Representative on the removals from office as *rationae personae* incompatible with the Constitution of BiH.[78]

Thus, despite the attempts of the Constitutional Court to find a way out of the vicious circle, ensuring equal legal protection to all citizens, following the reaction of the High Representative and later European Court of Human Rights, in fact there has been a collapse of authority of the Constitutional Court of BiH, and the BiH judicial system in general. Even if there were valid reasons for such actions, we think that a period of 16 years is sufficient to establish any effective system of control of the decisions of the High Representative, which has not been done yet.

5. THE ROLE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE SYSTEM OF CONSTITUTIONAL JUDICATURE IN BIH

The European Court of Human Rights is not a substitute for national courts and other local mechanisms for the protection of human rights, but it certainly is an important additional mechanism for the protection of rights. This importance is reflected primarily in its authority to which the Constitutional Court of BiH and other courts in BiH cite, and corrective activity in the elimination of institutional weaknesses to which the undeveloped BiH system has no answer. Also, other transition countries were faced with similar problems. Therefore, the European Court, upon inclusion of the former Eastern bloc countries into the European human rights protection mechanisms, faced an influx of a large number of identical cases caused by a slow and inconsistent democratic transition in these countries. The excessive workload of the Court required finding adequate solutions to the situation, which led to the modification of existing methods of work by introducing the so-called pilot judgment procedure.[79]

[77] Decision on admissibility of the European Court of Human Rights no.: 45541/04 and 16587/07 from 13.05.2008, available at: www.mhrr.evlada.ba/PDF/UredPDF/?id=311 (accessed on 17.11.2011).

[78] See e.g. Decision of the Constitutional Court of BiH no.: AP-680/07 from 13.05.2009, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=193481 (accessed on 17.11.2011).

[79] Committee of Ministers of the Council of Europe in its Resolution (2004)3, adopted on the 114th session on 12.05.2004, has invited the Court as far as possible, to identify in its judgments finding a violation of the Convention, what is considered to be an underlying problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding appropriate. Resolution available at: https://wcd.coe.int/ViewDoc.jsp?id=743257&Lang=fr#RelatedDocuments (accessed on 10.12.2011).

The pilot judgment procedure is used when there is a need to clearly establish the existence of structural problems, and propose special measures or actions that a government should take to remedy violations of rights. Cases against BiH pending before the European Court are largely pilot cases,[80] clearly indicating an insufficiently built state legal system, as well as weaknesses of the institutional mechanisms.

The Court, in addition, to identifying problems, encourages the state to solve the large number of individual cases within the framework of national mechanisms and thus apply the subsidiary system that underpins the system of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[81] In the context of resolving cases before the European Court, the principle of subsidiarity is the starting point for reviewing the relations between the national and supranational decision-makers. This principle rests on the fact that the Court is a supplementary and subsidiary mechanism for the protection of human rights and freedoms covered by the national legal system, whose political administrative and legal authorities retain the primary responsibility for the protection the rights of individuals. Although the principle of subsidiarity is not explicitly listed in the Convention, it stems from the provisions of exhausting national legal remedies and obligation to ensure effective domestic legal remedy.

There has been a debate recently about whether the European Court of Human Rights should provide "individual" or "constitutional" judgments. Proponents of the former believe that the right to an individual petition is the foundation of the European human rights mechanism and that the Court should "examine each case of anyone who claims to be victim of violations of the Convention rights" and ensure the right to a legal remedy to individuals whose rights have been violated.[82] The latter position departs with the premise that the Court should focus on providing fully reasoned and authoritative judgments in cases which rise substantial or new and complex issues of

[80] Suljagić against BiH, no.: 27912/02 from 03.11.2009, available at: www.mhrr.gov.ba/ured_zastupnika/novosti/?id=1092; Čolić et al. against BiH, no.: 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07, 3424/07,3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07 and 7211/07 from 10.11.2009, available at: www.mhrr.gov.ba/ured_zastupnika/novosti/?id=789; Karanović against BiH, no.: 39462/03 from 20.11.2007, available at: www.mhrr.gov.ba/PDF/?id=327; Šekerović and Pašalić against BiH, no.: 5920/04 and 67396/09 from 08.03.2011, available at: www.mhrr.gov.ba/PDF/UredPDF/?id=1980; Đokić against BiH, no. 6518/04 from 27.05.2010, available at: www.mhrr.gov.ba/ured_zastupnika/novosti/?id=1475 (accessed on 10.12.2011).

[81] First pilot judgment was passed in 2004 in the case Broniowski against Poland, no: 31443/96 from 22.06.2004, available at: http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=31443/96&sessionid=97914734&skin=hudoc-en (accessed on 14.12.2011).

[82] Dembour, *Finishing Off Cases: the Radical Solution to the Problem of the Expanding ECTHR Caseload*, EHRL Rev 604, 2002, p. 621.

human rights law, are of particular significance for the State concerned, or involve allegations of serious human rights violations.[83]

These premises apply to all Member States of the Council of Europe, whose systems are familiar with the mechanisms for the protection of human rights, including BiH. In this sense, it is necessary to emphasize the special role of the Constitutional Court of BiH, which, among other institutions, is constituted as the ultimate guarantor of the rights guaranteed under the Constitution of BiH. In addition, the Constitutional Court of BiH, at the national level, constitutes a supreme mechanism for protecting the Convention rights, given the direct incorporation of the Convention in the Constitution of BiH. It is significant to point out that the position of the Convention in BiH is a special one, compared to the other member states of the Council of Europe, especially having in mind the applicability of the Convention in the legal system, even before BiH became a member. Specifically, under the provisions of the Constitution of BiH, the Convention was given primacy over BiH laws, and implicitly over the Constitution itself, since the constitutional provisions on human rights protection cannot be changed.

In this regard, despite the above-mentioned debates and formal definition of the European Court as the "only" additional protection mechanism, the European Court, however, is increasingly becoming a supra-national "constitutional court", especially in countries that have directly incorporated convention rights in their constitutions. In support of this claim we cite the Judgment of the European Court of Human Rights in the case Dervo Sejdić and Jakob Finci against BiH,[84] where the established discrimination arose from the inability of members of non-constituent peoples to run and be elected to the Presidency and the House of Peoples of the Parliamentary Assembly of BiH. Although the wording part of the Judgment does not list concrete measures that the state is obliged to undertake in order to eliminate the established violation of law, in practice, following the reasoning of the judgment, its implementation requires, among other things, change of the relevant provisions of the Constitution of BiH.[85]

[83] Committee of Experts for the Improvement of Procedures for the Protection of Human Rights, Report of the Evaluation Group to Examine Possible Means of Guaranteeing the Effectiveness of the ECTHR, par. 98, Doc. EG Court, 2001.

[84] Sejdić and Finci against BiH no.: 27996/06 and 34836/06, from 22.12.2009, available at: http://mhrr.evlada.ba/ured_zastupnika/novosti/?id=1008 (accessed on 25.11.2011).

[85] Certain judgments of the European Court for other countries had similar implications, as e.g. in the case A, B and C against Ireland no.: 25579/05 from 16.12.2010, which found a violation of the applicants right to respect for private and family life in relation to constitutional determination on prohibition of abortion. Available at: http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=IRELAND&sessionid=97827181&skin=hudoc-en (accessed on 21.12.2011).

6. CONCLUDING REMARKS

In countries that find themselves in significant social, economic and political reform processes, as is the case in BiH, the development of normative regulation is in a constant discrepancy – being at one moment behind ongoing reforms, and at the other much ahead. In this situation, and in the absence of a functional unity of the judicial system, the "constitutionalisation" of the sectoral legislation and the legislation existing at the different levels of authority is the inevitable option. Effective and consistent implementation of law can and must be based on the supremacy of the constitution and therein built international documents for human rights protection, in particular the European Convention on Human Rights and Fundamental Freedoms, which are directly applicable in BiH, because as the Constitutional Court of BiH states "*the failure to respect human rights and fundamental freedoms and the failure to fulfil international obligations inevitably leads to international isolation and, through the lack of recognition of the institutions of such a state, to the discrepancies of that personality*".[86]

Proceeding from this, the importance of the role of the Constitutional Court of BiH is unquestionable, respectively its decisions, which by legal nature constitute the source of law. Although in form of an individual act, the decision of the Constitutional Court on annulling and repealing laws and regulations is a normative act. Laws and other regulations have their share in confirmation and further development of conditions and possibilities for the realization of human rights and fundamental freedoms, and the assessment of constitutionality and legality in principle is, and in many cases shall be, a form of protections of individual freedoms and rights.

Decisions of the Constitutional Court of BiH in some disputes have a character of judgments, but even then these acts may be more extensive than a judgment by ordinary court. Thus the competent authorities, particularly the judicial bodies, should be guided by legal views expressed in them. Under the current circumstances, and until the establishment of the Supreme/Appellate court at the state level, a more open and active role of the Constitutional Court of BiH in harmonisation of the court practice to achieve legal certainty and equality of citizens of BiH before the law would be necessary. At the same time, it is useful to note that with possible establishment and regulation of the jurisdiction of the State Supreme/Appellate Court taken into consideration should be the current broad appellate jurisdiction of the Constitutional Court of BiH, and in order to create space for its engagement in "most important" constitutional issues extend possibility to initiate proceeding for the review of constitutionality, and also "transfer" substantial part of "tasks" from the field of human rights protection and fundamental freedoms to that newly formed court.

[86] Decision of the Constitutional Court of BiH no.: U-14/05 from 02.12.2005, par. 50, available at: www.ccbh.ba/bos/odluke/povuci_html.php?pid=42072 (accessed on 14.12.2011).

PUBLIC ADMINISTRATION AND HUMAN RIGHTS

1. INTRODUCTION

In accordance with their constitutional status, the public administration authorities are obliged to respect, protect and fulfil the human rights and fundamental freedoms guaranteed under the Constitution of Bosnia and Herzegovina. Human rights protection in public administration is achieved through its function of executing laws and procedures in which decisions on the rights and obligations of citizens and legal entities are taken. Therefore, public administration plays a significant role in protecting and promoting human rights in Bosnia and Herzegovina (BiH).

Public administration in BiH in the post-conflict and transition period was certainly under the influence of a number of aggravating factors that affected reform processes. The main aggravating factors identified were: pronounced political monopoly over the administration, the materialization of quantitative over qualitative growth with multiple horizontal and vertical levels of authority, unfavourable personnel structures, as well as deficiencies incorporated into the existing constitutional structure that brought strong expansion of substantive administration liability[1].

According to the last assessment on democracy and the rule of law conducted by SIGMA[2], public administration is characterized by its ineffectiveness at the state level and by its politicization at the entity level. The multiplicity of governments, the number of employees and internal organization, make governance as a whole a severe drain on national resources.

[1] S. Leskovac, Transition and public administration reform, Faculty of Political Science in Sarajevo, Sarajevo, 2009 p 421.

[2] Assessment BiH Democracy and the Rule of Law 2010, Support for Improvement in Governance and Management (SIGMA), 2010, available at http://www.oecd.org/dataoecd/21/13/47073521.pdf

These and many other reasons give rise to the assertion that BiH has not made developed governance principles, despite the strategic efforts undertaken to adopt a Public Administration Reform Strategy.

Therefore, this paper will attempt to identify the role of public administration in promoting and protecting human rights based on the principles of good governance, and based on identified indicators, to assess the preconditions and the ability of the public administration in BiH to fulfil its human rights obligations.

2. THE ROLE OF PUBLIC ADMINISTRATION IN THE PROMOTION OF HUMAN RIGHTS

The promotion of most human rights requires the active participation of the authorities. Government action, in most cases, relates to the enforcement of laws and policies and the implementation of other activities of the various sectors of public administration. These activities are focused on the obligation to respect, protect, and fulfil human rights. Public administration and human rights complement each other. The principles of human rights provide guidance for the work of public administration and other political and social actors. In addition, the principles of human rights constitute a source of information for the development of a legal framework, public policies, programmes, and public budgets. On the other hand, without a public administration based on the principles of "good governance"[3] human rights would not be respected and protected in an appropriate manner. This includes the existence of an appropriate legal framework and institutions but also administrative processes that are ready to respond to the needs and rights of all members of society.

When talking about public administration then we are also talking about public administration in terms of management. Public administration is perceived as an administration that "has received from the political authorities the power and necessary resources to meet the general interests."

Although there is no universal definition of good governance, depending on the context, some basic principles are common to all definitions[4] and these are: public participation in decision-making, transparency, accountability, rule of law, efficiency, equality, and similar. The United Nations Security Council in its Resolution number 2000/64 in its statement: "The role of good governance in the promotion of human

[3] Eng. "Good governance"

[4] E.g. according to the World Bank, good governance entails sound public sector management (efficiency, effectiveness and economy), accountability, exchange and free flow of information (transparency) and a legal framework for development (justice, respect for human rights and liberties) in the World Bank, Governance, Washington, D.C., 1993

rights"[5] recognized that good governance is a foundation "*sine qua non*" for the promotion of human rights.

The principles of good governance are therefore crucial to establishing a positive environment for the realization of human rights. Good governance principles are based on fundamental human rights documents.

The principle of legal certainty is regulated under Articles 4 and 8 of the ICESCR[6], equality under Articles 1,2 of the UDHR[7], 3 and 14 of the ICCPR[8], 2,3 and 7 of the ICESCR, under Article 14 and Protocol 12 of the ECHR[9] and Articles 20 and 27 of the ESC[10], public participation under Articles 6, 8, 14, 21 and 29 of the UDHR, 6, 9, 13, 16 and 25 of the ICCPR, 5, 6 and 13, P3 of the ECHR and 15,22 of the ESC and so on.

Based on Resolution 2005/68 of the Commission for Human Rights[11], the Office of the United Nations High Commissioner for Human Rights (UNHCR) carried out research with the aim of examining the relationship between good governance and human rights and provided practical examples. Based on the analyses conducted, the UNHCR[12] has categorized basic relations between good governance and human rights into four main fields:

- **Democratic institutions**
- **Public participation in decision-making**
- **Service delivery and the rule of law**
- **Combating corruption**

These indicators will be used to analyse the state of public administration in BiH in the context of its capacities to apply the principles of good governance and actively engage in the protection of human rights.

2.1 Democratic institutions

The existence of democratic institutions is a basic precondition for the realization of human rights. Rating the democracy of public administration institutions in

5 The role of good governance in the promotion of human rights, Commission on Human Rights resolution 2000/64

6 International Covenant on Economic, Social and Cultural Rights

7 The Universal Declaration of Human Rights

8 International Covenant on Civil and Political Rights

9 European Convention on Human Rights and Fundamental Freedoms

10 European Social Charter

11 Available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-68.doc

12 Good Governance Practices for the Protection of Human Rights (HR/PUB/07/4), available at http://www.ohchr.org/Documents/Publications/GoodGovernance.pdf

BiH is influenced by many factors and the consequences of "triple transition". The three elements of this transition are: political, economic, and social. These elements have all had an impact on social dynamics in BiH and thus on the functioning of public administration. It is therefore necessary to consider public administration as part of democratic institutions through the prism of transition, the need for reform, and other elements necessary for the functioning of public administration.

2.1.1 The challenges of de-politicization of public administration

The Peace Implementation Council, in a meeting held in Madrid in 1998, concluded that "the creation of a professional and apolitical civil service is a vital component of any effectively functioning state"[13]. One way of achieving this goal is through the adoption of a civil service law which will regulate the separation of political influence from public administration; one of the preconditions for Euro-Atlantic integration stated in the Road Map for BiH.

However, in addition to the adoption of the above-mentioned law, the politicization of "public administration" still remains a real problem in BiH and represents an obstacle to the establishment of a professional public administration. According to the 2011 BiH Progress Report[14] "no progress has been made towards the development of a professional and de-politicised civil service", while according to the SIGMA[15] Report, the politicization is especially pronounced at entity level.

In further deliberations, the positive-legal aspects affecting the (de)-politicization of public administration as a precondition for establishing a public administration based on rule of law principles, will be analysed.

2.1.1.1 Prohibition of civil servants' activities in political parties

The clearly defined duties and rights of civil servants enable the establishment of a system which would distance civil servants from political influence. It is important to emphasize that all four laws[16] prohibit the public manifestation of political beliefs by civil servants and also prohibits membership of governing or other boards of political parties. Violation of these legal provisions entails disciplinary accountability, but it is

[13] Declaration of the Peace Implementation Council of 16.12.1998 item 12.2 taken from <http://www.ohr.int/pic/ default.asp? content_id=6873>

[14] Report available at: http://www.dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=8606

[15] Assessment BiH Democracy and the Rule of Law 2010, Support for Improvement in Governance and Management (SIGMA), 2010.

[16] Law on Civil Service in Institutions in BiH ("Official gazette BiH" no.: 19/02; 08/03; 35/03; 04/04; 17/04; 26/04; 37/04; 48/05; 02/06; 32/07; 43/09 and 08/10); Law on Civil Service in the FBiH ("Official Gazette FBiH" no.: 29/03; 23/04; 39/04; 54/04; 67/05; 08/06 and 04/12); Law on Civil Service in the RS ("Official Gazette of RS" no.: 118/08) and Law on Civil Service in BD Administration ("Official Gazette BD" no.: 28/06; 29/06; 19/07).

not clear if the violation of provisions of the FBiH law relate to violations committed by civil servant. It is interesting to note that state law only stipulates a fine[17]; Federation of BiH (FBiH) law stipules sanctions ranging from a public disciplinary warning to dismissal from the civil service; while the law in the Republika Srpska (RS) does not foresee any sanctions. The state and FBiH laws also regulate situations in which a civil servant is a candidate for public office to which they are directly or indirectly elected. In this case, the civil servant shall be considered as being on leave. From the moment of appointment to any legislative or executive body of authority at any level of government in BiH, any managerial civil servant is obliged to resign while other civil servants shall be reinstated in the same job after failure to be elected, at the end of his/her term or at the end of his/her position within a legislative or executive body of authority.[18]

2.1.1.2 Recruitment of civil servants in public administration

Limiting the role of politics in the hiring of civil servant is crucial for the de-politicization of the work of civil servants. The head of an institution is, in most cases, appointed by either the legislative or executive authority on behalf of the public administration body as an employer. The influence that these people may have during the recruitment of civil servants in public administration can directly effect the politicization or de-politicization of civil servants' work.

The appointment of a civil servant is regulated by the Law on the Civil Service and a number of by-laws regulating the appointment procedure. The procedure for appointment of civil servants is based on the principle of open public competition; while the procedure is run by a selection committee. The appointment of civil servants is regulated differently at the state and entity levels. While the state level highlights the role of the BiH Agency for the Civil Service and diminishes the role of the head of the institution, the entity laws give preference to the heads of institutions in the civil servant appointment procedure. There are three basic elements that can affect the (de) politicization of the work of civil servants:

- Composition of the selection committee;
- Criteria for passing a decision on candidate selection from the list of successful candidates; and
- Tenure of the managerial civil servants.

[17] Article 63a paragraph 5 stipulates a fine to the amount of 2000.00 KM to 5000.00 KM. Civil servants shall be penalized for violation if they are a member of governing or other boards of political parties or if they follow the instructions of political parties while paragraph 8 of the same Article stipulates a fine to the amount of 200.00 KM to 800.00 KM for public manifestation of political beliefs.

[18] More in M.A. Lejla Balić: The Principle of parliamentary discrepancies-Overview of the status of the representatives and delegates of the BiH Parliamentary Assembly, Yearly Book of the Law Faculty in Sarajevo, LIV–2011, p. 47-61

In accordance with the provisions of the Law on the Civil Service in the institutions of BiH, the role of the BiH Agency for the Civil Service is especially pronounced in the appointment of civil servants[19], while the head of the institution appoints managerial civil servants.[20] Following a request from the institution on the need to fill a vacant position, the Agency shall advertise the vacancy, appoint the selection committee and, in accordance with the results accomplished by the candidate, shall appoint the civil servant. The committee is composed of five members, of whom two are civil servants from the institution concerned, and three are selected from a list of independent experts (who cannot be employees of the institution concerned). The selection committee shall make a list of successful candidates and, in the case of civil servants, the Agency shall appoint the candidate with the highest score in open competition. With regard to managerial civil servants, the head of the institution has the complete freedom to appoint a civil servant from the list of successful candidates. This discretionary right enables the head of institution to ignore the ranking of successful candidates and choose any candidate from the list. However, the decision is limited to the list of successful candidates that the selection committee made, based on open public competition. If within 30 days a candidate from the list is not appointed, the Agency shall appoint the first successful candidate from the list. The law does not stipulate a tenure period for any of the managerial civil servants.

The entity laws on civil servants foresee a greater role for the head of an institution in employing civil servants. The majority of committee members entrusted with the selection procedure are employees of the institution that hires civil servants.

In the RS, the Civil Service Agency makes a list of successful candidates and submits a proposal for appointing the most successful candidate. The civil servant appointment proposal is forwarded to the head of the institution, while any proposal for appointing a managerial civil servant is delivered to the RS Government.

With three different laws, three different systems of filling vacant civil servant positions are in effect. Although all three systems are based on public competition, there are significant differences in them that may affect the (de)politicization of the work of civil servants. Under the Law on the Civil Service in FBiH, the head of the institution has a significant role in selecting civil servants and may influence the work of the selection committee. Although civil servants are not elected to a term, the law enables the head of the institution to disregard the points earned which means that the best candidate has no guarantees that he/she will be appointed. The FBiH Civil Service Agency's role is in appointing the committee members and giving an opinion on the

[19] Article 7 paragraph b)1) head of internal organizational unit; 2) senior advisor; 3) senior official; and 4) specialist.

[20] Article 7 paragraph a) 1) senior executive manager and senior executive manager with a special assignment and 2) assistant minister, assistant director and chief inspector

procedure. This fact calls into question the possible politicization of the hiring process because of the crucial role of the head of the institution.

In the RS, the government appoints civil servants to managerial positions for a 5 year tenure; demonstrating that the government has direct influence over the work of these civil servants. This emphasizes the role of the RS Government in (re)election which represents the real possibility of politicization in the work of managerial level civil servants in the RS.

Recently, the fact that managerial civil servants employed in the institutions of BiH and the FBiH are not appointed to tenure was questioned in public discourse. It was argued that ministers are unable to implement the goals of their policies due to the fact that they have no direct influence over their assistants nor have they the possibility to appoint other assistants if there is a vacant position. However, these arguments should be rejected especially because of the mechanisms that are provided in accordance with the Laws on Civil Service in situations of non-completion or failure to consciously and carefully execute the entrusted duties and tasks.

2.1.1.3 The judgment of the Constitutional Court of FBiH in case U-29/09

The Constitutional Court of FBiH, deciding on the Application for determining the constitutionality of the Law on the Civil Service in the FBiH, in case U-29/09[21], passed a judgment finding that the provision of Article 1 paragraph 1 of the Law on Civil Service in the FBiH reading "canton, city and municipality" is not in conformity with the FBiH Constitution. Specifically, the Court found that the law defining the employment status of civil servants in the bodies of public administration in the FBiH, canton, city, and municipality falls within social policy issues. In accordance with the provision of the Article III.2 of the FBiH Constitution, joint jurisdiction of the entity and the canton is stipulated, while the provisions of Article III.3 stipulate the ways of exercising these joint jurisdictions. Social politics, in accordance with the provisions of Article III.2 e, fall under joint jurisdiction. Within this judgment, the application of the provisions of the FBiH Law on the Civil Service to civil servants in cantons, cities and municipalities were pronounced unconstitutional; since before the adoption of the Law there had been no agreement reached between federal and cantonal authorities.

To date, this judgment has not been implemented; therefore the Constitutional Court of FBiH passed a Decision on non-implementation[22] and this issue still leads to legal uncertainty with respect to the status, rights and obligations of civil servants in

[21] Judgment in case **U-27/09,** 20 April 2010 available at http://www.ustavnisudfbih.ba/bs/open_page_nw.php?l=bs &pid=95

[22] 22 February 2011

cantonal, city and municipal administration services. Agreement on the application of the FBiH Law has not been reached, and some cantons[23] have already drafted working versions of the cantonal laws. The European Commission in the Progress Report also points out the fact that this poses a risk of further fragmentation of the civil service system across the country.

2.1.1.4 Ethnic representation of civil servants

All three laws on the civil service contain provisions that relate to the national structure of civil servants. The Law on Civil Service in the institutions of BiH and the Law on Civil Service in the RS use the formulation that the structure of civil servants "shall generally reflect the national structure" of the population in accordance with the last census. The Law on Civil Service in FBiH uses the formulation "Bosniaks, Croats and Serbs, as constituent peoples, along with Others and the citizens of Bosnia and Herzegovina, shall be proportionally represented", which is of an imperative nature. The Venice Commission in its Opinion on the Draft Law on the Civil Service in Governmental Institutions of BiH[24] considered that such formulation is in accordance with European standards and that the word "generally" should be deleted as being in conflict with the principle of non-discrimination. Analogous application of this opinion to the Law on the Civil Service in FBiH and the use of the auxiliary verb "will" that has imperative character leaves space for discrimination.

However, if we take into the account that fact that the head of the institution has the discretionary right to select any candidate from the list of successful candidates, then it can be concluded that, in this way, the national structure of employees can be ensured.

On the other hand, at the BiH and RS levels, the non-imperative nature of the provision related to the structure of employees, along with the principle of employing only the best candidate does not provide any mechanism for ensuring the structure of civil servants in accordance with the last census. However, according to data provided by the Civil Service Agency of BiH on 01.09.2011, the structure of civil servants reflects the national structure.[25]

From the perspective of non-discrimination, the question of the admissibility of giving preference to candidates because of their ethnicity is being asked. As already noted, the head of an institution in FBiH can give preference to a candidate belonging to an insufficiently represented ethnicity, while the laws at the BiH and RS level do not regulate this issue.

[23] Canton Sarajevo, Una-Sana Canton and Posavina Canton

[24] http://www.venice.coe.int/docs/2002/CDL(2002)009-e.asp

[25] http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=1938&Itemid=167&lang=bs

In the cases of Kalanke[26], Marschall[27] and Abrahamasson[28], the European Court of Justice looked into the preferential treatment with a view to ensuring gender equality and found that these cases involved discrimination given the fact that this measure ensures preferential treatment "solely due to the candidates' gender".[29] The European Court of Justice allowed that preference, in cases where two candidates are of equal qualification, should be given to a candidate belonging to an under-represented sex. Analogous application of this concept, in terms of national representation in civil service laws, could call into question the compliance of these provisions with the principle of non-discrimination.

This reasoning of the European Court of Justice was applied in the Law on the Civil Service in the administrative bodies of Brčko District[30] which, in Article 26 paragraph 2, provides preference only in cases of equal scoring and, if it does not lead to misuse, can certainly result in the selection of the less professional candidate.

2.1.2 Public administration reform

In 2006, based on the identified problems in public administration functioning, BiH adopted the Strategy for Public Administration Reform[31], a document that contains guidelines for strengthening general administrative capacity.[32] Adoption of the Strategy is seen as fulfilling the obligations under the Stabilisation and Association Agreement[33] (SAA), i.e. Article 8 relates to the accession process with administration reform in BiH.

The Strategy for Public Administration Reform is a comprehensive and universal document that provides a strategic framework for reform. The Strategy focuses on improving general administrative capacity or, more precisely, the ways in which the state administration is organized, how it creates policies, drafts and implements the

26 C-450/93, Kalanke v Freie Hansestadt Bremen [1995] ECR I-305

27 C-409/95, Marschall v Land Nordrhein-Westfalen [1997] ECR I-636

28 C-407/98, Abrahamsson v Fogelqvist [2000] ECR I-5539

29 Vehabović, Faris, Midhat Izmirlija and Adnan Kadribašić, "Commentary on the Anti-discrimination Law with explanations and overview of comparative law practice", Sarajevo: Human Rights Centre of Sarajevo University, 2010

30 Official Gazette of BD no. 28/06, 29/06, 19/07, 2/08, 9/08, 44/08 and 25/09

31 Available at: http://parco.gov.ba/?id=70

32 Strategy vision: "The reform is grounded in a firm vision to develop a public administration that is more effective, efficient, and accountable; that will serve the citizens better for less money; and that will operate with transparent and open procedures, while meeting all conditions set by European Integration, and thereby truly become a facilitator for continuous and sustainable social and economic development."

33 Available at: http://www.dei.gov.ba/bih_i_eu/ssp/doc/Default.aspx?id=743&template_id=14&pageIndex=1

budget, and employs and trains staff. All objectives of the Strategy are compatible with the characteristics of good governance which should provide all services in a manner that is consistent with human rights standards. According to the last Semi-Annual Progress Report[34] of the Public Administration Reform Coordinator's Office BiH the overall implementation of the measures from Action Plan 1 is 52.28%, while implementation progress in the period from January 1st- June 30 2011 is 3.04%. It has to be mentioned that in monitoring Strategy implementation, progress indicators are measured, as success indicators are still not available. One possible source of information on progress in reform would be the research conducted by the Centre for Humane Politics[35] in the first half of 2008, which indicates citizen's lack of trust towards public administration. Citizens' experiences of contact with public administration, according to the Report, are mostly described as unprofessional, inefficient, corrupt, and politicized. Therefore, it can be concluded that other factors may influence citizens' perception on the work of the public administration, and it seems that not much has been done in order to remedy this situation.

The Coordinator's Office sees the lack of political coordination and the fact that the role of entity coordinator for public administration has not been clarified as an independent function (which the Coordinator's Office has been requesting from the entity governments since 2007)[36] as the main obstacles.

Although the strategic approach adopted in BiH is to be applauded, research,[37] conducted by the Alumni Association of the Centre for Interdisciplinary Postgraduate Studies (ACIPS), has identified basic obstacles that prevent the implementation of this document. This specifically refers to the lack of political will for coordinated public reform, the fact that the process of public administration reform in BiH is decelerating, and that public administration reform has started without appropriate preparation with respect to the education and training of its key actors.

[34] Semi-Annual Progress Report (monitoring of implementation of the Action plan 1 of the Strategy of the Public Administration Reform in BiH) Public Administration Reform Co-ordinator's Office for the period from January-June 2011 with overview of the period 2006-2011

[35] Centre for Humane Politics, The Report on monitoring the process of public administration reform in the first half of 2008, July 2008, available at: http://www.chpngo.org/download/category/2-monitoring.html?download=12%3 Aizvjestaj-o-pracenju-procesa-reforme-javne-uprave-u-prvoj-polovini-2008-godine

[36] Semi-Annual Report on the work of the Public Administration Reform Co-ordinator's Office for the period of 1 January - 30 June 2011

[37] *QUO VADIS*, PUBLIC ADMINISTRATION? Evaluation of progress achieved in the implementation of Public administration reform in BiH, ACIPS, February 2010

2.2 Public participation in public administration decision-making

Civil society organizations are considered to be one of the essential components of a democratic society. With expertise and knowledge of the groups they represent, they can contribute to decision-making processes becoming professional and focused on meeting the needs of different groups. Simultaneously, involvement of civil society organizations in the decision-making process reduces costs because the representatives of these organizations may present issues of importance on behalf of groups they represent.

In BiH, where civil society organizations have existed for a relatively short space of time, there are still numerous barriers to full participation in the decision-making process. The barriers to more sustainable politics of influence are: lack of social capital, lack of public confidence and the undeveloped advocacy and lobbying skills of professional CSO staff[38]. On the other hand, the politics that were developed with the aim of involving civil society organizations have not yielded the desired results.

The involvement of CSOs in the different stages of the decision-making process varies based on the intensity of participation. There are four levels of participation, from least to most participative. These are: information, consultation, dialogue, and partnership.[39]

2.2.1 Information

Information is the lowest level of participation which usually consists of one-way communication in the decision-making process. One of the most basic and reliable channels of information is considered to be publication in the Official Gazette of BiH i.e. official gazettes at various levels of government in BiH. Yet this form of informing the public via public information is not complete since it is limited by a fee for purchasing hard copy editions or subscription for on-line publications. Article 5a was added to the Law on Changes and Amendments to the Law on the Official Gazette of BiH[40] which stipulates that laws and by-laws published on the website of the Official Gazette of BiH are free to the public. Although this has a positive effect on freedom of access to information, this Article is restrictively interpreted and free access is only available for the Official Gazettes of BiH published after number 103/09. At the same time, this website publishes the Official Gazette of FBiH and the Official Gazette of Sarajevo Canton, although access to these numbers is still not free of charge for the public.

[38] The actual influence of the civil society in BiH-Analyses and policy recommendations- Tijana Dmitrović, IBHI, 2010

[39] Code of good practice for civil participation in the decision-making process, adopted by the Conference of INGOs at its 1 October 2009 meeting, CONF/PLE(2009)CODE1, available at http://www.coe.int/t/ngo/Source/Code_ Croatian_final.pdf

[40] "Official Gazette BiH" 103/09

The Official Gazette of the RS is also only available to registered users while the official gazettes of some cantons do not even have web presentations. Examples of good practice are the Official Gazette of Tuzla Canton[41] and the Official Gazette of Bosnia-Podrinje Canton[42] offering free access to electronic editions. Yet it can be concluded that many governments and legislative bodies are making efforts to impose as many regulations as possible on their websites for downloads; although the practice is diverse and these sources of information are not always reliable.

2.2.2 Consultations

The Council of Ministers of BiH adopted the Uniform Rules for Legislation Drafting in the Institutions of BiH in September of 2006, which clearly stipulate the participation of the non-governmental sector in the process of drafting basic legal acts of the state. The rules also foresee mandatory consultations, in the drafting process, with private persons represented by registered citizen's associations.[43] However, in practice it proved that these Rules were not applied in terms of the sending of formal invitations for consultation in the legislative process.

In 2006, the Council of Ministers adopted rules to regulate procedures for consultations with the public and organizations, which must be followed by all ministries and other BiH when drafting legislation. These Rules established the framework of institutional cooperation between civil society organizations and state ministries in the field of legislative policies. The Rules, for the first time, enabled civil society organizations to voice their opinion and contribute to drafting legislation. However, research conducted by ACIPS showed that application of the Rules for consultations and public participation in the decision-making process still remains low and insignificant.[44] As only one example of good practice we can mention the Ministry of Justice of BiH that adopted a by-law[45] regulating the implementation of the Rules in practice, in legislation drafting by the Ministry of Justice in BiH. The official Report[46] on the

41 http://vladatk.kim.ba/Vlada/sl_novine.htm

42 http://www.bpkg.gov.ba/sluzbene-novine/7102/sluzbene-novine-bpk-gorazde

43 Article 75 paragraph (2) item c)

44 Implementation of the Rules for consultations in drafting legislation-dead letter, Association Alumni of the Centre for Interdisciplinary Postgraduate Studies, June 2009, available at http://www.acips.ba/bos/uploads/istrazivanja /acips_primjena_pravila%20o%20konsultacijama_bos.pdf

45 Rule Book for implementation of the rules for consultations in drafting legislation in the Ministry of Justice BiH, available at http://www.mpr.gov.ba/userfiles/file/Javne%20konsultacije/Pravilnik%20za%20konzultacije%20sa%2 0 avnoscu.pdf

46 Report on the implementation of the rules for consultations in drafting legislation in institutions of BiH, Ministry of Justice BiH, Sarajevo, September 2010, downloaded from http://www.mpr.gov.ba/userfiles/file/Javne%20 konsultacije/Sep%2010%20Izvjestaj%20o%20provodjenju%20Pravila%20za%20konsultacije%20-%20BJ.pdf

implementation of the Regulations on consultations in legislative drafting in the institutions of BiH published by the Sector for strategic planning, aid coordination, and European integration of the Ministry of Justice BiH concludes that most ministries, and other institutions in BiH, only partially implement the Regulations. The authors thereby concluded that "citizens and civil society organizations are deprived of the possibility of complete, timely and appropriate informing, consulting or participating, which leads to the absence of their contribution in shaping and implementing policies and missed opportunity to improve public confidence in the work of the institutions of BiH."

2.2.3 Dialogue

In April 2007, the Council of Ministers of BiH adopted the Agreement on Cooperation between the Council of Ministers and the non-governmental sector in BiH.[47] The Agreement highlights the urgent need for non-governmental organizations and state government to build sustainable and effective institutional frameworks for cooperation and constructive and productive dialogue. In this direction the only important development was the establishment of an Office for Cooperation with Non-Governmental Organizations in April 2008 within the legal authorities of the Ministry of Justice of BiH.[48] The Initiative for Better and Human Inclusion (IBHI), in its analyses of the signed Agreement, states that it was a positive example of successful partnership and concluded that "the signing of the Agreement, as well as the inclusion of the non-governmental sector by the Directorate for economic planning in drafting of strategic documents (Strategy for social inclusion in BiH, Development strategy of BiH) indicates that certain steps are taken in accordance with applicable European practice, but we can not ignore the significant delay (and tipping) in this regard".[49]

However, despite positive developments, it can be concluded that at this point it is difficult to talk about a satisfactory level of participation in the decision-making process by civil society organizations. At the same time, the development of civil society is a concrete indicator of the modernization of the political community, which is exactly what is missing in almost all East-European societies in transition, including BiH.[50] Every compliment goes to the fact that civil society organizations are recognized in a number of regulations as active participants in decision-making,

47 The Agreement is available at http://civilnodrustvo.ba/files/SPORAZUM_-_bos.2.doc

48 Proposal for practical policy in strengthening the civil society role in creating public policies in BiH, Sarajevo, 2009 available at http://www.kronauer-consulting.com/includes/tng/pub/tNG_download.asp?id=bb153e94efd 74910 3013862f98a1acbb

49 Advantages and possible forms of partnership between public, civil and private sectors- Analyses and policy recommendations, IBHI, April 2010

50 The actual influence of civil society in BiH - Analyses and policy recommendations -, Tijana Dmitrović, IBHI, 2010

but it is also obvious that the implementation of these obligations still depends on the readiness of decision-makers (in this context civil servants) to take action in order to ensure civil society participation.

2.2.4 Partnership

Partnership between public administration and non-governmental organizations is based on the principle of public-private partnership. Public-private partnership involves the pooling of financial resources, knowledge, and professional experience to provide services to the end users. By signing the Agreement between the Council of Ministers and the non-governmental sector in BiH, a framework was established for cooperation in this field.

Models of successful partnerships can be seen in the drafting and implementation of numerous strategic documents.[51] The Social Inclusion Foundation in BiH[52] represents a good example of partnership in the implementation of activities under the Social Inclusion Strategy because the partnership is achieved at the decision-making level (the Management Board of the Foundation consists of the representatives from institutions and non-governmental organizations) while one of the general conditions for project financing from the Foundation[53] constitutes "efficient partnership in implementation with at least one institution from the public sector".

Partnership that was accomplished in the field of preventing and combating domestic violence is one example of good practice, although the struggle for its realization lasted nearly 15 years.

The non-governmental organizations manage the work of shelters[54] and SOS lines[55] for helping domestic violence victims. The institutions in charge of implementation of the law on the prevention of domestic violence[56] have recognized the importance of work and capacities of the non-governmental organizations that manage shelters and representatives of these non-governmental organizations are involved in policy-making in this field and also in the implementation of activities related to the prevention of, and fight against, domestic violence. Non-governmental organizations

[51] Social Inclusion Strategy in BiH, BiH Development Strategy, Gender Action Plan of BiH, BiH Action plans for resolving Roma issues, Strategy for Prevention and Combat against Domestic Violence in BiH, Action Plan for implementation of UNSCR 1325 in BiH and others.

[52] http://sif.ba.

[53] Operational guidelines for NGO projects in BiH.

[54] On the territory of BiH there are nine shelters with 173 available beds.

[55] The SOS telephone line 1264 covers the entire territory of the RS, while SOS line 1265 covers FBiH territory

[56] Law on Protection from Domestic Violence in the RS ("Official Gazette RS" no.: 118/05 and 17/0) and Law on Protection from Domestic Violence in the FBiH ("Official Gazette FBiH" no.: 22/05 and 51/06)

secured funds for the running of shelters mainly from donations and recently through grants from the entity governments. However, new legal solutions foresee that the financing of shelters is ensured in the budget of entity governments and municipalities in the RS and the cantons and municipalities in the FBiH.[57]

2.3 The Rule of law

The rule of law limits government action with regard to all applicable laws in order to make them clear and predictable to all citizens. Respect for the principle of the rule of law by the public administration still constitutes an issue which can not be completely answered.

The administration procedure constitutes a base for ensuring the efficiency, effectiveness, and predictability of public administration in delivering public services. The Public Administration Reform Strategy foresees activities that tend to reinforce administrative decision-making as the key component of the interaction between the administration and citizens, thus making it a more functional, reliable, transparent, and responsible tool of modern public administration directed towards citizens. The Laws on administration procedure[58] constitute relatively advanced legal texts. SIGMA pointed out that these laws are partially implemented by persons conducting administrative procedures. As an indicator for this claim, numerous cases could be mentioned that were initiated under the Laws on administrative dispute i.e. through the number of complaints submitted to Ombudsmen. Although the backlog of cases was reduced by 45% after the adoption of new laws on administration procedure, the number was still worrying (at the beginning of 2006 there were 18.140 cases at all Courts in BiH).

In the course of 2010, the Institution of Human Rights of Ombudsmen received 512 complaints where citizens complained that administrative proceedings, initiated by them before the administrative organs, were carried out in contravention of the provisions of the Law on Administrative proceedings. Also, a high degree of human rights violations were present in the work of public administration, where the administration often acts in contravention to good administration principles, in particular the principles of "efficiency and effectiveness". The Ombudsmen, in their Report, concluded that public administration in BiH is overburdened with the length of proceedings, which makes the administration inefficient and, in the end, jeopardizes citizens in pursuance of their rights guaranteed under the Constitution.

[57] Proposal of the new Law on Protection from Domestic Violence in FBiH, putting in place this model, is currently in second reading at FBiH Parliament

[58] Law on General Administrative Proceedings in BiH, Law on Administrative Proceedings of Brčko District BiH, Law on Administrative Proceedings of the FBiH and Law on General Administrative Proceedings of the RS .

At the same time SIGMA notes that implementation of laws remains a serious problem. One of the reasons mentioned was failure to recognize the social and political significance of certain laws by public administration employees. As one of the most obvious examples of different application of regulations is the Law on Freedom of Access to Information in BiH.[59]

BiH is the first country in the region that in 2000 adopted the Law on Freedom of Access to Information[60], first at the state level and then in 2001 in both entities, the FBiH[61] and the RS.[62] Although the Law clearly stipulates the obligation to act when the administrative authority receives a request to access information, these obligations in most cases are not respected.

The Institution of Human Rights of Ombudsmen in 2010 received 226 complaints related to freedom of access to information. According to the Annual Report for 2010[63] the most frequent violations of rights in the field of freedom of access to information involve failure to respond within the legal deadline of 15 days, non-compliance of legal provisions on forms of decisions (written decision with all the elements pursuant to the provisions of the Law on Administrative Proceedings), and omitting legal remedy instructions. Also, denied requests often do not have either an explanation for denial or a reason based on public interest, but instead contain a statement that the information cannot be granted because of the protection of third party's privacy. Transparency International BiH[64] also pointed out similar problems in their research, published in September 2011.

Also, lack of sanction was mentioned as one possible cause for inefficient law enforcement. The Parliamentary Assembly of BiH adopted the Law on Changes and Amendments to the Law on Freedom of Access to Information in BiH,[65] introducing a new section to the Law that stipulates penalty provisions. However, the entity laws still have not prescribed penalty provisions, which further complicates access to information in BiH.

[59] This example is used because the implementation of these laws is in directly related to other elements of good governance that affect the realization of human rights, particularly transparency. The above-mentioned laws contain most features that SIGMA recognized as reasons for passing sub-standard legislation.

[60] Law on Freedom of Access to Information in BiH, "Official Gazette BiH", no.: 28/2000

[61] Law on Freedom of Access to Information in the FBiH, "Official Gazette F BiH", no.: 32/2001

[62] Law on Freedom of Access to Information in the RS, "Official Gazette RS", no.:20/200

[63] Annual Report on the Activities of the BiH Ombudsmen for Human Rights

[64] Research on the implementation of the Law on the Freedom of Access to Information in BiH, Transparency International BiH, September 2011 http://ti-bih.org/wp-content/uploads/2011/09/Izvjestaj-o-istrazivanju-primjene-ZoSPI-2011.pdf.

[65] The Law on Changes to the Law on the Freedom of Access to Information in BiH, "Official Gazette BiH", no.: 102/09

As one example of inconsistent implementation of legal regulations we could mention the rules for consultations and already mentioned ACIPS analyses, which indicate that implementation is still negligible and insignificant.

2.4 Fight against corruption

Corruption seriously undermines all efforts to ensure the realization of human rights. According to the International Council on Human Rights Policy Report[66], who made pioneering efforts to link the issue of human rights and corruption, the standards that may contribute to fighting corruption are numerous. Yet corruption has the greatest influence on requests that relate to the services delivered by the public administration, which has a direct link to the issue of discriminatory practice.

With the adoption of the Anti-corruption Strategy 2009-2014, BiH made significant progress, formally fulfilling some of the policy making obligations under the United Nations Convention against Corruption, and also fulfilling obligations from the European Partnership and Road Map for Visa Liberalization. The Strategy recognizes that corruption endangers rule of law, democracy, and human rights and degrades good governance, equality, and social justice.

According to the Report of the European Commission, "Bosnia and Herzegovina has made very limited progress in tackling corruption, which remains widespread throughout the public and private sector. Very limited steps have been taken in the implementation of the 2009-2014 Anticorruption Strategy and Action plan".[67]

According to the Transparency International's Corruption Perception Index for 2010, BiH is ranked between 91st and 97th place, sharing it with Djibouti, Gambia, Guatemala, Kiribati, Sri Lanka and Swaziland, while along with Kosovo, it is the worst amongst its neighbours, and is at the bottom of the list of European countries for corruption in public sector. What is particularly worrying is the fact that, despite public perception and awareness that corruption represents a problem against which it is necessary to fight through the mechanisms for protection (prosecutor's offices, courts, disciplinary commissions and etc.) there are still not many prosecuted corruption cases.

66 Corruption and Human Rights: Making the Connection, and Integrating Human Rights in the Anti-Corruption Agenda available at: http://www.ichrp.org/files/reports/58/131b_report.pdf

67 BiH 2011 Progress Report EUROPEAN COMMISSION, SEC (2011)1206 available at http://www.dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=8606

3. CONCLUSION

From previous analyses we can conclude that there are still numerous factors that affect the public administration's ability to respond to demands pertaining to the exercise of human rights. Striving for a total transformation of the civil service in public administration to a system based on the principles of good governance is a long-lasting process which, although it yielded some results, is yet not finished.

The fact that the public administration is fragmented between the different levels of government prevents a coordinated approach to reform; therefore the progress achieved has to be measured at different levels of authority. One such example is the (de)politicization of the work of civil servants because it is evident that different civil servant recruitment mechanisms are being applied at state and entity levels. Therefore, it is expected that SIGMA assessments will state that public administration at the entity level is still politicized. Particularly disturbing is the potential for further fragmentation of public administration in FBiH following the above-mentioned FBiH Constitutional Court Judgment.

The provisions that strive towards ensuring a national structure of civil servants bring into question the implementation of the principle of open competition in the civil servant selection process. The model used in the FBiH could be problematic from the perspective of non-discrimination, while the non-regulation of this rule at the BiH and RS levels leaves space for different approaches in achieving proportional representation.

Inadequacy of the mechanisms that are supposed to ensure the participation of civil society organizations in decision-making and the incomplete capacity development of these organizations, mean that the required levels of information, consultations, dialogue, and partnership are not met. Although some progress is visible, it is necessary to make additional efforts in order to ensure satisfactory levels of cooperation.

There are still many omissions in the implementation of regulations affecting the exercise of the rule of law. Therefore, it is necessary to continue activities to strengthen the administrative capacity to enforce the regulations which are key to achieving the principles of human rights.

Although there is consensus about corruption in public administration functioning being one of the most important causes of human rights violations, it can still not be said that decisive action has been taken to end this social problem. It is encouraging to note the establishment of an Agency for fighting corruption which will coordinate activities in this field. At the same time, it is important to take action as soon as possible, in order to detect corruption cases and restore public confidence in public administration.

In order to ensure a strategic approach to public administration work in the human rights field, it is essential to work on developing an action plan on the promotion

and realization of human rights that would include activities focused on the work of the public administration. A strategic approach was recommended during the World Conference on Human Rights, held in Vienna in 1993. One of the most important conclusions, contained in Part II, paragraph 71, refers to a call to each state to consider the desirability of drawing up a national action plan identifying steps that would improve the promotion and protection of human rights.

The Action plan for BiH should anticipate the inclusion of a human rights mainstreaming principle in the work of the public administration. This method is applied United Nations level, based on a report[68] made during the tenure of Kofi Annan, while in BiH; this principle was applied in the field of gender equality through the adoption of the Gender action plan for BiH.[69]

[68] Renewing the United Nations: A Programme for Reform, Report of the Secretary General, (A/51/1950), July 14, 1997, p. 87.

[69] Available at: http://arsbih.gov.ba/figap.ba/files/GAP_BiH.pdf.

CORRUPTION IN BOSNIA AND HERZEGOVINA – ANALYSIS

1. INTRODUCTION

Corruption is one of the greatest challenges of our time and is globally recognized as a fundamental obstacle to the development of society and democracy. Countries in transition, such as Bosnia and Herzegovina (BiH), are particularly susceptible to corruption, given their poorly developed institutional capacities to implement laws and the general lack of culture of democracy throughout society.

The post-conflict period in BiH is characterized by a complex institutional structure, ethnic and political divisions, and lack of transparency and accountability in the work of public institutions. Corruption is widespread in the public and private sectors and is also present at the highest levels of government and politics. Close connection between the political elite and close oligarchies whose private interests are placed above public interests, places BiH in a rank of countries, in literature known as a "state capture".[1] Despite the fact that, in the past few years, solid legislative and institutional frameworks for effectively fighting corruption were put in place, major challenges such as weak implementation mechanisms and a lack of positive results still remain. The most worrying fact, which is also the main cause of extremely high corruption levels in BiH, is the lack of political will and readiness of the political elite to take concrete action to resolve this problem. Furthermore, the lack of a holistic approach, as the best long-term solution for reducing corruption in BiH encompassing

[1] State capture is defined as the "situation where powerful individuals, institutions, firms or groups, in or out of state, use corruption to shape state policy, legal frameworks, and economy to their own advantage". J. Hellman and D. Kaufmann, *Confronting the Challenge of State Capture in Transition Economies*, Finance & Development, vol. 38, no. 3 (2001).

all pillars of social integrity,[2] resulted in anti-corruption activities being undertaken unsystematically and on an *ad hoc* basis. Such an uncoordinated system did not, nor could it ever, produce sustainable results.

This report contains an overview of analyses in the field anti-corruption efforts in BiH, focusing on practices, i.e. the implementation of certain legislation. In addition to an overview of the current situation with regard to corruption, a brief overview of the level of international commitments undertaken by BiH in the field of anti-corruption, as well as the implementation level of the most significant anti-corruption reforms, will be presented. Based on the analyses, it can be concluded that BiH has numerous laws that are based on good international practice, but owing to lack of political will, non-conformance at different levels of authority and weak coordination mechanisms, they are inconsistently implemented. In relation to other countries in the region, BiH has lagged behind for years. Therefore, in order to avoid any further collapse of the legal system and institutional framework, it is urgently necessary to prosecute the most heinous forms of corruption.

2. CORRUPTION IN BOSNIA AND HERZEGOVINA

The dramatic extent of corruption is one of the most important issues in BiH and constitutes a serious obstacle on its path towards the European Union (EU). Despite years of reforms and international community engagement, systemic corruption still exists in BiH, without adequate institutional capacities and real political will for its suppression.

According to the last Corruption Perception Index compiled by Transparency International for 2011, on a list of 182 countries, BiH with an index of 3.2 shares 91-94 place with Liberia, Trinidad and Tobago and Zambia, which clearly points to the fact that BiH made no progress and, together with UNMIK Kosovo, is worst ranked in the region and again at the bottom of the list of European countries.[3]

Despite declarative commitment to anti-corruption reforms, the European Commission 2011 Progress Report notes that BiH made no significant progress in tackling corruption, emphasizing the lack of political will to solve the problems that BiH is facing. Insufficient implementation of legislation, asymmetry, and unconformity of legislation aimed at the fight against corruption at different levels of government stand out as particularly problematic. The European Commission also noted

[2] For holistic and comprehensive approach in fight against corruption see National Integrity System Assessment, TI, available at: www.transparency.org; for BiH, see National Integrity System Assessment in BiH 2007, available at: www.ti-bih.org/publikacije/.

[3] TI, *Corruption Perceptions Index 2011*, available at www.cpi.transparency.org/cpi2011/

inadequate implementation of the 2009-1014 Anti-corruption Strategy and the delay in establishing the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.[4] The report also emphasized the inefficiency of the judiciary and political pressure exerted on the work of courts and prosecutors' offices, especially the fact that there were no processed corruption cases at the highest levels of government and politics.[5] In addition to the Progress Report, other relevant research has, over the years, confirmed previous findings. Namely, the Global Corruption Barometer survey showed that citizens of BiH assess government efforts to fight corruption as completely inadequate, while they deem that the most corrupt segments of society are the political parties, the legislative authority and the judiciary.[6] Furthermore, the research conducted by Global Integrity for 2009 showed that BiH, together with Uganda, displays the greatest discrepancies between anti-corruption laws "on paper" and the actual application of these laws in practice.[7]

2.1. Fight against corruption in BiH and International commitments

Concrete progress in the fight against corruption is essential for progress towards European integration; therefore an efficient and systematic approach to resolving the corruption problem in all segments of BiH society is set before BiH as a priority. In recent years the EU has significantly intensified the strictness of the anti-corruption standards that apply to candidate countries and potential candidates for EU membership, putting the issue of the fight against corruption as the top priority for the EU. The European Council, in Copenhagen in 1993, set explicit focus on political reform in the accession process by introducing the so-called the Copenhagen criteria, which constitute the main basis for the fight against corruption and good governance.[8]

BiH must take decisive action to combat all forms of corruption in the public sphere, implement anti-corruption legislation, including preventive and repressive measures, harmonize legislation with the EU *Acquis,* and ratify and implement the main international instruments to combat corruption.[9] Furthermore, BiH is obliged

[4] European Commission, *BiH 2011 Progress Report,* Commission Staff Working Document, SEC (2011)1206 Brussels, 12.10. 2011, p.12, available at www.dei.gov.ba

[5] Ibid.

[6] TI, "Global Corruption Barometer 2011", available at: http://www.transparency.org/policy_research/ surveys_indices/gcb/2011

[7] Global Integrity Report *BiH: 2009,* available at: http://report.globalintegrity.org/Bosnia%20and%20 Herzegovina/2009

[8] For more details see http://europa.eu/legislation_summaries/glossary/accession_criteria_copenhague_en.htm.

[9] These are among others: United Nations Convention against Corruption, Council of Europe

to participate in the monitoring mechanism of the Council of Europe's Group of States against Corruption (GRECO), to establish clear rules about protecting people who report corruption in the public and private sectors, and to implement quality control mechanisms, audit standards and monitor the promotion of integrity, accountability and transparency in public administration.

Under these principles, priorities and conditions for European partnership with BiH in the field of anti-corruption policy, BiH is obliged, *inter alia*, to adopt and implement a detailed action plan against corruption based on the national Anti-corruption Strategy, implement GRECO recommendations, and fulfil obligations arising from international conventions on corruption. BiH is expected to effectively prosecute the offenders of crimes of corruption and adopt a policy of zero tolerance towards corruption, as well as to ensure the enforcement of the Law on the Conflict of Interest.

2.2. Anti-corruption Strategy 2009-2014

By adopting the Anti-corruption Strategy 2009-2014 in September 2009, and the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in December 2009, BiH formally fulfilled a part of the obligations envisaged under the international documents that it had signed. The overall objective of the Anti-corruption Strategy is to "reduce the level of corruption, create the strategic framework and common standards that will be used in BiH and also strengthen the trust in government institutions at all levels."[10] Under the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was established as an independent body reporting to the Parliamentary Assembly of BiH and which has a primarily preventive, educational, coordinating, and policy-making role in preventing corruption and monitoring legislative implementation; also playing an active role in managing databases and statistically monitoring corruption status and trends.[11]

The Anti-corruption Strategy 2009-2014 is a comprehensive document that consists of five components. Special attention is paid to: corruption prevention and preventive measures including the obligation of every ministry and other public institutions at all levels of government in BiH to prepare their own action plans and establish

Criminal Law Convention on Corruption, Council of Europe Civil Law Convention on Corruption, as well as Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and OECD Convention.

[10] See Anti-corruption Strategy (2009-2014), p. 11, available at: http://msb.gov.ba/docs/strategija1.pdf

[11] For more details see the law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in BiH, "Official Gazette BiH" no.: 103/09.

open communication channels in all public institutions at all levels of government in BiH, in order to allow their clients or public servants to report corruption; establishing the legislative-legal framework to protect persons indicating irregularities in public duties; introducing E-government and E-governing; conducting surveys on corruption in the private sector and developing strategies to combat corruption in private sector.[12]

However, from the moment of enactment to the drafting of this report, there was no significant progress in the implementation of the Strategy. The reasons for this situation are numerous but the main one was the delay in setting up the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. This was due to the leadership of the Agency being appointed in July 2011 after a one year delay (the anticipated deadline for the appointment of the leadership under measure 1.3 of the Action plan "Appointment of the necessary Agency staff in order to facilitate effective work" was June 2010) and also because of political lines, whereby the activities of election and vetting of candidates by the Commission for the selection and monitoring of the Agency, which lasted more than a year, were made completely unnecessary.[13] Delay in forming the Agency was even more worrisome because 89% of the measures envisaged under the Action plan fall under the responsibility of the Agency. Quantified analysis of the implementation of the Action plan for the fight against corruption 2009-2014, by Transparency International (TI BiH), showed that the implementation level of the various components of the Strategy, so far, is extremely unsatisfactory. Only 17.2% of the measures planned under the Action plan have been partially realized.[14] The European Commission in its Progress Report also emphasized that "very limited steps have been taken in the implementation of the 2009-2014 anti-corruption strategy and action plan" between institutions at different levels of government.[15]

3. IMPLEMENTATION OF ANTI-CORRUPTION REFORMS IN BIH

The anti-corruption reforms in BiH were conducted at a very slow pace and mainly were the result of conditioning and pressure from the international community. In the past several years the anti-corruption legislation in BiH has been improved by adopting certain key laws, but the fact that these laws were adopted under external

[12] See Anti-corruption Strategy 2009-2014, available at: www.msb.gov.ba.

[13] See TI BiH, Press release, *The administration of the Agency for the prevention of Corruption appointed by political lines,* 15.07.2011, available at: www.ti-bih.org/4279/uprava-agencije-za-prevenciju-korupcije-imenovana-po-politickoj-liniji-2./

[14] TI BiH, *Quantified analysis of the implementation of the Action plan on the fight against corruption 2009-2014*, December 2011, p. 10, available at: www.ti-bih.org/publikacije./

[15] European Commission, *BiH 2011 Progress Report*, available at: www.dei.gov.ba.

pressure, as the result of conditioning by various international actors, primarily the EU, has made their existence meaningless in the implementation phase. For this reason, despite certain progress in the overall anti-corruption activities in the country in terms of adopting important anti-corruption measures, and rather significant changes and amendments to the legislation[16], the main challenge in BiH remains the ineffectiveness and lack of constitutional capacities for law enforcement.

The section that follows gives a brief overview of situation in several areas that are key for progress on the anti-corruption agenda (the prosecution of corruption and work of the judiciary, public procurement, conflict of interest, audit institutions, political party financing) with primary focus on an analysis of practices, deficiencies and obstacles that prevent effective implementation of the anti-corruption legislation in the above-mentioned areas. This overview is based on available reports and monitoring conducted by national non-governmental organizations,[17] as well as the European Commission Progress Report and GRECO.

3.1. Prosecution of corruption

Prosecution of corruption in BiH is at a very low level. The last analysis on judiciary statistics published by TI BiH, which contains data for 2009 and 2010, points to the fact that, in order to prosecute corruption before the courts and prosecutors' offices in BiH, there has to be willingness from the responsible institutions to begin resolving this issue in an adequate way. Specifically, the analysis showed that in the period 2009-2010 there almost was no progress in increasing the number of convictions for corruption.[18] Lack of convictions for corruption, repeatedly over the past several years, was a conclusion of the European Commission BiH Progress Report.[19] Despite creating the legal preconditions for the effective prevention and prosecution of corruption, in practice, so far, it is worrying that there have been no prosecutions for systemic corruption at the highest levels of government.[20] These findings in the judiciary give reason for concern, particularly bearing in mind that the citizens of BiH

16 E.g. adoption of the Anti-corruption Strategy (2009-2014), adoption of the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, changes and amendments of criminal legislation, introduction of sanction provisions in the Law on Freedom of Access to Information etc.

17 This primarily refers to TI BiH and Citizen's Association Tender.

18 TI BiH, *Prosecution of corruption before courts and prosecutor's offices in BiH 2009-2010*, July 2011, available at: www.ti-bih.org/publikacije.

19 European Commission, *BiH 2011 Progress Report*, *BiH 2010 Progress Report*, available at www.dei.gov.ba.

20 TI BiH, *Prosecution of corruption before courts and prosecutor's offices in BiH 2009-2010*, 2011, and *Monitoring the implementation of anti-corruption reforms 2010*, available at: www.ti-bih.org/publikacije.

perceive the judiciary as very corrupt pillar of society with an average grade of 3.5 on a scale of 5.00.[21]

The existence of four separate judicial systems, overlapping of jurisdictions and lack of coordination constitutes a problem that seriously affects the efficiency of judiciary.[22] Looking at judicial reform, it can be concluded that limited progress was made. The Justice Sector Reform Strategy (JSRS) 2009-2012 did not produce significant results, and reasons for such are, *inter alia*, insufficient allocation of human and financial resources and weak coordination amongst the relevant institutions.[23] The Structured Dialogue on Justice was launched in June 2011, within the framework of the Stabilisation and Association Process, to facilitate the revision of legislation and functioning of institutions in line with relevant European standards and aiming at ensuring an independent, effective, impartial and accountable judicial system. However, what is concerning in the work of judiciary is political pressure, which not only resulted in the transfer and termination of corruption investigations at the highest levels of government, from the state to lower instances, but the judiciary has shown negligence in its own work by losing crucial documents from important cases initiated against high-ranking politicians.[24]

A very important change to the Criminal Proceedings Code of BiH was introduction in the form of a provision that allowed prosecutorial and police bodies to undertake special investigative actions while investigating corruption cases.[25] However, in practice, these legislative changes have not produced significant results. Analysis shows that the proportion of investigations that relate to corruption offences are only 2.8%, compared to the total number of investigations; while the proportion of convictions for corruption in the total number of convictions is less that 1% which certainly does not satisfy the demands of efficient and decisive sanctioning of corruption.[26]

21 See TI, "Global Corruption Barometer", available at: http://www.transparency.org/policy_research/surveys_ indices/gcb/2010.

22 European Commission, *BiH 2011 Progress Report*, p. 11, available at: www.dei.gov.ba.

23 Ibid.

24 In the case against Milorad Dodik, suspected for abuse of office in connection with construction of a highway Banjaluka-Gradiška, part Banjaluka-Glamočani, construction of the Administrative centre of the RS Government and Broadcasting House, the case, after two years, was transferred from the BiH Prosecutor's Office, that found that the case was not within its jurisdiction, to the RS Special Prosecutor's Office, which terminated the investigation against Dodik and his associates. For more details about the disappearance of certain original documents from the prosecutor's file in the case Čović-Lijanovići, see http://www.cin.ba/Stories/P27_ Justice/?cid=999,2.

25 Article 34 of the Law on changes and amendments to the Criminal Proceedings Code BiH, "Official Gazette BiH", no.: 58/08.

26 TI BiH, *Prosecution of corruption before courts and prosecutor's offices in BiH 2009-2010*, 2011, available at: www.ti-bih.org/publikacije/.

Substantive criminal legislation in BiH contains provisions that constitute criminal offences against official duty or other responsible duty.[27] The changes and amendments to the state Criminal Code have made considerable steps in expanding the circle of perpetrators (international officials) for offences of accepting gifts and other forms of benefits.[28] However, BiH has not yet adopted the Additional Protocol to the Criminal Convention on Corruption of the Council of Europe.[29] During 2009, the adopted was the Law on International Legal Aid that prescribes general and special institutes of the International legal aid.[30]

3.2. Public procurement

Although the Law on Public Procurement of BiH[31] has existed since 2005, its implementation is still at an unsatisfactory level. A decentralized public procurement system in BiH is still not adequately regulated or fully functional.[32] Different interpretations of the

[27] Following criminal offences are stipulated under: Criminal Code of BiH (Chapter XIX-criminal offences of corruption and criminal offences against official duty or other responsible duty), Criminal Code of the FBiH (Chapter XXXI-Criminal offences of bribery and criminal offences against official and other responsible duty), Criminal Code of the RS (Chapter XXVII-Criminal offences against official duty) and Criminal Code of Brčko District BiH (Chapter XXXI- Criminal offences of bribery and criminal offences against official and other responsible duty). Criminal Code of Bosnia and Herzegovina "Official Gazette BiH", no: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10. This chapter prescribes following offences: (a) Accepting gifts and other forms of benefit (Art. 217), (b) Giving gifts and other forms of benefits (Art. 218), (c) Illegal interceding (Art. 219), (d) Abuse of office or official authority (Art. 220),(e) Embezzlement in office (Art. 221), (f) Fraud in office (Art. 222), (g) Using property of the office (Art. 223), (h) Lack of commitment in office (Art. 224), (i) Forging of official document (Art. 226), (j) Illegal Collection and disbursement (Art. 227), (k) Unlawful release of a detainee (Art. 228) and (l) Unlawful appropriation of objects while searching or carrying out enforcement order (Art. 229); Criminal Code of the FBiH, "Official Gazette FBiH", no. 36/03; Criminal Code of the RS, "Official Gazette RS", no.: 49/03; Criminal Code of Brčko District BiH, "Official Gazette BD BiH", no.: 10/03.8 See Law on changes and amendments to the Criminal Code of the FBiH, "Official Gazette of the Federation of Bosnia and Herzegovina", no.: 42/10 (Art.62). 9 See Law on changes and amendments to the Criminal Code of BiH, "Official Gazette BiH", no.: 8/10 (Art. 94 and 95).

[28] Articles 94 and 95 of the Law on changes and amendments to the Criminal Code of BiH, "Official Gazette BiH", no.: 8/10.

[29] In terms of Additional Protocol, the most important elements of compliance refer to expanding the scope of punishment for perpetrators that have the function of domestic, respectively foreign arbitrary judges and lay magistrate for committed criminal offences of active and passive bribery of corrupt practices in international business transactions. For recommendations see GRECO report, and *European Commission BiH 2011 Progress Report*

[30] Law on International Legal Aid in Criminal Matters "Official Gazette BiH", no.: 53/09.

[31] Law on Public Procurement BiH, "Official Gazette BiH", no.: 19/05, 52/05, 8/06, 24/06, 70/06, 12/09 and 60/10).

[32] TI BiH, *Monitoring the implementation of anti-corruption reforms*, pg.17, available at: www.ti-bih.org/publikacije/.

Law on Public Procurement by the Public Procurement Agency and the Public Procurement Review Body, and insufficient professional capacities, are also issues affecting the quality of Law implementation. The Strategy for Development of the Public Procurement System for 2010-2015,[33] was adopted by the Council of Ministers of BiH in mid August 2010, but its implementation was delayed.[34] In the last Progress Report, the European Commission identified failure to adopt a new Public Procurement Law that would incorporate the *acquis,* the overlapping of power, high administrative costs, and lack of formal cooperation between the levels of authority as problematic.[35]

In addition, the Law on Public Procurement is not in conformity with other regulations, especially regulations related to the issuance of different licences and permits, which, together with the overlapping of power, prevents the formation of a single public procurement market and opens up space for corruption. The Draft of the new Law on Public Procurement, drafted by the Public Procurement Agency in November 2010, is still pending adoption. This Draft Law encountered criticism from civil society organizations because it contains numerous provisions that create additional space for corruption. Therefore, it is estimated that some of the proposed provisions would enable an additional growth in corruption of as much as 150 million KM.[36] The audit reports from the past few years point to violations of the Law on Public Procurement, causing damages of several hundred of millions of KM through custom and non-transparent procedures.[37]

3.3. Preventing conflicts of interest

After a series of failed attempts in the course of 2010, to change the Law on Conflict of Interest in BiH, in October 2011 the Interagency Working Group for changing the Law on Conflict of Interest, the Election Law, and the Law on Political Party Financing[38] was established. The 2011 Progress report states that no steps

[33] See Strategy for Development of the Public Procurement System 2010-2015, available at: www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf.

[34] European Commission, *BiH 2011 Progress Report*, p.35, available at www.dei.gov.ba

[35] Ibid.

[36] Some other provisions are related to tender procedure in case of only one bidder, provided that the offer corresponds to tender conditions, increasing the threshold for public procurement of goods and services from 30.000 to 50.000 KM and from 50.000 to 80,000 KM for performing work, aforementioned increase of threshold would also increase corruption by about 5% per annum - around 150 million KM. For more details see Association Tender, *Reasons for rejecting the Draft*, 20.10.2011, available at: www.tender.ba.

[37] "Corruption in Public procurement in BiH annually consumes 600-700 million KM from the tax payers and citizens", taken from http://mitolovac.ba/strana/420.

[38] Members of this body are: from the House of Representatives of the PA BiH Nermina Zaimović-Uzunović, Niko Lozančić and Milorad Živković, from House of peoples PA BiH Borjana Krišto, Halid Genjac and Dragutin Rodić, Minister of Justice BiH Bariša Čolak, Minister for Human

have been taken to harmonize the legislative provisions at the state and entity level to ensure uniform application of the law in the country.[39] According to the Report on Law Enforcement within the competence of the Central Election Commission BiH (CEC BiH) for 2010, out of the total number of sanctions that were pronounced by the CEC BiH in 2010, only two sanctions were imposed on officials at state level, no sanctions were imposed on entity officials, while the Commission at the RS level pronounced six sanctions.[40]

One of the reasons for inadequate implementation of the Law on Conflict of Interest is the lack of capacity of the CEC BiH and RS Commission, as well as the politicization of these institutions and pressures exerted on them by the ruling government structures. What specifically makes the implementation of the Law on Conflict of Interest difficult, as, *inter alia,* mentioned by CEC BiH in their Report for 2010, is the lack of harmonization of the Law on Conflict of Interest and solutions in specific laws and other normative acts such as, for example, the Law on Public Enterprises or the Law on Ministerial, Government or other Appointments, then the lack of provisions on pantouflage, respectively preventing inappropriate migration of officials from the public to the private sector, lack of capacity in the implementation of all laws within its jurisdiction etc.[41] Particularly worrying is the lack of political will to harmonize the entity laws on conflict of interest with the state level law especially bearing in mind their numerous differences.

3.4. Public sector audit institutions

The work of the audit institutions is of utmost importance for monitoring the transparency and accountability of public institutions, particularly bearing in mind the existence of different administrative levels in BiH that open many opportunities for inappropriate spending and misuse of public funds. An audit of the public sector is fragmented by the existence of four audit institutions in BiH (state, entities and Brčko District) and, due to internal non-conformance of the audit laws, the problems in practice are numerous. Lack of precise legal provisions that relate, above all, to the procedure for appointing the General Auditors and issues related to the financing of audit institutions also constitute a problem.[42]

Rights and Refugees BiH Safet Halilović and Minister of Civil Affairs BiH Sredoje Nović, as well as members of the Central Election Commission of BiH Branko Petrić, Suad Arnautović and Stjepan Mikić.

39 European Commission, *BiH 2011 Progress Report*, p. 13, available at: www.dei.gov.ba.

40 TI BiH, *Report on monitoring the enhancement of legal framework and implementation of the Law on conflicts of interest in BiH, 2011*, available at: www.ti-bih.org/publikacije/.

41 Ibid.

42 TI BiH, *Monitoring the functioning of the audit institutions*, in Monitoring the implementation of the anti-corruption reforms in BiH, available at: www.ti-bih.org/publikacije/.

However, in addition to the nonconformity of the laws and insufficient precision of the legal provisions, what really is of concern are the political pressures on the work of the Audit Office and attempts to put these institutions under the direct control of political parties, which constitutes an open violation of the law stipulating the independence of this institution. In the 2011 Progress Report of the European Commission it is emphasized that there was no progress on ensuring the independence of the state level supreme audit from the executive authority.[43] Recent agreements between political parties to put the Audit Office under their direct control represent a flagrant violation of the law and the collapse of the independence of institutions that are supposed to be impartial in a truly democratic society.[44]

The annual audit reports of the Supreme Audit Services in BiH constantly point to irrational and inappropriate spending of public funds, as well as the absence of sanctions for those responsible for such behaviour.[45] The last report of the BiH Audit Office for 2010, emphasizes as the most important findings and deficiencies: an insufficiently developed system of internal control, deficiencies in the existing regulations in the field of public procurement, the non-existence of by-laws in accordance with the Law on Salaries and Remunerations in the Institutions of BiH, as well as other acts that regulate particularly sensitive categories of cost (use of vehicles, representation, travel expenses, etc), lack of consumer standards and behaviour at the BiH level institutions when it comes to specific categories of expenditures (procurement of official vehicles, procurement of computer equipment, use of representation funds, use of aircraft transportation and hotel accommodation, etc).[46]

3.5. Political party financing

The area of political party financing, regulated under the Election Law[47] and the Law on Political Party Financing in BiH,[48] is still not sufficiently transparent. Despite significant efforts to regulate political financing, in terms of introducing legislation that would stipulate restrictions to certain types of contributions, prescribing limits

43 European Commission, *BiH 2011 Progress Report*, p. 48

44 See Emir Djikić, *On political control of the Audit Office* available at http://staff.balkans.aljazeera.net/video /emir-dikic-o-politickoj-kontroli-ureda-za-reviziju-institucija.

45 Monitoring the implementation of the anti-corruption reforms in BiH, *Monitoring the functioning of the Audit institutions for public sector* p, 92; Also see: www. revizija.gov.ba/ izvještaji i www.gsrrs.org/izvještaji.

46 Audit office of the institutions of BiH, *Audit report for 2010*, p. 10-11, available at: www.revizija.gov.ba/ izvjestaji

47 The Election Law of BiH, "Official Gazette 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, 37/08 and 32/10.

48 Law on Political Party Financing, "Official Gazette BiH" number 22/00 and 102/09.

to the amount of donations and the obligation to register transactions, the transparency of party financing is still insufficient and remains most vulnerable to corruption.[49] According to the research of the Global Corruption Barometer, citizens of BiH consider political parties as most corrupt segment of society with an average grade of 4.1 on the scale of 5.00.[50]

The above-mentioned non-transparency and lack of appropriate sanctions for law violations were also presented in the studies of TI BiH, based on CRINIS methodology developed by Transparency International, which examines the level of transparency and accountability of financial systems of political parties in certain countries around the World. The overall index for BiH was 4.4, and the CRINIS study showed that in BiH, out of all dimensions of political party financing, the worst score was identified for sanctions (result: overall grade 1.1 on a scale from 0 to 10), prevention (2,7) and accessibility to information (3,6).[51]

An additional problem related to the Law on Political Party Financing is that the Law is not harmonized with the Election Law. In its third evaluation report for BiH, GRECO notes that, despite positive elements that both laws contain, there is need for more transparency and accountability in relation to the routine expenditures of political parties. Also, the report points out that current arrangements on meaningful information have to be improved ensuring more relevant and timely public access to information on political party financing, especially related to private donations above a certain threshold and the identity of donors, as well as the results of CEC monitoring. Despite the institutional independence of the CEC, lack of financial and personnel resources prevents significant oversight and timely response to violations of political financing by political parties. It is recommended that special attention is paid to sanctions in the Law on Political Party Financing and Election Law because they are not adequate.[52]

[49] Transparency International BiH, *Political Party Financing in BiH*, 2010, p. 16, available at www.ti-bih.org/publikacije/.

[50] TI Global Corruption Barometer 2010, available at: http://www.transparency.org/policy_research/surveys_ indices/gcb/2010.

[51] Transparency International BiH, CRINIS Study – *Study of the Transparency of Political Party Financing in BiH*, 2010, available at: www.ti-bih.org/publikacije/.

[52] GRECO, Third evaluation round – *Evaluation report on BiH - Transparency of party funding (Theme II)*, 27.05.2011, available at: http://msb.gov.ba/dokumenti/strateski/?id=6244

4. INTERNATIONAL COMMITMENTS OF BIH IN THE FIGHT AGAINST CORRUPTION

BiH has ratified a number of international instruments that contain generally accepted international standards in the field of anti-corruption. These include the UN Convention against Corruption, the UN Convention against Transnational Organized Crime, the Council of Europe's Criminal Law Convention on Corruption, the Council of Europe's Civil Law Convention on Corruption, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

Within the framework of undertaken international commitments in the field of combating corruption, some of the activities are especially important for effective prevention of corruption, those are, *inter alia*, promoting integrity in the public and private sector, incriminating all forms of corruption, confiscation of proceeds of corruption, and protection of witnesses, victims and persons who cooperate with the judiciary.

4.1. Promoting integrity in the public and private sector and the integrity of public officials and civil servants

BiH still does not have a Code of Conduct for civil servants at the state level, although the BiH Civil Service Agency made a draft Code of Conduct and submitted it to the Council of Ministers for final adoption.[53] At the RS level, changes were adopted that relate to limiting the transfer of civil servants to the private sector, while the Code of Ethics for civil servants in FBiH, amended in 2009, includes explicit reference to ethical issues and risks of corruption.[54]

Adequate access to information is of crucial importance for improving transparency and accountability of public institutions and to the promotion and protection of civil and political rights. In reference to this, it can be concluded that the laws on freedom of access to information are still inadequately implemented. As main obstacles to law application are low levels of educated staff in public bodies, lack of understanding of the laws, non-established structure of public bodies for the implementation of the laws, poor justification of decisions issued upon a request for access to information, failure to reach a decision within the time limits established by law, and failure to comply with statutory provisions on the form of decision (written decision with all the elements under the provisions of the Law on Administrative Procedure).

[53] According to available data, the Public Administration Reform Coordinator's Office adopted its Code of Conduct, in FBiH adopted was Code of Ethics for civil servants in FBiH (Civil Service Agency FBiH), Government of RS passed RS Code of Ethics for civil servants, in Brčko District there is BD Code of Ethics, Transparency International *Analyses of the Strategy implementation-Third periodic report*, 2011, p. 9.

[54] GRECO Second Evaluation Report, *Addendum to the Compliance Report on BiH*, recommendation VIII, 2011 available at www.msb.gov.ba.

Furthermore, one of the perceived weaknesses of public bodies is collection, classification and keeping of statistical data.[55] The Laws on Freedom of Access to Information in the FBiH and the RS are not harmonized, which leads to inconsistent and selective implementation.[56] At the state level, with changes and amendments in 2009, fines and violation procedures for institutions that do not act in accordance to the Law were introduced.[57] However, provisions that relate to exemptions from the Law still cause considerable problems, bearing in mind that this category of information is most frequently misused and enables the non-transparent behaviour of public institutions.

4.2. Incriminating certain forms of corruption

BiH has not yet signed or ratified the Additional Protocol to Criminal Law Convention on Corruption of the Council of Europe. The criminal legislation in BiH was changed several times in order to better align it with international requirements. The last reform in 2000 included certain changes and amendments at the entity and Brčko District levels in relation to corruption as criminal offences (e.g. the definition of the official person, international dimension of bribery, provisions on seizure, etc),[58] so that their provisions are in line with those at the state level.[59] The legislative framework has been improved in terms of introducing into criminal legislation, provisions that facilitate the prosecution of corruption in practice, such as extended confiscation, and the application of special investigative procedures in all corruption criminal offences[60]. However, due to nonconformity of internal criminal legislation at different levels of authority, it is necessary to further harmonize a number of incriminations with the commitments undertaken.[61]

[55] Presentation of the Ombudsperson for Human Rights Jasminka Džumhur held at the Round table organized by TI BiH on the occasion of International Freedom of Access to Information Day, 28.09.2011

[56] Law on Freedom of Access to Information in FBiH stipulates that state authorities are obliged to respond to the applicant (in the form of a decision), while in RS there is no such provision, and based on the cooperation of the state organ it depends whether the analogy with the RS Law on Administrative procedure shall be applied, and appeal treated as legal remedy in cases of violations of the Law on Freedom to Access to Information. The practice also introduced standard procedure of submitting appeal to a second instance organ, and outcome mainly depends on the cooperation and knowledge of the law thereof.

[57] See, Law on changed and amendments to the Law on Freedom of Access to Information in BiH "Official Gazette BiH" no.: 102/09.

[58] These amendments were adopted by Brčko District on 17.06, by the RS on 06.07 and by the FBiH on 08.07.2010. They came into force in the beginning of August 2010.

[59] GRECO *Third Evaluation Report - Theme II*

[60] See Compliance Report, Second Evaluation Report for BiH and Addendum (Greco RC-II (2008) 7E)

[61] In relation to this, GRECO in its report states "lack of harmonisation of the four existing Criminal Codes in the country (State level, Federation of Bosnia and Herzegovina, Republika Srpska and

4.3. Establishing a special body for the fight against corruption

By adopting the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in December 2009, the conditions for establishing a special body specialized in the fight against corruption, provided under Article 20 of the Council of Europe Criminal Law Convention on Corruption and Article 6 of the United Nations Convention against Corruption, were formally fulfilled. These Conventions state that the Agency shall primarily be independent, politically and financially, and that it has qualified and professional staff to effectively fight corruption. However, two years after the adoption of this Law, the Agency is still not operational. A Book of Rules on internal organization and post tables in the Agency, as well as other by-laws on the work of the Agency were not adopted. Furthermore, the financing of the work of the Agency is currently based on the Decision on temporary financing of institutions of BiH, while at the same time the current projection for the budget of BiH institutions for 2011-2012 provides funding for 24 employees, which is not sufficient given the scope of its jurisdiction.[62]

4.4. Confiscation of proceeds of corruption

Confiscation of proceeds of corruption is a form of the overall efforts of government bodies to effectively confront corruption, and is a standard set by the United Nations Convention against Corruption, the European Conventions, as well as GRECO recommendations. Confiscation of proceeds of corruption in BiH legislation is regulated in a fragmented, unsystematic, and inefficient manner. A provision to Article 110a was introduced to the BiH Criminal Code allowing so-called extended confiscation of property gain, by stipulating that the court "may confiscate the property gain for which the prosecutor provided sufficient evidence to reasonably believe

Brčko District), is particularly noticeable with respect to criminalisation of bribery (material elements of the offence and applicable sanctions) and the issue of jurisdiction. All Criminal Codes share a number of deficiencies when compared with the provisions of the Criminal Law Convention on Corruption (ETS 173) under review. In particular, it must be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions occurring in the exercise of a public official's duties, whether or not within the scope of his/her official competences. The definition of foreign and international officials is to be expanded since at present it only covers those persons serving in Bosnia and Herzegovina. The lack of court decisions concerning private sector bribery results in conflicting interpretations of the existing provisions and their scope, to the extent it doubtful whether private sector bribery is indeed covered by national law. Likewise, active trading in influence needs to be criminalised." GRECO, *Third Evaluation Report on Bosnia and Herzegovina*, *Theme I*, 27.05.2011, available at: www.msb.gov.ba

[62] See Transparency International BiH, *Analysis of the implementation of the Anti-corruption Strategy 2009-2014, Third periodic report*, December 2011, p. 18

that such property gain was acquired by the perpetration of these criminal offences, while the perpetrator failed to prove that the gain was acquired in a lawful manner". Similar solutions exist in the criminal codes of the FBiH and Brčko District,[63] while on 25 January 2010, the RS adopted a Law on confiscating property gain acquired through the perpetration of a criminal offence.[64] This Law also foresees the establishment of a special agency for managing illegal incomes.[65] Bearing in mind the previously mentioned changes, the key material-legal shortcoming is the fact that the institute of extended confiscation is not equally present in the legislation of both entities. Namely, FBiH and Brčko District have harmonized their criminal codes with the provision from the CC of BiH, while in the RS a separate regulation on confiscating property gain acquired by the perpetration of criminal offence was adopted, thus indicating an uneven approach in this field. Analysis of the regulations from the field of law enforcement also showed that there are no adequate legal, institutional and other mechanisms necessary for the efficient execution of decisions on the confiscation of property gain acquired through the perpetration of a criminal offence.[66] As for the confiscation of illegally acquired assets, in the course of 2010, property was seized in 220 cases amounting to about 17 million KM, of which 10 million was seized by decisions of the Court of BiH, although information on how much were the amounts seized in criminal offences of corruption.[67]

4.5. Witness protection

Witness protection is achieved through several different instruments of criminal, administrative, civil and other fields of law. The Council of Ministers of BiH, based on a proposal from the BiH Ministry of Security, established a Working Group for preparing a Draft Law on the Witness Protection Programme in BiH, which is

63 Article 114a Criminal Code FBIH, "Official Gazette of the FBiH", no: 42/10; Law on changes and amendments to the Criminal Code of BD BiH, "Official Gazette BD BiH" no: 2/10.

64 Law on confiscating property gain acquired by the perpetration of criminal offence, "Official Gazette RS", no: 12/10.

65 GRECO, Second Evaluation Report, *Addendum to the Compliance Report on BiH,* 01.04.2011, available at www.msb.gov.ba; for details see Law on confiscating property gain acquired by the perpetration of criminal offence, available at: www.narodnaskupstinars.net/latn/?page=133&kat=10&vijest=3301.

66 Transparency International BiH, *Confiscating property gain acquired by the perpetration of criminal offence analysis of the legal framework in Bosnia and Herzegovina*, 2011, available at: www.ti-bih.org/wp-content/uploads/2011/03/Oduzimanje-imovinske-koristi-pribavljenje-pocinjenjem-koruptivnih-krivicnih-dijela-u-BiH.pdf.

67 Transparency International BiH, *Judiciary in BiH still inefficient in prosecuting corruption*, 16.06.2011, Press release, available at: www.ti-bih.org/4183/pravosude-u-bih-jos-uvijek-neefikasno-u-procesuiranju-korupcije/

currently in the stages of harmonization with the opinions of competent institutions.[68] BiH has still not adopted the Law on the protection of "whistle-blowers". In spite of certain normative activities for the protection of those reporting corruption such as e.g. provisions on immunity in criminal proceedings and amendments to the Code of Ethics for civil servants in the RS, a comprehensive systematic approach to this problem has been omitted.[69]

5. CONCLUSIONS AND RECOMMENDATIONS

Although BiH has made some progress in the fight against corruption by adopting relevant anti-corruption laws, it is still long way from harmonizing national legislation with international anti-corruption standards. The extent of corruption in all spheres of public and private sectors constitutes a major threat to the further development and democratization of the state and therefore it is of the utmost importance to approach this phenomenon in a comprehensive and systematic way.

The authorities in BiH have only formally dealt with corruption fairly recently, which resulted in the fact that BiH has reached a dramatic level of corruption. On several occasions the existence of laws and institutions was made meaningless, leading to a collapse of rule of law. Certain anti-corruption efforts were undertaken in the country, but the lack of involvement of society and its support, disorganization, lack of coordination, the absence of a resolute approach and political will to reduce corruption practices resulted in endemic scale of corruption in BiH.

The main challenge in BiH is the efficient implementation of legislation, as confirmed by the results of relevant national and international research. When assessing certain areas that are of great importance within the overall effort to fight corruption, then one can rightly conclude that stagnation is visible in BiH. The existing mechanisms in the fight against corruption are inadequately enforced, corruption at the highest levels of government and politics is not prosecuted, and investigations do not result in indictments or convictions. On the other hand, the findings of audit reports have no influence over the management of public finance, while the independence of audit institutions is threatened.

There are numerous reasons for such a situation; however, it is certain that first on the list is the absence of real political will to start solving the problem of corruption. It is very important to move from the declarative stage and support for fighting

[68] Transparency International BiH, *Analysis of the implementation of the Anti-corruption Strategy 2009-2014, Third periodic report*, p. 18, available at: www.ti-bih.org/publikacije/.

[69] Ibid. As one of the short-term goals (by the end of 2010) the Strategy requires creating "procedures in all public institutions that will guarantee that no public officer of client of administration can be victim because of willingness to expose irregularities", and as one of the mid-term goals (by the end of 2012) to establish a "legislative framework for protection of persons who indicate irregularities in performing public duties (whistleblowers)."

corruption to the enforcement stage in terms of anti-corruption activities, as is the case in neighbouring countries, above all Croatia and Serbia. Bearing in mind the numerous international commitments undertaken by BiH, the fight against corruption primarily requires a coordinated and strategic approach, and the improvement of institutional cooperation at different levels of government with the aim of efficient prevention and punishment of crimes of corruption.

A systematic approach in the fight against corruption should go in several directions. First, at the legislative level, it is necessary to adequately enforce existing laws as well as to amend the legal framework where necessary to harmonize national legislation with the relevant international standards and commitments. At the institutional level, it is necessary to strengthen institutional capacities, as it is a prerequisite for effective law implementation. In this context, it is crucial to strengthen those institutions that ought to be pillars of independence and apolitical in a truly democratic societies, in order to efficiently perform and complete their tasks. This primarily refers to the CEC, the Audit office, the Agency for Public Procurement, and the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption and others. Thirdly, in terms of prevention and public education, it is necessary to make additional efforts. The Strategy for the Fight against Corruption in its component 2 "Prevention, education and training of public" foresees many preventive measures to enhance transparency, public administration reform and accountability. It is important to emphasize that the prevention of corruption is continuous task not exhausted by a one-time activity but rather demands the systematic and comprehensive involvement of the state and society as a whole. It is necessary to expedite activities related to the establishment and formation of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, to provide it with enough material and human resources to assume the role of the leading anti-corruption body in BiH.

Therefore, urgent concrete actions to prosecute the most serious forms of corruption in order to avoid complete collapse of legal system and institutional framework are vital. The fight against corruption must become a priority of the political elite, and not only in declarative terms. Certainly, one should bear in mind the fact that the fight against corruption cannot keep using the so-called "top-down" approach; citizens should show greater awareness of the causes and harmful consequences of corruption for society, and thus exert continuous pressure and demand more accountability and transparency from elected officials. Only coordinated and systematic efforts, involving all segments of society, can result in significant effects and progress in the fight against corruption. The corruption phenomenon can be controlled by raising the awareness of citizens, civil society, and independent media, respectively only if all segments of society support it. The end-state is to have an enlightened and determined political leadership with a high level of awareness and public support; yet this will be the hardest part of the equation.

HATE CRIMES: REGULATIONS AND PRACTICES IN BIH

1. INTRODUCTION

Phrases such as hate speech, "inflammatory" language, spreading of inter-ethnic intolerance and tensions, anti-Semitism or Islamophobia can often be heard in BiH public. When considering the fundamental characteristics of the BiH society-such as persistent strong reflections of the conflict that ended sixteen years ago, ethnic, constitutional-political structure, dominance of the collective identity, fragmentation of society along ethnic lines, media exclusivity, mono-ethnic narratives of the past war, and mono-ethnic education system-a wide variety of acts based on hatred and bias (from hate speech to physical assaults) appear as an integral part of the post conflict package, rather than anomalies of the transitional political system. On one hand, each of the above categories sound serious and concerning enough to signify the essence of unacceptable behaviour in democratic countries, so it does not come as a surprise when these categories are used as synonyms in public speech. On the other hand, however, understanding the nature of crimes based on hatred and bias and their adequate classification is of the utmost importance because they determine the arsenal of possible legal and other measures aimed towards their suppression.

The basic intentions of this paper is to elaborate on most core concepts related to legal regulations and combating hate and bias, outlining their mutual differences and relations, and to, at least indicate, based on the scarce available resources, the situation in BiH in this rather complex area in light of international standards and comparative experiences. Through the prism of hate crimes as the primary focus of the analyses, with the thesis that the specific social context in BiH dictates even stronger intervention within the domain of criminal regulation in expressing hatred and bias, this section of the report will point out to fundamental flaws and inconsistencies in the legal framework and practice in BiH.

This theme has distinct and obvious significance, primarily due to the situation in BiH, in which diverse incidents based on bias and hatred have not abated even 16 years after the war has ended. In addition, criminal regulation of hate and bias, despite the fact that this is a matter of all-European consensus, is directly related to BiH obligations in the context of the implementation of the UN Convention on Elimination of all Forms of Racial Discrimination. Therefore, it is necessary to determine to what extent BiH follows mentioned regional and global standards.

As far as the structure of the text is concerned, a relatively lengthy deliberation on the concept of hate crimes and principles of their legal regulation are motivated primarily with promoting dimension of the text, but also the Report as whole. Namely, in a situation that is characterized by lack of relevant literature on this issue in the BiH context, and frequently emphasized ignorance and misunderstanding of this complex matter, not only by the general public, but by judicial professionals in BiH, such deliberation of the basic concepts seems to be doubly beneficial. The introductory part, which sets out the framework for the analyses of the situation in BiH, is followed by consideration of the quality and scope of BiH regulation within this domain, limitations in its implementation and other complementary measures that are necessary for an efficient fight against hate and bias in the BiH context. Recommendations at the end identify some of the priority steps that ought to be taken in the content of hate crimes in BiH.

2. DEFINITION AND DELIMITATION IN RELATION TO RELATED CONCEPTS

The regulation in this area, which originates from the activism of the movement for equality in the USA in the sixties and seventies, gained in intensity and significance only in the last twenty years.[1] However, at the international level there is no consensus on the definition of such crimes that owing to its specific nature gain the character of hate crime. Among many alike, the working definition of hate crime that is developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) is valuable because of its precision, but also because of the authority of the institution. The definition consists of two essential elements:

> *"Part A) Any criminal offence, including offences against persons or property, where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership with a group as defined in part B.*

[1] In general see e.g. Ryan D. King, "Hate Crimes: Perspectives on Offending and the Law", in Marvin D. Krohn et al. (ur.), *Handbook on Crime and Deviance*, Handbooks of Sociology and Social Research, (New York: Springer, 2009), p. 525-549.

Part B) A group may be based upon their real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or other similar factor."[2]

Therefore, the elements of this criminal offence are: an action that is defined as criminal offence in the criminal law, and bias or motive that consists of the fact that perpetrator of the criminal offence choose a victim because of the victim's protected characteristic (race, national or ethnic origin, religion, sexual orientation and similar). In doing so, we should bear in mind that the "Motive of the bias crime… is relevant for… for criminal offence regulated by law. Such motive, however, is not prohibited in itself. It implies [e.g.] an increased penalty only when it is expressed as criminal behaviour."[3]

What is important is that, in the commission of such crime, there is no element of personal animosity and the victim is random, in the sense that every member of a specific group, from the perpetrator's perspective, is an equally good and legitimate target. In other words, victims of such criminal offences are selected "on the basis of *what* they represent rather than *who* they are. The message that is conveyed is intended to reach not just the immediate victim but also the larger community of which that victim is a member."[4] Thus, owning to such group dimension, hate crimes are sometimes described as symbolic crimes. Simultaneously, such acts are always and necessarily *political* in nature because they send a message that far exceeds the boundaries of a relation between two individuals. Moreover, often this public and political aspect of such criminal offence is deliberately used to send a certain message to a public or part thereof.

Individuals and groups that are most exposed to attacks of this kind vary from state to state: in some cases those are predominantly Jews or Muslims and, in others, members of national minorities or new religions, while some are also members of the LGBTI communities etc. However, it is important to note that from the aforementioned definition it becomes evident that persons that affiliate with such groups that support or stand up for their rights can also be victims within the content of a hate crime. Also, this definition includes those cases of erroneous perception of identity-for example, situations in which a heterosexual person is attacked because of misconception of his/her homosexuality, as long as the motive for perpetration of concrete criminal offence is linked to a specific identity group.[5]

2 OSCE/ODIHR, "Challenges and Responses to Hate-Motivated Incidents in the OSCE Region (for the period January-June 2006)", 12 October 2006, available at: http://www.osce.org/odihr/21629 (accessed on 20.11.2011).

3 Theresa Suozzi et al., "Crimes Motivated by Hatred: The Constitutionality and Impact of Hate Crime Legislation in the United States", Syracuse Journal of Legislation and Policy, No. 1 (1995.), p. 56.

4 OSCE BiH, "Hate Crimes Laws: Practical guide", 2009, (initial page numbers are not marked), available at: http://www.osce.org/bs/odihr/36429 (accessed on 20.11.2011).

5 Compare Ibid., p. 45-47.

When it comes to BiH context, where multiple and overlapping identities dominate, it is necessary to pay special attention to determine the precise relation between the victim and protected group. As ODIHR states, in many states, including BiH, making simple categorizations of hate crimes is impossible, because it can often be difficult to judge whether a victim was attacked because of ethnicity or religion or a combination of different factors.[6] However, it is important to mention, within a content of these criminal offences, that clear categorizations are not necessary. Further, the mentioned definition obviously goes beyond the dilemma that it may need an "objective" or perceived connection with a specific community (therefore, the only one necessary is the one seen from the perspective of the hate crime perpetrator).

This criminal justice concept is akin to some other legal institutions such as anti-discrimination legislation or hate speech. However, unlike hate crimes, those other crimes lack a key element: namely, they could not be processed without the element of motive (i.e. identity bias)-as "ordinary" criminal offences. The act of discrimination, for example implies an unjustified difference in treatment of persons in similar situation and on the basis of any prohibited reason (ethnicity, religion etc.) that would not be illegal without a discriminatory ground. In addition, in most countries the discrimination is a matter of civil, and not criminal law, therefore that represents a major difference compared to hate crimes.

It is similar with hate speech. In different countries, these complex issues are treated differently, but in some countries hate speech, speech that incites hatred and speech that is insulting to specific groups is penalized.[7] However, if the content itself is removed-speech itself-then there is no "ordinary" criminal offence because, in this case, the intolerant speech is the only element of the criminal offence. However, this difference is not always simple. In case of incitement to criminal offence, e.g. which is penalized in all OSCE participating states, prohibited motive, respectively the bias motive, in committing the act turns the act itself (meaning speech) into the criminal act of hate crime. In this case, the ordinary criminal offence-incitement to criminal offence-is present. Finally, the conceptual and practical relation between hate crime and hate speech, exists because hate speech, before, during or after a crime, could constitute the prohibited motive.

6 OSCE/ODIHR, *Hate Crimes in the OSCE Region – Incidents and Responses (Annual Report for 2009)*, 2010, pg. 20, available at: http://www.osce.org/odihr/73636?download=true (accessed on 22.11.2011).

7 In the broader field of regulation of hate speech, in addition, included are laws that regulate prohibition of denying Holocaust or glorifying fascist ideology.

3. RELEVANT INTERNATIONAL STANDARDS

International legal instruments in several important provisions affirm the importance of regulating hate in criminal justice. The International Convention on the Elimination of All Forms of Racial Discrimination foresees that all States parties undertake immediate and positive measures designed to eradicate all incitement to or acts of propaganda based on ideas of racial, ethnic or any kind of superiority of specific group.[8] According to the authoritative interpretation of this important provision, Article 4 (1) of the Convention,

> *"requires States parties to penalize four categories of misconduct: 1. dissemination of ideas based upon racial superiority or hatred; 2. incitement to racial hatred; 3. acts of violence against any race or group of persons of another colour or ethnic origin; 4. incitement to such acts."*[9]

A second important global instrument that regulates this area is the International Convention on Civil and Political Rights, which stipulates that States parties shall prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence"[10]

Relevant regional, respectively European documents are generally more detailed, because they do not only define what needs to be done in this area, but offer basic guidelines on *how* to regulate hate crimes. In that sense, the Recommendations of the European Commission against Racism and Intolerance (ECRI) foresees that one of the measures is to ensure that racists and xenophobic acts are stringently punished, through methods such as: defining criminal offences committed based on racist and xenophobic motives as specific offences (hate crimes) or enabling the racist and xenophobic motives of the offender to be specifically taken into account when pronouncing sanction for other criminal acts.[11]

Particular dangers of internet abuse in the context of racist and xenophobic activities were identified in the Additional Protocol to the Council of Europe Convention

[8] International Convention on the Elimination of All Forms of Racial Discrimination, UN SG Resolution 2106 (XX), 21 December 1965. (entered into force on 4 January 1969).

[9] The UN Committee for elimination of racial discrimination, General Recommendation no. 15: Organized violence based on ethnic origin (42nd session, 1993), p. 3.

[10] International Covenant on Civil and Political Rights UN SG Resolution 2200 A (XXI), 16 December 1966 (entered into force on 23 March 1976.), Article 20, item 2.

[11] European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation No. 1: On Combating Racism, Xenophobia, Antisemitism and Intolerance* (4 October 1996), available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n1/Rec01en.pdf (accessed on 20.11.2011.ž). Also compare ECRI, *General Policy Recommendation No. 7: On National Legislation to Combat Racism and Racial Discrimination* (13 December 2002), available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf (accessed on 20.11.2011.).

on Cybercrime.[12] This document, which came into force in BiH on 1 September 2006[13], introduces an obligation that states should establish as criminal offence the following acts committed through computer system: distribution, or otherwise making available, racist and xenophobic materials, initiating racist, ethnic or religious threats with the commission of serious criminal offences towards members of concrete identity groups, initiating race motivated insults, and denial, gross minimisation, approval or justification of genocide or crimes against humanity.

While the question of legal regulation of hate speech is still controversial and subject to very different practices within the OSCE participating states,[14] the growing European consensus for the regulation of hate is perhaps best reflected in the Council's Decision on racist and xenophobic criminal acts.[15] This document confirms a need for a common approach in the European Union, in order to ensure minimum common standards and coordinated criminal policy in all member states.[16] By 28 November 2010 the member states shall transpose these provisions to their national laws, while the Council shall, by 28 November 2013, assess to what extent the member states have complied with the imposed obligations.[17]

Among other things, this document particularly highlights the need that criminal acts as public inciting to violence and hatred, public dissemination of racist and xenophobic materials, denial and trivialization of the crime of genocide and crimes against humanity are punishable by criminal penalties of at least between 1 and 3 years of imprisonment.[18] For offences where a criminal act was motivated by racism or xenophobia, such motive should be considered as aggravating circumstance for all criminal offences.[19] Besides the aforementioned, the Decision encourages ex officio initiation of investigations, and not on the initiation of the victim, due to his/her potential distrust, marginalization and vulnerability.[20]

12 CETS No. 189, 28 January 2003

13 Signing and ratification status of member states is available at: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=189&CM=8&DF=&CL=ENG (accessed on 22.10.2011).

14 See OSCE BiH, op.cit., footnote 4, *supra*, p. 21-22. For the overview and analyses within the BiH context of hate speech see Tijana Cvjetičanin, Sevima Sali-Terzić and Slobodanka Dekić, *Exclusion strategy: Hate speech in BiH public*, available at http://www.media.ba/mcsonline/files/shared/Strategije_isklju__ivanja_IZVJE__TAJ.pdf (accessed on 21.12.2011).

15 Framework Decision of the European Union Council no. 2008/913/JHA (on fight against certain forms and expressions of racism and xenophobia through criminal law), 28 November 2008, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF (accessed on 20.10.2011).

16 Ibid, Preamble, par. 5

17 Ibid., Article 10, item 1 and 2.

18 Ibid, Article 3, item 2.

19 Ibid., Article 4.

20 Ibid., Preamble, par. 11. Also compare ECRI, General Policy Recommendation No. 1, op. cit.

It is especially important that, for crimes mentioned under the Decision, legal persons can be held liable, and respectively their representatives, where dissuasive penalties, such as exclusion from entitlement to public benefits and judicial supervision are envisaged for legal persons.[21] Of course, this Decision does not fail to stress that undertaken measures can not be in contradiction to fundamental human rights and freedom principles, such as freedom of association and freedom of expression and in particular, freedom of media.[22]

All international instruments which provide for introduction of legal protection in this area explicitly or implicitly recognize the cultural, historical and political traditions of different countries and accept the fact that "full harmonization of criminal laws, in this field, is currently not possible."[23] Thus, for example, it is understandable that the value of freedom of speech in the USA is almost absolute and precludes criminalization of even the most serious forms of racial and xenophobic speech, while in Germany, for example, the imperative of prohibiting the propagation of Nazi ideas is quite understandable. The aforementioned Decision of the European Council talks about free evaluation of the countries in this field, and as subject of its own regulation primarily defines "hatred based on race, colour, religion, descent or national or ethnic origin."[24] Though, at the same time Member states have a right, in accordance to their specific characteristics, to extend protection in order to include other characteristics, such as social status or political convictions.[25] However, one should keep in mind that balancing of specific values of certain societies with determined human rights standards in this field, as well as ensuring proper balance between various human rights (especially freedom of expression and protection from racial discrimination) is a complex endeavour, on which the jurisprudence of international judicial[26] and quasi judicial institutions[27] eloquently speak.

21 Ibid., Article 6.

22 Ibid., Article 7.

23 See Framework Decision of the European Union Council, op.cit., preamble, par. 6.

24 Ibid., preamble, par. 9.

25 Ibid., preamble, par. 10.

26 See e.g. European Court for Human Rights, Jersild vs. Denmark, ap. no. 15890/89, 23 September 1994.

27 See e.g. UN Human Rights Committee, Faurisson vs. France, communication no. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (1996).

4. MECHANISMS OF CRIMINAL REGULATION OF HATE AND MEASURES DIRECTED TOWARDS ITS ELIMINATION IN COMPARATIVE PERSPECTIVE

Specific legal measures that refer to problems of hate crimes and hate speech are one of the three key areas of regulations of bias or hate in European context-together with legislation that prohibits fascist ideology and anti-discrimination legislation.[28]

After several years of intense involvement in this field, the ODIHR has identified three separate but closely connected areas that require special attention in combating hate crimes: need for effective law enforcement response, the importance of adequate data collection, and the need for appropriate legislation and its effective implementation.[29] The OSCE Ministerial Council Decision from 2009 outlines in detail the parameters and key policy aspects of the fight against hate crimes. The Member states are called to, *inter alia,* collect, maintain and make public the statistics of hate crimes; enact appropriately tailored legislation against such crimes; take appropriate measures to encourage victims to report hate crimes, with support of civil society; train and raise awareness of law enforcement authorities, prosecutor's offices and courts in this field, as well the general public and potential victims; and provide victims of hate crimes with effective access to justice.[30] Thus, the scope of measures in this area is rather wide and it does not only stay within the criminal dimension, as mentioned in the General Recommendation of ECRI no. 1, which also gives equal importance to preventive activities in the domain of promotion and education as well as legal regulation.

In general, a smaller number of states in the OSCE region (e.g. United States and United Kingdom) have separate, concrete criminal offences that contain a bias motive.[31] In most of the OSCE member states, on the other hand, hate crimes are regulated in a way that the prohibited motive constitutes an aggravating circumstance when sentencing. In doing so, the provision on the motive as aggravating circumstance can be general, i.e. referring to a large number or any criminal offences (Great Britain) or specific, i.e. related only to specific criminal offences (e.g. murder or physical assault). It is similar in the United States. Ignoring the specifics and slight differences, most states in the United States, when prosecuting hate crimes as criminal acts, in their state laws foresee one of the three options: 1. make bias-motivated intimidation

[28] Compare Jo Goodey, "Racist Crime in the European Union: Historical Legacies, Knowledge Gaps, and Policy Development", in: Joanna Goodey and Kauko Aromaa (ur.) *Hate Crimes* (papers from 2007 and 2008 at Stockholm Criminology Symposiums), Helsinki 2008.

[29] OSCE/ODIHR 2006, op. cit., footnote 2.

[30] OSCE Ministerial Council, Decision no. 9/09 (Combating Hate Crimes), MC.DEC/9/09, 02 December 2009.

[31] OSCE BiH 2009, op. cit., footnote 4, p. 26-27.

as a separate crime; 2. automatically enhance the penalty for crimes motivated by a forbidden prejudice; or 3. give a judge discretion to increase penalties when the crime is motivated by a forbidden prejudice.[32]

The advantage of defining the hate crime as a separate criminal offence is foremost in accenting the social condemnation of such acts. The main disadvantage of this approach in the domain of regulation lies with the fact that it is hard and uncertain to prove a motive; therefore there might be a risk that, if motive is not proved as an essential element of criminal offence, the offence itself would not be proved.

When it comes to protected characteristics, i.e., the characteristics of group identities that are covered by hate crimes, the practice of countries varies. Almost all OSCE participating states deal with these issues in their criminal laws by, for example, covering criminal offences committed on racial or ethnic hatred, while some of them incorporate disability too (physical or mental) as protected characteristics. The basic idea is to protect the fixed, permanent characteristics, actually those that are difficult to change (e.g. religion). While defining specific legislation it is necessary to take into account the social-historic content (history of violence amongst the groups, discrimination patterns etc.).[33] It is interesting to mention that for example Croatia has a very wide range of protected characteristics defined by the criminal law as aggravating circumstances when imposing sanctions, which include also property, birth, education and social status, as well as "other characteristics".[34] A similar situation is in BiH, in line with recent changes to the criminal legislation in Republika Srpska and Brčko District (see next section). This openness is essentially positive, but may jeopardize the principle of legal certainty and legal predictability, because it leaves the courts and prosecutors with excess freedom in the interpretation of such broadly set provision.

Further, there is a difference in the view of the motive provided in the concept of these criminal acts. Thus, in some of the participating states the hate crime is the one that is solely hate or hostility motivated, while in others those are all prohibited acts that are either partially or wholly hate-motivated.[35] Of course, the motive is rarely singular and unique, but there is often a combination of many. This is particularly the case in the context such as BiH, in which different identities (ethnic, religious even regional) are intertwined, and where even seemingly trivial conflicts, such as for

[32] Lu – In Wang, *Hate Crimes Law* (2001), par. 10:3, mentioned in Jeannine Bell, "Deciding When Hate is a Crime: The First Amendment, Police Detectives, and the Investigation of Hate Crime", *Rutgers Race Law Review* vol. 4 (2002), p. 37-38.

[33] OSCE BiH 2009, op.cit., footnote 4, pgs. 32-33 Compare OSCE/ODIHR, *Hate Crimes in the OSCE Region - Incidents and Responses (Annual Report for 2010)*, November 2011, pgs. 18-20 available at http://tandis.odihr.pl/hcr2010/pdf/Hate_Crime_Report_full_version.pdf (accessed on 1.12.2011).

[34] OSCE BiH 2009, op.cit., footnote 4, p. 39.

[35] Ibid., p. 47-48.

example, conflicts of football fans, often have ethnic dimension. However, as pointed out by the ODIHR, taking into account the complexity of the motive, the investigation in all cases where there is no direct confession of perpetrator should reflect the complexity of the motive and recognize the essential dimension of hate.[36]

5. HATE CRIMES LAWS IN BOSNIA AND HERZEGOVINA

5.1. Foreword

As elaborated in the previous two sections, the international standards enable, even encourage different approaches and regulation in this area, depending on the historical and social-political conditions in a specific country. It is therefore not surprising that different countries have different range of measures in this area. However, ethnically divided societies, such as BiH, certainly represent specific context in that sense. On the one hand, in such countries, the "control of hate crimes…is based on a high degree of ethnic segregation", this makes the contact difficult, and thereby minimizes conflicts between members of different groups. However, this is also a major problem: "Because people live in strictly delimited areas, there is very little cooperative and friendly daily communication between opposing sides that would influence or decrease the need for sanctioning hate."[37]

In divided post-conflict societies, such as for example the Northern Ireland or BiH, recently ended inter-ethnic violence and pervasive political and social divisions along ethnic lines create specific context where hate and prejudice motivated incidents are results of such context, but they also have potential for further politicization and escalation.[38] In other words, "in situations where relations between ethnic, national or religious groups are already sensitive, hate crimes can have an explosive impact"[39] Thus, for example, commemorations and related projects of memorialisation and honouring the victims of the conflict, that in theory can have a positive impact on relations between the groups, in BiH are often the source of additional inter-ethnic tensions. As ODIHR highlights, ethnically motivated incidences between Serbs and Bosniaks occur regularly on the occasion of the July commemorations for war victims in Srebrenica.[40]

36 Ibid., p. 53.

37 Jack Levin and Gordana Rabrenovic, "Hate Crimes and Ethnic Conflict", American Behavioural Scientist No. 45 (2001), p. 582.

38 Compare Roger Mac Ginty, "Ethno-National Conflict and Hate Crime", American Behavioural Scientist No. 45 (2001), p. 639-653.

39 OSCE BiH 2009, op. cit., footnote 4.

40 OSCE/ODIHR 2010, op.cit., footnote 6, p. 38.

For all of the aforementioned reasons, extensive criminal law regulating this area becomes an imperative in the BiH context.

However, criminal laws in BiH, despite significant legislative interventions in this area in recent years, still offer uneven protection in the context of hate crimes and, as of yet, do not fully correspond to the request for consistent, more extensive regulation in this area. This primarily relates to the Criminal Law of the Federation of BiH, where hatred is still not established as an aggravating circumstance for all criminal offences, nor is it intended as a qualifying factor for a number of serious crimes. BiH, in addition, has not taken any steps necessary to fulfil its obligations in accordance with the aforementioned Additional Protocol to the Council of Europe Convention on Cybercrime. In the end, none of the criminal laws in BiH provide adequate sanctions for legal persons in the context of hate crimes, which means that BiH does not follow trends and new standards defined at the EU level.[41]

5.2. Hate as separate criminal offence

The separate criminal offence in the area of bias and prejudice in all criminal laws in BiH is defined in a similar way, as "inciting national, racial and religious hatred, discord and hostility among the constituent peoples and others, as well as others living and residing on the territory of BiH"[42], "public incitement…hostility between constituent peoples and others who live in the Federation"[43], "incites and inflames national, racial or religious hatred, discord or hostility, spreading the ideas about superiority of one race or nation over another…"[44], i.e. "public incitement or inflaming national, racial or religious hatred, discord or hostility between the constituent peoples and others…"[45]

From the above definitions the element of public is clear (either explicitly or implicitly), for this crime to exist it is necessary that it is committed in the public sphere. By the logic of things, inciting hostility can only happen in this way and that is one of the main distinctive characteristics of this act in relation to other crimes committed out of hatred.

However, noticeable differences are not insignificant: at first sight, the definition of this criminal offence in criminal laws in BiH is comprehensive as it explicitly mentions national, racial and religious grounds. On the other hand, it seems that the

41 See Framework Decision of the European Union Council, op.cit.

42 Article 145a, item 1 of the BiH Criminal Law, Official Gazette BiH no. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10.

43 Article 163 of the Criminal Law of the Federation of BiH, Official Gazette FBiH no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11.

44 Article 294a, item 1 of the Republika Srpska Criminal Law, Official Gazette of the RS no. 49/03, 108/04, 37/06, 70/06, 73/10.

45 Article 160 of the Brčko District Criminal Law, Official Gazette no. 10/03, 45/04, 06/05, 21/10.

focus to constituent peoples in the definitions in CC BiH, CC FBiH and CC of Brčko District are unnecessarily complicate the identification of collective identity and characteristics covered by this definition. Strictly speaking, it is not clear whether and how they cover the category of national minorities, respectively a wider category of the "others". Justifiably the question arises, namely, whether, in the universal collectivization of all spheres of social life in BiH individuals-citizens of BiH who do not belong to any of the protected ethnic identities may be victims of crimes committed out of hatred?[46]

The next potential problem is the extremely broad definition of this crime, from which it can be concluded that it can include various enforcement actions, including certain forms of offensive speech. Specifically, we should bear in mind that the ODIHR gave the opinion that there is a need for a more precise definition of this offence so it does not open space for criminalization of offensive speech that represents a "relatively low threshold for criminal liability".[47] At the same time, and in this way, the principles pf legal certainty and legal predictability are jeopardized because potential criminal consequences of certain behaviour can not be clearly determined in advance. In the end, such a broad formulation of this criminal offence (inciting hatred and intolerance…) in all criminal laws in BiH has led to the situation in which prosecutors and courts have significantly different practice in applying this provision.[48]

There is also an issue when it comes to applying these provisions in practice. Since essentially the same crime is prescribed under the Criminal Code of BiH and Criminal Codes of the entities and Brčko District, a question of jurisdiction for prosecution arises. While it could, by the logic of things, be assumed that the intention of the legislator was that the BiH Prosecutor's Office prosecutes more serious forms of this criminal offence, this is not visible from the relevant provisions, even in the domain of sanctions. Although, by the so far limited practice of prosecuting this criminal offence, it seems that there has been no problem in determining the jurisdiction (which is, apparently, largely due to abstinence of the Prosecutor's Office to significantly engage in this context), this potential problem should be solved at the level of legislation.

In addition, the sanction policy for the crime of inciting hatred and hostility is uneven under different criminal laws in BiH. According to the Criminal Code of Brčko District, the legal scope of the penalties for this offence is one to five years[49], the CC BiH and CC FBiH stipulate a penalty from three months to three years[50], while

[46] Compare OSCE/ODIHR, "Opinion on Draft Amendments to the Federation of Bosnia and Herzegovina Criminal Code", 30 July 2009, par. 23.

[47] Ibid., par. 21.

[48] Personal interview with Marta Vallinas, Legal Adviser for Judicial and Legal Reform, OSCE Mission to BiH, 1 December 2011.

[49] Brčko District Criminal Law, Article 160.

[50] Criminal Law of the Federation of BiH, Article 163, in accordance with the changes and amendments published in the Off. Gazette FBiH 42/10.

the CC RS stipulates a fine or imprisonment up to two years[51]. Even if Brčko District has reasons to defend its specific multi-ethnicity with higher sanctions in this area, it is difficult to understand why in Republika Srpska the sanctions for this criminal offence should be lower that those at the level of BiH and FBiH. These various practices are even more evident when it comes to different qualified forms of this criminal offence. Only for one form of this offence (namely, a situation which actually results in riots and severe consequences) penal policy in BiH is almost uniform.[52] In two other cases, typical of BiH criminal legislation-that is, if the criminal offence was committed "by employing duress and abuse, jeopardizing the safety, exposing national, ethnic or religious symbols to derision, damaging other people's belongings, desecrating monuments or graves", or by abuse of official post or authority, CC FBiH, similar to the CC of BiH and CC of Brčko District, provides penalty from one to ten years.[53] However, the CC of Republika Srpska for the first type of such qualified offence prescribes a much smaller range of penalties-from five months to five years, while the provision on the increased sentence for this offence, if it is done by abuse of post, has been completely erased with last changes and amendments to the Criminal Code.[54]

Of course, the aforementioned problem should be considered in the context of a broader problem of inconsistency of criminal laws in BiH, but it appears that the specificity of this criminal offence and the symbolic importance of its equal social condemnation throughout BiH still require priority intervention in the direction of harmonization of penal policy. In other words, if we bear in mind that this is a symbolic crime, then the "symbols" of their social condemnation should be uniform throughout the country.

5.3. Hate as an aggravating circumstance in respect of all offences

Although the general rules for sentencing under all criminal laws in BiH point out that the motives for committing an offence will be taken into account as an important factor when imposing sanctions, the explicit reference to hatred as a motive and a concrete impact that it may have on the sanction until recently was not foreseen in the criminal laws in BiH. In the report that was published in February 2011, the ECRI emphasized that criminal laws in BiH should change and

[51] RS Criminal Law, Article 294a.

[52] From one to eight years in the RS CC, from one to 10 years in the CC F BiH and Brčko District CC.

[53] CC F BiH, Article. 163, item 2 and 3. See also CC BiH, Article 145a, item 2 (in conjunction with abuse of office-from one to 10 years of imprisonment); Brčko District CC, Article 160, item. 2 (if offence committed "with coercion, harassment..."-from one to eight years of imprisonment), and item 3 (in conjunction with abuse of office and authority-from one to 10 years imprisonment).

[54] See RS CC, Article 294a (compare with the erased Article 390).

provide that hate constitutes an aggravating circumstance for all criminal offences.[55] However, this has so far been done only in the Criminal Code of Brčko District and Criminal Code of Republika Srpska. Namely, with the changes and amendments to the Criminal Codes of Brčko District[56] and Republika Srpska[57] from 2010 hatred is defined as a general aggravating circumstance for all offences, except for qualified forms that already provide severe punishment.

According to the last changes to the CC of Brčko District from 2010, instead of concrete listing of reasons-racial, ethnic or religious (which is still a practice in FBiH)-a more specific definition of motive-"out of hate", which in Article 37 paragraph 2 of the same law is defined as an incitement to "commit a criminal offence, stipulated under this law, which is wholly or partly based on differences on the basis of actual or presumed ethnic or national origin, language or alphabet, religious beliefs, race, colour of skin, sex, sexual orientation, political or other belief social origin, social status, age, health status or other characteristics, or for bringing in relation with people who have some of the mentioned different characteristics"[58], is used. In accordance to the recent changes and amendments, the CC of Republika Srpska contains almost identical formulation.[59] Certainly it is positive that, although the term hate was used, the legal definition of this term under the CC of Brčko District and CC of Republika Srpska explains that this is not about hatred as such, but the excitation based on prejudice.[60] However, at this point it is worth reiterating the caution when it comes to the excessive extent of the protected identity characteristics: although such comprehensiveness is generally positive because it provides protection to a number of identity groups, besides already mentioned question of jeopardizing the principle of legal certainty and legal predictability, another question is raised and that is if all these characteristics have equal weight in the context of BiH, or, specific priorities in the domain of legislation are still possible and desirable.

55 ECRI Report on BiH (fourth monitoring cycle), CRI (2011)2, adopted on 07.12.2010, published on 08.02.2011, par. 16. Available at: http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia_herzegovina/BIH-CBC-IV-2011-002-ENG.pdf (accessed on 30.11.2011).

56 Article 49, item 2 (in accordance with changes and amendments published in the Official Gazette of Brčko District no. 21/10).

57 Article 37 item 3 CC RS, according to the Law on changes and amendments CC RS, Official Gazette RS no. 73/10.

58 Article 2 item 37 Brčko District CC.

59 Article 147 item 25 CC RS, according to the Law on changes and amendments CC RS, Official Gazette RS no. 73/10.

60 When talking about defining hate crimes, ODIHR for example, differentiates approach "based on hatred" and "based on selection", where in the first case it is about hate crime, while the second refers to selection where the victim is chosen *because of* protected characteristics. Of course, the ODIHR expresses the preference for the second approach. See OSCE/ODIHR, "Opinion on Draft Amendments to the Federation of Bosnia and Herzegovina Criminal Code", 30 July 2009, par. 12.

Nevertheless, it seems premature to point out the shortcomings of a broad definition, especially because, according to available information, the main problem in the initial phase of implementation of these provisions is not the intense and too broad interpretation of this legal term, but quite contrary-their misunderstanding and ignorance. In addition, some of the protected characteristic will often coincide in practice (for example social background and ethnicity, or political and other beliefs and ethnicity). Finally, one can expect that the very nature of the social context in BiH and the relationships among various groups will dictate priorities in the treatment of protected characteristics and adequate responses to these offences in the field of jurisprudence.

5.4. Provisions on the increased penalty for specific hate crimes

These provisions complete the triangle of the legal regulation of hate, respectively a bias motivation in the BiH context. Under all criminal laws in BiH, except CC BiH (which, due to specific nature of criminal offences that are prescribed therein, does not require such intervention), hate as a motive more or less constitutes an aggravating circumstance for specific criminal offences too. In such cases the statutory maximum of a penalty has significantly increased-by rule, almost double. These relate to serious crimes against life and limb (murder[61], grievous bodily injuries[62]), sexual freedoms and morality (rape[63]) and serious forms of criminal offences against property (aggravated theft, theft in the nature of robbery, robbery, damaging other persons property)[64], as well as serious forms of criminal offences against public safety and property.[65] As already mentioned, only CC of F BiH still awaits changes and amendments that would expand this legal institute to a larger number of serious criminal offences.

[61] Brčko District CC, Article 163 item 2, point 3; CC RS, Art. 149 it. 1 pt. 2; CC FBiH, Art. 166 it. 2 pt. c.

[62] Brčko District CC, Article 169 it. 4; CC FBiH, Article 172 it. 4; CC RS, Article 156 it. 3.

[63] Brčko District CC, Article 200 it. 4; CC FBiH, Article 203 it. 4; CC RS, Article 193 it. 5.

[64] Brčko District, Article 281, it. 5, Art. 282 it. 2, Art. 283 it. 2, Art. 287 it. 3; CC FBiH, Art. 293 it. 3 (only damaging other persons property); CC RS, Art 232 it. 7, Art. 233 it. 2, Art. 234 it. 2, Art. 249 it. 3.

[65] Brčko District CC, Art. 322 it. 1; CC RS, Art. 402 it. 5.

6. PROBLEMS IN IMPLEMENTING THE LEGAL PROVISIONS AND OTHER FACTORS IN FIGHTING HATE CRIMES IN BIH

6.1. Laws and practice

Relevant international institutions, as the UN Human Rights Council[66], and the Committee on the Elimination of Racial Discrimination[67], have stated that BiH should ensure effective implementation of the provisions on hate crimes. However, although the key criminal provisions in this field in BiH are of a newer date, already some of the problems in its effective implementation can be identified.

Before all, there seems to be a significant discrepancy between the number of registered bias motivated incidents and those that have had a judicial epilogue. According to the OSCE data, in BiH in 2009 151 bias motivated incidents, which mostly related to areas where there are a large number of returnees, were reported.[68] As an illustration, based on the only available data for that same period throughout the country, only 15 criminal cases of incitement to hatred were recorded.[69] Even representatives of international organizations following the situation on the ground also confirm that, at least so far, there is no indication that the new criminal law provisions in this area have brought significant increase in terms of the number of indictments for hate crimes.[70]

However, it should be noted that the implementation of the legal provisions on hate crimes is very complex task in all countries. According to one commentator, with these criminal offences

> *"the motives of perpetrators are often unclear, the role of "hate" is frequently ambiguous, incidents can be a result of a provocation and mutual conflict while a consensus within the community may be absent. As a consequence, what is defined as "bias motivation" is arbitrary and leads to statistical details that cannot be interpreted or may be misleading."*[71]

66 "Report of the Working Group on the Universal Periodic Review: Bosnia and Herzegovina", 17 March 2010., A/HRC/14/16, pg. 16, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A_HRC_14_16_Bosnia_and_Herzegovina.pdf (accessed on 22.11.2011).

67 "Concluding observations of the Committee on the Elimination of Racial Discrimination: Bosnia and Herzegovina", CERD/C/BIH/CO/7-8, par. 10, 23 September 2010, available at http://www2.ohchr.org/english/bodies/cerd/cerds77.htm (accessed on 22.11.2011).

68 OSCE/ODIHR 2010, op.cit., footnote 6, pg. 44.

69 The same number of such criminal offences was registered during 2010. OSCE/ODIHR 2011, op.cit., footnote 33, p. 25.

70 Personal interview with Marta Valinas, Legal Advisor for Judicial and Legal Reform, OSCE Mission to BiH, 1 December 2011.

71 See King 2009, op.cit, footnote 1, p. 535.

6.1.1. Problem recognition

The first problem with efficient prosecution of hate crimes is related to their adequate recognition. It is very important to mention that members of the law enforcement agencies are the first ones to learn about the incident and make contact with the victim. Therefore, it is essential that they are capable of distinguishing hate crime from the "ordinary" crime. In other words, they need to determine not only what happened, but also to investigate *why this* incident occurred.[72] The ECRI for example notes that insufficient progress in the investigation stage of hate crimes in BiH can be attributed, among other things, to lack of understanding hate elements and indicators.[73] However, the problem to adequately understand the category of this criminal offence by the police and investigative authorities is not only characteristic for BiH or countries where this legislation is of a newer date. Studies that have been carried out in the United States show, for example, that police officers who are classifying criminal offences mainly fail to understand the meaning and specificity of hate crimes, believing that only a few of these incidents, respectively the most extreme and most explicit forms of violence perpetrated by e.g. racist organizations or KKK, can be classified as hate crimes. Others, on the other hand, ignored the issue of motivation, leaving prosecutors to deal with the perpetrator's motivation.[74]

There is also a valid question raised as to which indicators specific criminal offences may be defined as hate crime. Do you give priority to subjective or objective criteria and what are the objective criteria in these situations? In the United States, for example, the police officials give an assessment, where in the official incident note, in cases where necessary elements exist (those that are listed in the incident registration form), they determine that it is a hate crime. Although even such assessment has subjective elements, in the United Kingdom the subjectivity is even more pronounced, since a racist incident is any issue that is characterized as such by the victim or anyone else (e.g. witnesses). This difference in the approach and concept of defining the hate crime, of course, leads to understandable statistical differences: while in the United Kingdom, with the approximate population of 60 million, every year around 50 000 racist incidents are recorded, in the United Stated with the population of approximately 300 million, in the same period only some 5500 racist and 7500 hate crimes are recorded.[75]

It is important to note that many countries are faced with the problem of recognition, therefore within their respective police services; they conduct trainings and education programmes, which (as for example in Kosovo) are sometimes performed

[72] King 2009, op.cit, footnote 1, p. 535

[73] ECRI Report on BiH, op.cit., par. 20.

[74] Bell 2002, op.cit., footnote 32, p. 50.

[75] Liz Dixon and Larry Ray, "Current Issues and Developments in Race Hate Crime", Probation Journal vol. 54 (2007), p. 111-112.

by the members of the vulnerable groups. Besides that, countries organize specialized bodies or working groups for specific forms of hate crimes and establish cooperation with organizations and associations of specially vulnerable groups-for example LGTB communities etc.[76]

According to the available information, such activities in BiH were not systematically undertaken although training programmes for the members of the Ministry of Interior were organized.[77] However, these programmes lacked continuity. Currently, first steps are being undertaken towards institutionalizing trainings in this field, in the form of separate modules on hate crimes within the entity police academies. It is expected that these modules will be integrated in the police academies' curricula in the course of 2012.[78]

6.1.2. The problem of pragmatism

One of the potential problems in the effective prosecution of perpetrators of such crimes is the complexity of investigations, particularly in situation where the offence was committed without witnesses. In such cases, the imperative of efficiency and pragmatism of prosecutors lead prosecutors to prefer to prosecute the offence under "ordinary" crime, ignoring the complex examination of motive, which often involves such actions that go beyond the specific incident and include previous behaviour patterns, habits and beliefs of perpetrator. On the other hand, studies carried out in the United States and some European countries suggest that, in practice, social recognition of the importance of such crimes, activism of the non-governmental sector and concrete communities, and education of police officials and prosecutors are factors that have positive impact on the effective implementation of the legal provisions on hate crime offences.[79] Apparently, in BiH, all these elements are yet to be materialized.

6.2. Problem of the lack of statistics

Another important aspect in the combat against hate crimes, especially in the area of prevention, is keeping statistics. Namely,

> *"... adequate statistics are needed to show what is happening, where, and to whom. This will enable states to assess the magnitude of the problem of hate crime; identify trends,*

[76] See OSCE/ODIHR 2006, op.cit., footnote 2.

[77] E.g. during 2009 In BiH the ODIHR implemented a Hate Crimes Education Programmes for members of the Ministries of internal affairs and security agencies. See OSCE/ODIHR 2010, op.cit., footnote 6, pg. 31.

[78] Personal interview with Marta Valinas, Legal Advisor for Judicial and Legal Reform, OSCE Mission to BiH, 1 December 2011.

[79] See King 2009, op.cit., footnote 1.

emerging issues, and groups involved in hate crimes; and determine which groups are most vulnerable. At a practical level, statistics on the scale and distribution of hate crimes allows for effective resource allocation to the areas of greatest need, support for groups and communities managing the occurrence and effects of hate crime, and the development of appropriate policy responses in the sphere of criminal justice."[80]

In this sense, data collection is not only one of the fundamental factors, but also the essential prerequisite for successful coping with the issue.

In the context of BiH, the ECRI emphasized the need for data collection and keeping statistics, in all stages of criminal proceedings-from the filing of a complaint to the final outcome.[81] According to the ECRI, in BiH, the data in this field is not systematically collected, which prevents adequate coping with the problem of ethnic and racially motivated violence.[82] As the representatives of international organizations engaged in this field also confirm, the lack of collection of data on hate crimes is currently a significant problem in BiH, having in mind that the only available statistical information in this regard are those related to the separate criminal offence of inciting hatred and intolerance.[83]

Thereby, as stated in the relevant documents, it is important that this information is collected separately from general information on discrimination cases because they are two different phenomena.[84] But in situation in which such statistics is not even collected in the context of discrimination, despite clear legal obligation of the Ministry for Human Rights and Refugees of BiH and the Ombudsman Institution of BiH in this regard[85], the lack of statistics in the field of hate crimes is not particularly surprising.

In general, data in this area is collected by different institutions. According to data from 2010, in most OSCE participating states, for example, data collection is gathered by law enforcement agencies (in 29 states), prosecutor's office (in 26 states) and Interior Ministry (in 24 states), while, in a smaller number of states, data is gathered by the Ministry of Justice, statistics offices, intelligence agencies, and other

[80] OSCE/ODIHR, "Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives", 2005, p. 14, available at http://www.osce.org/odihr/16405 (assessed on 22.11.2011).

[81] ECRI Report on BiH, op.cit., par. 22.

[82] Ibid., par. 55.

[83] Personal interview with Marta Valinas, Legal Advisor for Judicial and Legal Reform, OSCE Mission to BiH, 1 December 2011. Compare OSCE/ODIHR 2011, op.cit., footnote 33, p. 25.

[84] Compare OSCE/ODIHR 2005, op.cit., footnote 80, p. 15.

[85] See Saša Madacki, "Monitoring Human Rights in Justice Sector", in Adisa Zahiragić et al., *Human Rights and Judiciary in Bosnia and Herzegovina: A report on implementation of the recommendations for justice sector from the Universal Periodic Review of the United Nations Human Rights Council 2010-2011*, (Sarajevo: ADI/Justice network in BiH, 2011), p. 19-20.

institutions.[86] In BiH, on the other hand, it is not quite clear which institution should collect and publish such statistics, especially bearing in mind, that in order to obtain relevant data and appropriate assessments, different mechanisms and methods should be used: from official statistics carried out by competent authorities at different levels through data from non-governmental organizations to additional mechanisms such as victimization surveys.[87] Moreover, there appears to be a considerable confusion in this field. The ODIHR Report for 2010 points this out by stating that in BiH, all aforementioned institutions are involved in data collection and reporting in this domain.[88] However, it remains unclear which institution should be principally responsible for collection and coordination of statistical information and formulation and publishing of the summary reports. If we keep in mind that that ODIHR primarily recognized the BiH Ministry of Security as a partner, where the state communication office for these issues[89] is located, then this institution might be the one responsible. Also, the BiH Ombudsman could encompass this area, bearing in mind the responsibilities of this institution in the context of related activities in the field of combating discrimination and already developed mechanisms of cooperation with the non-governmental sector. However, as in many European countries, this institution even under our conditions has no explicit mandate, procedures or internal organization that would respond to the demands of combating hate crimes.[90] So, in a situation where everyone is supposedly dealing with statistics in this field, it seems that no one is actually seriously engaged.

6.3. The problem of inadequate prevention and promotion

Finally, we should emphasize the importance that of campaigns against hatred, education in the field of equality and understanding diversity, and fighting against racially motivated hooliganism in various areas (from education to sport) etc. have in the prevention of such crimes, and they constitute important elements of the arsenal of possible responses to the challenges of identity based violence.[91] However, apart from farce campaigns mainly limited to the sports fields, which do not meet appropriate responses even at the sports stands in BiH, recently we have not witnessed any significant effort in this area. The intensive activities of the international organizations,

86 OSCE/ODIHR 2011, op.cit, footnote 33, p. 17-18

87 Compare King 2009, op.cit, footnote 1, pg. 538. Also see Warren Silver et al., "Hate Crime in Canada", Canadian Centre for Justice Statistics, Catalogue no. 85-002, Vol. 24, no. 4. Also see ODIHR 2005, op.cit., footnote 80, p. 25.

88 OSCE/ODIHR 2011, pg. 17-18 and footnote 29-35

89 See e.g. OSCE/ODIHR 2011, op.cit, footnote 33, p. 140.

90 Compare OSCE/ODIHR 2006, op.cit., footnote 2.

91 Compare OSCE/ODIHR 2006, op.cit., footnote 2.

especially the OSCE, in this area are of a recent date[92], and more active involvement of all the stakeholders on strengthening this essential element in the fight against hate crimes is still necessary.

7. CONCLUSIONS AND RECOMMENDATIONS

With the exception of the Criminal Law of Federation of BiH, the legal framework in the field of hate crimes is more or less completed-true, with some insignificant flaws that need to be rectified in the future. In this sense, we can say that the legal framework in BiH in this area largely meets the highest global and regional standards in the field of regulation. However, as it is usually the case in BiH, the initial signs of implementing the legal framework are not encouraging.

Having in mind the fact that the interventions of legislators in BiH in this area are mostly recent; the fundamental prerequisites for a successful fight against hate crimes are not yet completed. Despite relatively large numbers of hate motivated incidents, hate crimes are relatively rarely prosecuted. The statistics in this area are not recorded, making it impossible to define specific and realistic needs-based policies in this area. The systematic training of staff in police and judicial institutions in this area is also still not existent, while preventive, and promotional activities in the field of education and raising public awareness about this complex issue are weak and without continuity.

In light of these conclusions, it is necessary to take the following steps:

- Coordinate and clearly delineate, legal solutions in the Criminal Law of BiH on the one hand, and criminal laws of the entities and Brčko District, on the other hand, when it comes to a criminal offence of inciting hatred and hostility in order to avoid potential jurisdiction conflicts. One possible solution is, for example, that this crime is only regulated by the Criminal Law of BiH.
- Introduce to Criminal Law of the FBiH a provision on hate as an aggravating circumstance for all criminal offences and expand the pool of qualified forms of criminal offences for which hate constitutes qualifying circumstance.
- To all criminal laws in the country introduce liability of legal persons for criminal offences of hate crime, and appropriate sanctions prescribed by newer European standards in this field (such as judicial supervision and exclusion from entitlements to public benefits).

[92] E.g. during 2011 OSCE organized two trainings/workshops in the domain of prevention and treatment of hate crimes for the NGOs. Personal interview with Marta Valinas, Legal Advisor for Judicial and Legal Reform, OSCE Mission to BiH, 1 December 2011.

- Undertake necessary steps towards completion of the BiH obligations required by the Additional Protocol to the Council of Europe Convention on Cybercrime, respective legal regulation of racist and xenophobic activities committed through internet.
- Due to symbolic significance of these criminal offences, harmonize the penal policy under all criminal laws in BiH.
- Ensure continuous trainings and education of law enforcement officers and judicial authorities on hate crimes.
- Develop appropriate criteria for recording hate crimes by law enforcement officers and prepare appropriate data-collection forms.
- Identify the institutions that should be responsible for managing and publishing statistics in the field of hate crimes at the state level, which will develop methodology and mechanisms to collect relevant information and start working in this area.
- Intensify and institutionalize the activities of the school education of children, young people, and the wider public in the context of hate crime prevention (such as educational programmes dealing with bias motivation, diversity education, etc.).

THE RIGHT TO PRIVACY AND PERSONAL DATA PROTECTION IN BOSNIA AND HERZEGOVINA

1. DOES BOSNIA AND HERZEGOVINA HAVE REASONS TO CELEBRATE 28th JANUARY – THE DAY OF PERSONAL DATA PROTECTION?

How often in life we give out our personal data, such as name and surname, address, unique personal identification number or copies of personal documents which contain such data in order to obtain some rights or fulfil a commitment? Often we give them automatically, without considering whether the requesting person is entitled to them, without asking for what purpose, in what way and for how long will our personal data be used. Even when we realize that our data are being gathered and used excessively, many do not know what they could do about it in order to protect themselves.

Personal data are being exchanged in all segments of professional and private life during education, employment, medical treatment, opening of bank accounts, payments, communicating over social networks etc. Data are being exchanged in the real and virtual world, and the latter in particular, due to the blooming of new information and communication technologies, which has brought improvement of speed, simplicity and mass usage of electronic exchange of data to the unimaginable frontiers.

The development of society of information technology has of course contributed to the positive changes in various spheres of daily life, especially in terms of accessing information, expression and exchange of opinions, and organization of labour. However, it has brought along certain risks such as new forms of crime, violation of copyrights and intellectual ownership rights, invasion of privacy and abuse of personal data. Obviously, new technologies enable a mass and selective processing of information, availability of information, often without any time and other limitations, profiling of our habits and interests, following our current location and fast

transmission of data from countries where privacy has better protection, into countries where it is not the case.

While Europe, due to challenges forced by evolution of economic and social relations followed by fast technological changes, discusses the need of modernization of regulations on personal data protection and right to privacy, as well as the need to ensure a standardized protection all over the world, Bosnia and Herzegovina transposes existing international standards into national legislation and practice.

Bosnia and Herzegovina made a commitment to adjust its laws relating to the personal data protection to EU legislation and other international legislation on privacy, when the Agreement on Stabilisation and Association would come into force. Another commitment included establishing of an independent supervisory body with a sufficient financial and human resources in order to efficiently follow and guarantee implementation of national legislation on personal data protection.[1]

According to the report of the European Commission on progress of Bosnia and Herzegovina in 2011, a certain progress has surely been made, even though "preparation for personal data protection in general is at its early stage".[2] Latest adjustment of the basic regulation on personal data protection has been made in 2011, when the Parliamentary Assembly of Bosnia and Herzegovina adopted Amendments to the Law on Personal Data Protection.[3] This law eliminated both terminological and substantive discrepancies in comparison to a Directive 95/46EC of the European Parliament and the Council on protection of personal data processing and free personal data circulation.[4] The state had also ratified a European Council Convention on protection of persons in terms of automatic personal data processing,[5] as well as Additional Protocol relating to supervisory bodies and cross-border data circulation,[6] while the Personal Data Protection Agency had been set up in 2008.

However, it is necessary to continue working on the very implementation of adopted regulations, and on strengthening human and financial capacities of the

1 Article 79 of the Stabilisation and Association Agreement, http://www.dei.gov.ba/bih_i_eu/ssp/doc/Default.aspx?id=743&template_id=14&pageIndex=1 (accessed on 15.12 2011).

2 European Commission, *Bosnia and Herzegovina 2011 Progress Report,* (Brussels, SEC(2011) 1206, 2011), p. 56.

3 Amendments to the Law on Personal Data Protection, "Official Gazette of BiH" No.: 76/11 and 89/11.

4 Directive 95/46/EZ of European Parliament and Council dated on 24/10.1995 on protection of persons in personal data processing and free circulation of such data, http://www.azlp.gov.ba/index.php?type=1&a=pages&id=2 (accessed on 16.12.2011).

5 Decision on ratification of Convention on protection of persons in relation to automatic personal data processing, "Official Gazette of BiH – international contracts" No.: 7/04.

6 Decision on ratification of Additional Protocol to the Convention on protection of persons with regard to automatic personal data processing, regarding supervisory authorities and cross-border data flow, "Official Gazette of BiH – international contracts" No.: 7/04.

Agency and its independence, because efficient protection of personal data is essential for Bosnia and Herzegovina in joining the EU and making agreements with the EUROPOL and EUROJUST.

An awareness of how important are rights to privacy and protection of personal data as well as mechanisms of protection must be developed further in Bosnia and Herzegovina. Individuals must be aware that protection of privacy is their human right guaranteed under Conventions and domestic constitutional and legal regulations, and that they have mechanisms of protection at their disposal in cases when they suspect their personal data are being processed illegally. On the other hand, those who collect and process personal data must be aware of basic principles of personal data processing and their commitments in the procedure; in case they fail to respect these commitments they are eligible to offence proceedings being initiated against them and could be fined.

It is important that society becomes aware that the right to privacy does not hold an absolute primacy over other rights, such as freedom of opinion and freedom to receive and transfer information and ideas, as the European Convention on protection of human rights prescribed that a public authority must not interfere with the execution of rights to respect private and family life, except when such interference is prescribed by the law and if it is a necessary measure in a democratic society with regards to national security, for example, public security, economic welfare of a country, etc.

However, this does not mean that either other rights or public interest have absolute priority over right to privacy or personal data protection. For that particular reason, it is highly important to balance specific interests in each individual case, and opinions and stands of the Personal Data Protection Agency and of court instances on such matters as when public interests may justify interference into a private life have important role in implementation and evolution of regulations in this field.

Last but not least, Bosnia and Herzegovina made strong committments to harmonize the sector laws and implement regulations in terms of privacy protection and personal data processing rights with the demands of the European Union. Regulations adjustments on entity and state levels will also be necessary.

2. LEGAL FRAMEWORK FOR PERSONAL DATA PROTECTION IN BOSNIA AND HERZEGOVINA

Personal data processing in our country has been regulated first and foremost with the Law on Personal Data Protection.[7] The purpose of the Law is to ensure the right to privacy and protection of personal data during collecting, processing and using, for all persons on the territory of Bosnia and Herzegovina, regardless of their citizenship and residence.

The Law applies to all personal data processed by all public bodies, natural and legal persons, except to those collected and processed by the Intelligence and Security Agency of Bosnia and Herzegovina.[8] The Law does not apply to personal data being processed by natural persons for their personal activities or household activities.

But what does exactly a personal data mean? Personal data are any piece of information that refers to identified natural person or any person whose identity can be established. It shall not be considered that a person can be identified if unreasonable amount of time, resources, and human labour are required to establish their identity.

For instance, personal data are: first name and last name, place of residence, date of birth unique personal number, salary information, bank accounts, numbers of documents such as identity card, passport etc. Besides the above stated categories, the Law recognized the so-called special categories of personal data prescribing a higher level of protection for them. They include personal data in terms of race, national or ethnic background, political views or political affiliations, union memberships, religious, philosophical or other beliefs, health condition, genetic code, sexual life, criminal conviction and biometrical data.

Processing of personal data, meaning any activity on the data, such as collecting, using, altering, disclosing, or destroying data, must be done in accordance with certain principles. Firstly, the processing must be done in a just and legitimate way. For example, laws on criminal procedure in Bosnia and Herzegovina present a legal basis for personal data processing for the purpose of criminal processing of a person. However, the same laws, according to the decisions[9] and views[10] of Personal Data Protection Agency do not represent a basis for indictments or verdicts on web sites of judicial institutions,

[7] Law on Personal Data Protection, "Official Gazette BiH" No.: 49/06, 76/11 and 89/11.

[8] Law on Intelligence-Security Agency of Bosnia and Herzegovina, "Official Gazette BiH" No.: 12/04, 20/04, 56/06, 32/07 and 12/09.

[9] Personal Data Protection Agency BiH, *Decision on publishing of personal data from indictments on official web site of Prosecutor's Office of Brčko District BiH*, No: 03-1-37-7-440-3/10 dated 12.11.2010, available at www.azlp.gov.ba/index.php?type=1&a=pages&id=7 (accessed on 17.12.2012).

[10] Personal Data Protection Agency, *Opinion on personal data processing at official web sites of Prosecutor's Offices and Courts in BiH*, No.: 03-1-37-2-127-1/11 dated 25.02. 2011

and this sort of publication would be against the principles of justice and legitimacy. In addition, this principle shall not be met if the person processing personal data alleges projects, strategies or similar documents as legal basis for processing.

Other than processing on legal grounds, the data processing may be done with consent of the data subject, the person this data refers to. After the Law on Personal Data Protection was adjusted to the previously mentioned Directive 95/46EC, which prescribed that the consent must be unequivocal, a written consent is asked only in cases of personal data special categories, while the consent for processing of other categories of personal data may be given in a different way as well. The consent may be withdrawn at any time unless the data subject and controller have explicitly agreed that the consent withdrawal was not possible. The consent, among other things, is not needed if the data processing is necessary to enable the data subject upon personal request start negotiating contracts or fulfil previously taken commitments, accomplish duties in public interests or for statistics needs.

When personal data are being processed, the purpose must be considered. For example, if the purpose of personal data processing is to identify a buyer, taking a copy of buyers' identification card is a violation of the principle, because the identification can be done by simple viewing of identification card. Collecting of copies of this personal document, in terms of privacy protection, greatly surpasses limits of necessary identification and creates unjustified risks of personal data abuse.

The one who processes personal data (the so-called controller[11]) must always determine a purpose for data processing, and follow the extent, scope, and time frame required for its accomplishment. After this time frame expired, the data collected can be used only for statistical archiving and scientific purposes, considering that the personal data must be made anonymous, i.e. formed in such way that personal identification is not possible. As a rule, personal data collected for various purposes cannot be grouped or combined.

Accuracy and safety of data and the format of their safe-keeping is also important. The Law prescribes that the controller is obligated to process only authentic and accurate personal data, and update, erase or correct them as necessary. The format in which personal data are kept must enable identification of data subject, but not longer than necessary for the very purpose the data have been collected and processed for.

The one who is processing data must draft a plan of personal data security, and undertake technical and organizational measures to prevent, for example, unauthorized access to personal data, their alteration, destruction or unauthorized transfer, illegal processing or even abuse. These measures could include educating and training staff

[11] A controller is any public body, natural or legal person, agency or other body that either independently or with others runs, processes and determines the purpose and method of personal data processing according to the laws and regulations.

working on personal data processing, physical and technical measures of protecting the working premises and equipment, secrecy and security of passwords for access to information system, etc.[12]

Every person has the right to be informed in advance that their personal data will be collected. Included in such information should be the purpose of such processing, information on the controller, a third party having access to the data, whether providing the data is mandatory or voluntary, etc. If personal data are not given by the data subject, the data subject has the right to be informed on who is the third party that delivered the data to the controller. In fact, every person also has the right to request access to their personal data which are being processed and ask for correction of incorrect data.

These rights may be excluded or limited in accordance with the law. For example, information on processing personal data or access to them can be denied if legitimate interests of Bosnia and Herzegovina could be damaged, in categories such as national and public security, defence, investigation, detection of crime and prosecution of perpetrators, but only to the extent prescribed by the law.

Filing complaints is another right of the data subject. Namely, every person may file a complaint to the Personal Data Protection Agency if they consider that their data are being illegally processed or that there is a danger this could occur, and accordingly demand the person processing data to stop the activity, to correct the situation caused by processing, to correct or supplement personal data for the purpose of authenticity and accuracy, rather to block or destroy the same. Furthermore, everyone is entitled to request from the controller in the court proceedings a compensation of material and non-material damages, if such damages occurred due to the violation of privacy.

Besides the abovementioned obligations towards persons whose data are being processed, the one who processes personal data has certain obligations to the Personal Data Protection Agency as well. Specifically, for any collection of personal data, or in layman terms, database, a controller forms and runs records that contain basic information on this collection, such as the name of collection, the type of data processed, source of data, type of transferred data, receivers of data and legal grounds for data transfer, whether the transfer is done to foreign country with all the details of such transfer, etc. Such data from the records of each controller are delivered to the Agency, which compiles them into the Central Registry.[13]

The amendments to the Law brought new regulations on data transfer to foreign countries, processing personal data through video surveillance, and use of personal data that were made and collected at the time of former Socialist Federative Republic of

[12] Regulations on the manner of keeping and special measures of technical protection of personal data, "Official Gazette of Bosnia and Herzegovina" No.: 67/09.

[13] Central Registry, http://www.azlp.gov.ba/gr/ (accessed on 20.12.2011)

Yugoslavia. The Law also brought changes which shall improve the status of the Agency into a completely independent supervisory body. It changed the procedure of appointment of Director, which was done earlier by the Council of Ministers and presently by the Parliamentary Assembly of Bosnia and Herzegovina, which is in accordance to regulations of the surrounding countries. The Parliamentary Assembly of Bosnia and Herzegovina is authorized to appoint candidates to the newly introduced positions of Deputy Director, suspension and discharge of Director and Deputy Director in accordance with the conditions specifically prescribed.

3. INDEPENDENCE OF THE PERSONAL DATA PROTECTION AGENCY

The mentioned legal amendments concerning the status of the Personal Data Protection Agency are not sufficient to ensure its independence, thus it is necessary to provide adequate working conditions for this Agency.

First of all, the Agency must have financial independence. It must be financially capable to perform its broad legal competencies, for example the Agency supervises through inspection of the fulfilment of obligations prescribed under the Law on personal data protection, receives complaints of citizens in breaches of the law, brings regulations, directives or other legal acts, provides advice and opinions regarding personal data protection, supervises transfers of personal data outside of Bosnia and Herzegovina, defines penalties within violation procedures, etc.

Human resources must be educated further, for only with a trained staff the Agency can meet its legal commitments and act preventively and supervisory protecting the rights to privacy of citizens of Bosnia and Herzegovina in fighting against illegal personal data processing. According to the current information, the Agency employs 23 persons, which is a half of the planned number of staff. This situation is a progress compared to earlier years, but it is not ideal.

The Agency must be free from any external influence and political pressure in decision-making, because only in such way it will be able to act completely independently in accomplishing its tasks. It is also necessary to have the Agency actively involved in the process of regulation making concerning processing and protection of personal data, and be given an opportunity to provide opinions. This will ensure that the adopted decisions are in harmony with standards on personal data protection which our country took upon. In that respect, the European Commission emphasized that the rules of the Council of Ministers referring to the Agency's participation in relevant law-making process must also be improved, as the existing rules are not satisfactory.[14]

[14] European Commission, op.cit., footnote 2, p. 56.

The principle of independence of responsible authority for personal data protection presents a challenge that other European countries are facing as well. For example, the European Commission has formally asked Germany in 2011 to execute a decision of European Court of Justice, which established that Germany failed to properly ensure the principle of "total independence" of responsible authority for personal data protection.[15] The decision stated that the personal data processing supervisory bodies, which are out of public sector[16], are under supervision of the state, which is not in accordance with the European Parliament and the Council Directive on protection of individuals in personal data processing and free personal data circulation (95/46/EC). The Court confirmed that the agencies which supervise personal data processing must have complete independence, allowing them to perform their duties without external influence. This independence ensures freedom not only from supervisory bodies, but from any kind of external influence, either direct or indirect, which could jeopardize Agency's performance in establishing a just relation between rights to privacy and free personal data circulation.[17]

4. PERSONAL DATA PROTECTION AT WORK AND DURING RECRUITMENT PROCEDURE

The Personal Data Protection Agency has produced several opinions and decisions in the past period, which refer to personal data processing done by an employer. One can conclude from these documents that certain personal data are requested in Bosnia and Herzegovina in the vacancy announcements, although there are no legal grounds for collecting some of them.

One such data is a record of convictions, rather non-convictions, and the so-called criminal clearance certificate. Namely, providing of this data was regulated by the provisions of the Criminal Procedure Code of Bosnia and Herzegovina, Federation of BiH, Brčko District and also by regulations of Criminal Code of Republika Srpska, which prescribed that no one has the right to ask an individual to submit evidence on their criminal conviction, rather non-conviction. A person may, in accordance with the aforementioned laws, get data from the registry if it is necessary for exercising their rights (abroad), and these data may, with an elaborated request, be

15 European Court of Justice, case C-518/07 [2010] ECR I-0000, 09.03.2010

16 In Germany, the 16 states have special authorities, which supervise personal data processing in the public sector, and authorities which do this in the non-public sector.

17 European Commission Press Release, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/407&format=HTML&aged=0&language=EN&guiLanguage=en (accessed on 22.12.2011).

given to the state bodies if certain security measures or legal consequences of a conviction are ongoing.[18]

Because of the abovementioned, the Personal Data Protection Agency has stated in their findings that "an institution or organization during hiring process, has no right to ask a candidate for a criminal clearance certificate, rather it is obligated for the candidates who meet the requirements in the vacancy, to request data from criminal registry from the competent body, and only in cases when prescribed by the law." [19]

The criminal clearance certificate must be distinguished from a vigilance clearance certificate. Namely, employers may ask a candidate, in the vacancy announcement, to provide a clearance from a competent court that no criminal procedure is instigated against them. However, collecting this data too should be limited to candidates who are shortlisted, as it is being done presently by the Civil Service Agency of Bosnia and Herzegovina.

A similar situation is with collecting of medical clearance certificates, because data on medical status of a person represents a special category of personal data, and as such, is especially protected by the Law on personal data protection and by international standards. These administrative documents, even if not medical records per se, inform about employee's work abilities and include personal data related to their health condition. That is why collecting of such records from all job applicants in the first phase of hiring procedure would be utterly unjustified, and would represent illegal interference in their private life, as not all the applicants shall be selected for the position.[20] Due to the abovementioned, a proper practice would be to ask medical records only from the applicant who was selected for the position. Considering the practice of RS Civil Service Agency to ask for medical certificate from all the applicants for civil service positions, it is obvious that the Personal Data Protection Agency will have to remain active in this matter.

While the abovementioned examples refer to potential employee's personal data processing, the following example represents a collection of personal data of persons already employed within institutions of Bosnia and Herzegovina. Namely, Civil Service

[18] Article 212 of the Law on Criminal Procedure of B&H, "Official Gazette of B&H" No.: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 29/07, 32/07, 53/07, 76/07 and 58/08, Article 227 of the Criminal Procedure Code of the Federation of B&H, "Official Gazette FB&H" No.: 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07 and 53/07, Article 212 of the Criminal Procedure Code of Brčko District B&H, "Official Gazette BD B&H" No.: 10/03, 48/04, 6/05, 12/07, 14/07, 19/07, 21/07 and 2/08 and Article 103 of the Criminal Procedure Code of Republika Srpska, "Official Gazette RS" No.: 49/03, 108/04, 37/06 and 70/06.

[19] Personal Data Protection Agency of B&H, *Findings*, No.: 03-1-37-2-79-2/10 dated 03.03.2010, www.azlp.gov.ba (accessed on 23.12.2011).

[20] Personal Data Protection Agency BiH, *Press release*, 10.11.2011, www.azlp.gov.ba (accessed on 23.12.2011).

Agency of Bosnia and Herzegovina had developed, within implementation of Action Plan for human resources management, a Human Resources Management Information System in institutions of Bosnia and Herzegovina (the so-called BH-HRMIS system).

The system was to process personal data such as name and surname, photographs, unique personal identification number, nationality, religion, military title and specialty. Other data to process were data on temporary and permanent residence, telephone number, email address, education, bank accounts, trade union memberships, sick leave, diagnosis, family ties, etc.

However, the Personal Data Protection Agency banned this system data processing in December 2010, with an explanation that there were no legal grounds for personal data processing in this manner, and instructed a deletion of collected data.[21] The Decision stated that this acting of Civil Service Agency was against principles of legality and justice, because "the Civil Service Agency is authorized to process personal data of civil servants during the employment procedure upon request of institutions and during organizing and conducting of training and developing of civil service. However, this Agency is not authorized to process personal data of civil servants and employees in all institutions of BiH through the BH-HRMIS system, because BH-HRMIS contains larger amount of personal data than the amount the Civil Service Agency is authorized to process. Pursuant to the paragraph 2, Article 62 of the Law on Civil Service in BiH institutions, the Civil Service Agency is authorized only to assist BiH institutions in developing of Human Resources Management Information System, but not to develop and run the system by itself." Acting upon this Decision, all activities of data entering into the system were stopped, and BiH Civil Service Agency shall erase data collected up to date.[22]

Draft amendments to the Law on Civil Service in BiH institutions have entered the legislative procedure in the Parliament Assembly of BiH on 08.09.2011, and one of the amendments relates to the Article 62. The Draft writes that the Civil Service Agency within its competencies "establishes and runs the Human Resources Management Information System in BiH institutions" thus creates conditions to have the data processing through this system done in accordance with the law. The Draft does not write explicitly on sensitive personal data processing, such as medical diagnosis, trade union membership, and religion, which leaves hope that the alleged system will indeed consider the purpose of employee's personal data processing, and bring it to a reasonable level. Yet, it is still extremely important to have an adequate protection set up for the system because of the volume of personal data it will contain.

[21] Personal Data Protection Agency BiH, Decision No. 03-37-11-403-5/10, 30.12. 2010

[22] Civil Service Agency, *Information on temporary discontinuation of HRMIS usage*, http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=1475&catid=64&Itemid=153&lang=bs (accessed on 23.12.2011).

The fact that there is a special recommendation from the Council of Europe on this particular matter speaks about importance, sensitivity, and volume of personal data collecting and processing during the employment procedure.[23] This recommendation recognizes the advantage of having the personal data automatically processed in relation between employer and employee, but highlights at the same time that such automatic processing must be guided by principles that minimize risks of such processing for rights and fundamental liberties of potential, current and former employees, especially for their right to privacy.

Among other things, this recommendation contains directives on data keeping pertaining to employees or certain vacancy announcement applicants. Namely, an employer should not keep personal data longer than necessary or longer than former or current employee's interests require. Personal data submitted in the vacancy announcement procedure, should in principle, be deleted as soon as it becomes clear that the applicant will not be offered the position. When such data are kept for future vacancies, the data should be deleted upon applicant's request. If there is a need to keep such data for the court procedure, they may be kept only within a reasonable time frame.

A report of EU Agency for Fundamental Rights drafted in 2010 speaks of the need to protect personal data in terms of relations between employer and employee, relations where actors are obviously placed in unequal positions. This informative report stated among other things, that various irregularities were apparent in member states in terms of personal data protection at work. Some countries, (Sweden, Romania, Great Britain, Bulgaria, Malta, Lithuania, Cyprus, France, Estonia, Denmark, Austria, and Germany) do not have a separate legislation which would increase protection of employees from irregularities in their personal data processing. Besides that, in countries that do have this legislation, there are reasons for concern due to the lack of supervisory role of Unions over its implementation (for example, Czech Republic, Latvia, Ireland), discretionary rights of employers to establish the purpose of data processing (Poland for example) or exclusion of small companies from compliance to act according to the strict standards of data processing (The Netherlands). Even in other countries such as Finland, where personal data protection at work was satisfactory up to date, the ongoing legislative reform would greatly decrease current standards of protection, because it would allow employers to monitor, under certain conditions, which e-mail addresses their employee communicates with, type of attachments they send in e-mails, but not the very content of the e-mail messages.[24]

[23] Council of Europe, *Rec No. R (89) 2 of the Committee of Ministers to Member States on the Protection of Personal Data Used for Employment Purposes*, 18.01.1989

[24] European Union Agency for Fundamental Rights, *Data Protection in the European Union: the role of National Data Protection Authorities*, p. 37, http://fra.europa.eu/fraWebsite/attachments/Data-protection_en.pdf, (accessed on 25.12.2011).

The European Human Rights Court dealt with matters of monitoring of e-mail communications of employees in the case of Copland v the United Kingdom.[25] The case facts can be summed up in the following way: an applicant was a female employee of the state Carmarthenshire College. Upon a request from the Deputy Director, her telephone, Internet, and e-mail were monitored in order to establish whether she was using it excessively for private purposes. The state claimed that the use of telephone was monitored through analyzing College telephone expenses, while the applicant claimed that her incoming calls were monitored too, that duration of the calls, the number of calls and telephone numbers were registered. The state claimed that the phone calls and e-mails were monitored for a few months, and she claimed that her calls were monitored for minimum 18 months and e-mails for minimum 6 months.

The court established in this specific case a violation of right to private life and of correspondence in Article 8 of the European Convention on Human Rights, because the monitoring was not in accordance with the law. The court based its decision on the following: according to the jurisprudence, telephone calls from office premises are *prima facie* protected under rights to private life and correspondence.[26] Therefore, it is logical that e-mails sent from an office must be protected too in accordance with the Article 8, as well as the information collected by screening of personal use of Internet. The applicant in this case was not warned that her calls would be monitored; therefore she had justified reasons to believe that her calls, e-mails and Internet use would not be monitored.

Even if monitoring was not done to such extent as claimed by the applicant, collecting and maintaining of personal data without her knowledge is invasion of her right to privacy and correspondence. Whether this invasion of privacy was in accordance with the law and necessary in a democratic society, the Court determined that there was no local legislation at the time of monitoring which would regulate the monitoring of communications at the work place, and the College itself was not practicing informing the employees to expect such monitoring. Therefore, it was concluded that the invasion of applicant's privacy was against the law.

The report on personal data protection in EU mentioned earlier and the role of national agencies for protection of personal data also stated that in some countries breaches of personal rights of employees were obvious because of secret video surveillance in the office (for example, in Cyprus, Sweden and Germany in private sector). In Bosnia and Herzegovina, personal data processing via video surveillance was generally regulated by the Amendments to the Law on personal data protection regardless if the surveillance was done in work or public place. It is mandatory for those who process personal data in this way to place a notification on video surveillance, and contact details where information on video surveillance can be given. Before the processing

[25] European Human Rights Court, Copland v the United Kingdom, 03.07.2007

[26] European Human Rights Court, Amann v Switzerland, 16.02.2000

the controller must bring a decision of rules of processing unless the surveillance was prescribed by the law. This way, the legislator established rules for video surveillance without having this modern method of securing persons and properties breaching privacy rights of individuals.

5. THE RIGHT TO PRIVACY AND FREEDOM OF ACCESS TO PUBLIC INFORMATION

In accordance to the laws on freedom of access to information in Bosnia and Herzegovina, each natural and legal person has the right of access to information under control of public body, and each public body has a corresponding obligation to publish such information.[27] This right of access falls under certain formal activities and limitations, as the legal prescription states that any request to access information must be in written form, must contain sufficient data on nature and/or content of requested information in order to find it, as well as the name of requesting person and their address.

The authorized public body may deny access to information in whole or in part if established an exception applies according to the law, including protection of privacy. Namely, the law states that an "authorized public body shall establish an exception if they justifiably confirmed that requested information includes personal interests referring to privacy of a third person."[28] However, this rule has an exception as well, hence the authorized body will publish the requested information, regardless to the interests of protection of privacy, if it is in public interest, and shall consider during decision-making any advantage and damage that may result from publishing.

An issue that is closely linking the matters of freedom to access information controlled by public bodies with interests of personal data protection, issue which caused contradicting stands in Bosnia and Herzegovina is Internet publishing of income and asset declarations of candidates and elected members of authorities. Namely, the Personal Data Protection Agency ordered in April 2011 to have the scanned declarations of candidates and elected members of authorities removed from the web site of the Central Election Commission of Bosnia and Herzegovina,[29] because "publishing those data violates principles of personal data processing, first and foremost the principle of justice and legitimacy, then the principle of extent and scope of data required

[27] Freedom of Access to Information Act of Bosnia and Herzegovina, "Official Gazette of BiH" No: 28/00, 45/06 and 102/09 and 62/11, Freedom of Access to Information Act of Bosnia and Herzegovina in the Federation BiH, "Official Gazette FBiH" No.: 32/01 i 48/11, Freedom of Access to Information Act of Bosnia and Herzegovina in Republika Srpska, "Official Gazette RS" No.: 20/01.

[28] Op.cit, footnote 25, Article 8

[29] Central Election Commission, www.izbori.ba (accessed on 23.12.2011).

for some purpose, and principle of personal data processing in time frame required to accomplish the specific purpose of processing. The fact that the official web site which published the income and asset declarations of people who have died meanwhile still has them on site, shows that the principles of updating and processing of accurate data were violated. It is especially pointless to still hold the declarations of those people as well who have not been elected in the election procedure. The web site publishing such declarations enables other forms of abuse, such as scanning of signatures, robberies, blackmails etc. Further processing of these data was ordered to halt."[30]

The Central Election Commission of Bosnia and Herzegovina has temporarily removed the disputed property records off its web site, but due to disagreement with this stance, it used all available legal remedies in administrative procedure and in the argument. The Commission legally based its decision to publish the data on Article 15.9 of the Election Law of Bosnia and Herzegovina which prescribed that the Central Election Commission makes available forms containing statements of the complete property status.[31] Institutions such as Transparency International, other NGO and numerous media supported the publishing income and asset declarations, stating that such practice was widely accepted in democratic countries and very important for controlling and promoting principles of public officials' accountability.

By the end of the year, the Court of Bosnia and Herzegovina accepted the complaint of the Central Election Commission, annulled the decision of Personal Data Protection Agency of BiH and the first instance decision of the Agency inspector. In explanation of the Court decision stands among other that "a legitimate purpose was clearly identified by publishing income and asset declarations, which was that voters, rather citizens, find out who are the candidates and the elected officials and what they and their household members have acquired property – wise at the beginning and the end of their mandate, in order to strengthen the principle of accountability and their activities for the public good and not their private interest. This finally comes down to prevention of public office abuse for personal gain".[32]

Based on this decision, the income and asset declarations are made available again on the web site of the Central Election Commission, as of mid December. It is interesting to mention that the Centre for Research Journalism, during the Court procedure, published parts of declarations on their website, but the Agency did not take any measures, because the provisions of the Law on personal data protection do not refer to processing of personal data in the media, except provisions on security and

30 Personal data Protection Agency, *Press release No.: 03-1-37-19-369-1/11*, 02.08.2011

31 Election Law of Bosnia and Herzegovina, "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, 37/08 and 32/10.

32 Central Election Commission of BiH, *Press release,* 15.12.2011, http://www.izbori.ba/default.asp?col=Saopstenja (accessed on 25.12.2011).

confidentiality, and liability in damages. However, this case is not closed yet, considering that the Personal Data Protection Agency has filed an appeal to the BiH Court Appellate Division to re-examine the decision.

The publication of the World Bank and UN Office of Drugs and Crime from 2009 undoubtedly highlights advantages of publishing income and asset declarations as anti-corruption measure, but emphasizes two issues which are very important in terms of protection of personal data contained by the declarations. The first issue is the time frame for which the data will be available, and the other issue is which data will be available to the public.[33]

It is clear that the states have different approaches to these issues, but what is extremely interesting for our case are examples of some countries who have, to some extent, reconciled requests of public to access information and requests for rights to privacy, even security of persons whose income and asset declarations are being published. For example, in Argentina, they make a distinction between the so called "public section" of the income and asset declaration which is available to the public, and the "private section" containing sensitive data such as name of the bank or financial institution where they keep their assets, bank account numbers, addresses of the property etc. This private section is available only with a court order.

An interesting solution is being used in neighbouring Croatia where asset and income declarations are made available to the public, while the website of the Board for decisions on conflict of interests made available only processed information on property of certain categories of public officials (without an address of property, signatures, etc),[34] and the viewing of original declarations is made available upon request and done in the premises of the Board. Surely, this processing system requires more engagement from the Board, but seemingly it perfectly conforms to the right for information while diminishing a possibility of personal data abuse.

There is no international standard that enforces an obligation to have the asset and income declarations of public officials published, and most likely there will be no universal standard either determining the exact balance between public access to information and privacy. Therefore, a legal and social tradition of a country remain a key factor in defining the most acceptable solution in this matter, and they vary from extreme transparency in case of Norway, to restrictive approach used by France, where asset declarations of Ministers, members of Parliament and state officials are not publically available. [35]

[33] Burdescu, R. et al, *Stolen Asset Recovery – Income and Asset Declarations: Tools and Trade-offs*, (The World Bank, United Nations Office of Drugs and Crime, 2009.), http://www.oecd.org/dataoecd/40/6/47489446.pdf (accessed on 28.12.2011).

[34] Committee on Conflict of Interest, www.sukobinteresa.hr (accessed on 29.12.2011).

[35] Organisation for Economic Cooperation and Development, "*Asset declarations for public*

When it comes to Bosnia and Herzegovina, with ending of the administrative litigation mentioned earlier, the legal aspects of asset declaration via Internet will be solved, and the approaches in Argentina and Croatia may serve as good example for our country as to how to serve both the public interest and publishing purpose even without disclosing "sensitive" personal data. Specifically, just as denying certain information must not be hidden under the guise of privacy, neither can disclosure of private data can always be justified with public interest.

In order to inform the public it often happens that the media in Bosnia and Herzegovina disclose personal data, including identity of minors and protected witnesses, their addresses, medical data, publish photographs of the murdered and killed etc. Because of this kind of media reporting, the Press Council of BiH, as a self-regulating body for printed and on-line media, had received since its beginning many remarks and complaints for violations of Article 9 of the Press Code of BiH, which stated "The press shall avoid involvement into someone's private life, unless such involvement is in the interest of the public. Topics that include personal tragedies shall be treated with consideration, and person affected shall be approached discreetly and with compassion".[36] However, there is an issue of how simple can be in practice to affirm as to when is that media involvement into a person's private life in public interest, and furthermore are there consequences for unethical and unlawful publishing of personal data by the media, and what the status of person revealing such information to reporters is.

When it comes to media reporting on investigations and court procedures, the Press Council has found several violations of privacy in 2011. Thus, a violation occurred in reporting on infanticide, for even if the reporting on the crime was not disputed, the disclosing of mother's identity and detailed description of the child murder violates an Article 9 of the BiH Press Code.[37] Also, the breach of privacy was established in reporting of some media about a young man's suicide, when along with the photographs from the scene of death, details of his life were published too, with cause of death, autopsy findings etc. In this case, BIH Press Council Complaints Committee established that "reporting on personal tragedy was conducted without due respect to the victim and his family and without a minimum of sensitivity for the event in the sphere of deepest privacy."[38]

The role that the BiH Press Council has in the civil society is huge, but it still has its limits. Namely, the Code and Council decisions, even some recommendations and

officials: A tool to prevent corruption", 2011, http://www.oecd.org/dataoecd/40/6/47489446.pdf (accessed on 29.12.2011).

36 Press Code, http://www.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9&lang=bs (accessed on 24.03.2012)

37 Press Council of BiH, *Decision on Appeal No: 529-02/11*, Sarajevo, 05.11.2011

38 Press Council BiH, *Decision on Appeal No.:521/02/11*, Sarajevo, 05.11.2011

guidelines are only morally binding and carry no legal sanctions for reporters, editors, and publishers. This means that adjusting their reporting depends finally on the will of the media in question.

On the other hand, the Regulatory Communications Agency of Bosnia and Herzegovina, which was established in 2001, has certain supervisory competencies when it comes to electronic media. The Agency is competent to run a procedure in case of breaches of relevant rules and regulations of the Agency, terms of issued licences and the Law on Communications,[39] and has the authorization to issue penalties such as fines, written and verbal warnings, revocation of licence and suspension.[40] As no information on breaches and penalties in 2011 are available on the Agency's website, the information for 2010 states that only one written warning was issued due to breaches of privacy protected by the Code on RTV programme broadcasting.[41]

When it comes to media being responsible for misdemeanour, it is important to mention that the Law on personal data protection, which in principle is not applied to personal data processing for journalist purposes, prescribed that a fine between 5.000 and 50.000 BAM will be issued to any controller who processes personal data for journalist purpose against the regulations on security and confidentiality of personal data.[42]

On the other hand, civil responsibility for damages made to reputation of natural or legal person by stating or transmitting false facts and identifying this person to the third natural or legal person, has been regulated by the provisions of the Law on Defamation.[43] These laws prescribed that responsibility for defamation in the media lies on the author, editor-in-chief, publisher, and on any person who supervised the contents of the statements if they have intentionally or unintentionally published or transmitted false facts.

Until the mentioned laws on defamation came into force, the entity criminal laws predicted criminal responsibility as well, and prison sentence for committing the act of defamation. However, even if defamation was de-criminalized, criminal responsibility will remain, with some exceptions, in cases of secret data disclosure, breaches to procedure secrecy (court, administrative procedure) and other cases when publishing of certain data presents a criminal act or when the data was illegally collected.

When we talk about information sources, the mentioned regulations stated that "a journalist has the right not to reveal the identity of his information source... or any

39 Law on Communications, "Official Gazette of BiH" No.: 31/03.

40 Review of breaches and corresponding penalties issued by Regulatory Agency for Communications, "Official Gazette of BiH" No.: 35/09.

41 Code on Radio and Television Programme Broadcasting, "Official Gazette of BiH" No.: 20/08.

42 Law on Personal Data Protection, op. cit., footnote 7, Article 50.

43 Law on Protection from Defamation of Federation of Bosnia and Herzegovina, "Official Gazette of FBiH" No.: 59/02and 73/05, and Law on Protection from Defamation of Republika Srpska, "Official Gazette of RS" No.: 37/01.

other document or a fact which may reveal the identity of the source",[44] "is obligated to protect the identity of those who provide information in confidence, regardless have they or have they not specifically asked for confidentiality",[45] rather "have ethical obligation to protect the information source".[46] The existence of protection of journalist sources is important for freedom of expression, because the pressures and negative consequences these sources would suffer in case their identity was revealed would be greater than those that journalists suffer.

This shows that the responsibility of the media in terms of protection of privacy is a complex matter which will require in future an active monitoring, more responsible behaviour from the media, but from the citizens as well, who are able to point out any possible violations of rights to privacy. Namely, it is necessary to create a system which enables a constant debate on where the public starts and private stops, in order to ensure a delicate balance between the right of public to be informed and right of individual to protect their privacy. Even if it is possibly obvious that reporting on some politician carries public significance for their decisions can greatly affect the state and the citizens, a borderline of reporting on privacy of some other persons is not that clear. It will also be necessary to adjust authorizations of regulatory agencies, because existing solutions bring electronic media into unequal position with the printed and online media.

6. PROTECTION OF SECRET DATA

A distinction must be made between personal data protection and secret data protection, the latter being regulated by the Law on secret data protection.[47] Pursuant to the Article 8 of the Law, "secret data is any data whose disclosure to unauthorized person, the media, an organization, institution, body or other state, rather other state body, may cause a threat to integrity of Bosnia and Herzegovina", and particularly in terms of public security, defence, foreign affairs and interests of Bosnia and Herzegovina.

The secret data may be marked by "top secret", "secret", "confidential", and "restricted". Following the level of secrecy, a regime of data protection was made, as well as right of access to this data for certain official persons and state bodies.

Access to secret data is extremely restrictive, and their disclosure constitutes a criminal act. Article 10 of the Law prescribed that the "access to secret data is possible

[44] Law on Protection from Defamation of the Federation of BiH, op.cit, footnote 42, Article 9, and the Law on Protection from Defamation of RS, Article 10.

[45] Press code, op. cit., footnote 34, Article 13.

[46] Code on Radio and Television Programme Broadcasting, op.cit., footnote 40, Article 3.

[47] Law on Personal Data Protection, "Official Gazette of BiH" No.: 54/05 and 12/09.

only under circumstances determined by the Law and other bylaws issued from the Law, rather than international and regional agreements made by Bosnia and Herzegovina." Article 5 predicted that, exceptional from provisions of the Law, access to secret data of all degrees without a security clearance, rather without a permit to access secret data, can be held by all members of BiH Presidency, delegates in the House of Representatives of the Parliament Assembly and delegates in the House of Peoples of the Parliament Assembly, President and Vice Presidents of Federation of BiH and RS, judges, prosecutors and attorneys. These persons shall have access to secret data only when necessary for them to perform their duties.

An interesting issue comes up in connection to secret data protection, which is a question of data subject accessing this information. For example, according to the practice of Intelligence and Security Agency, a person this Agency marked "confidential" as potential threat to security of Bosnia and Herzegovina, will not be allowed access to this document, even in case of court proceedings. The Court of Bosnia and Herzegovina confirmed this conduct to be in accordance with the Law on secret data protection in several cases relating to deportation of foreigners or requests for temporary stay according to the Law on stay and movement of foreigners and asylum.[48] The Court of BiH explained its decision by referring to the mentioned Articles of the Law on secret data protection, and Article 72 of the Law on Administrative Procedure of BiH[49] stating that the national law enforcement bodies are not obliged to keep a foreigner informed on availability of data on their potential threat to the public order or security of Bosnia and Herzegovina.[50]

According to the jurisprudence of the Constitutional Court of BiH, denying data subjects having access to secret data does not constitute violation of their human rights per se. Namely, the Constitutional Court of BiH had established that even if the applicant himself had no access to a document marked as "confidential", the very fact that, in accordance with the Article 5 of the Law on secret data protection, the competent judges of the BiH Court had access to secret data necessary to perform their duties, is a sufficient guarantee that applicant's privacy will be respected. "The Constitution Court is of the opinion that the explanation given by the Court of BiH in terms of national security and respecting appellant rights to family life is satisfactory and does not suggest any arbitrary intent. Decisions of administrative bodies were a subject to court control in terms of European Convention, thus the Court of BiH

[48] Law on Stay and Movement of Aliens and Asylum, "Official Gazette of BiH" No. 36/08.

[49] Law on Administrative Procedure of BiH, "Official Gazette of Bosnia and Herzegovina" No.: 29/02, 12/04, 88/07 and 93/09.

[50] Example: Verdict of Court of Bosnia and Herzegovina No.: U-460/09 dated 04.03.2010 and Decision on admissibility and merits of the Constitutional Court, No.: AP-1483/10 dated 15.07.2011

examined appellant's threat to national security under the circumstances and ensured that secret information will not be disclosed publically..."[51]

In case that access to secret data was conditioned by preliminary security check, it is important to mention that this procedure too must be conducted with respect for the basic principles of personal data protection. In connection to that, the Personal Data Protection Agency of Bosnia and Herzegovina, performing their regular tasks, has identified certain flaws in terms of personal data processing and security checks, and therefore ordered certain measures for their removal, for example in terms of personal data processing in operational records.[52]

7. FINAL REMARKS

According to the European Human Rights Court, the term "private life" is broad and cannot be defined fully. "It would be too restrictive to limit this term to "the inner circle" where individual can live their life the way they want and thus completely exclude themselves from the outer world which is not a part of that inner circle. Respect for privacy must to a certain level include the right to establish and develop relations with other human beings."[53]

Due to this widely set up concept of private life, there is a great challenge before Bosnia and Herzegovina, to ensure protection of privacy rights, and personal data protection. Even if the basic legislation in terms of personal data protection is significantly harmonized with the European standard, the implementation of this standard will require a serious approach to the issue not only by the Personal Data Protection Agency, but by all those who process data, those whose data is processed, and by those who can point out possible abuse of personal data, such as the media, NGO, or unions.

Legal grounds for personal data processing by public bodies must be better defined in order to avoid ambiguity in legitimacy of processing, and the Free Access to Information Act must be added regulations referring to the use of modern communication technologies, as one cannot deny the fact that Internet is probably the most suitable way for distributing information of public interest.

[51] Constitutional Court of Bosnia and Herzegovina, Decision on Admissibility and Merits, No.: AP-201/10.

[52] Personal Data Protection Agency, Decision UP1 03-1-37-1-37/11, 07.10.2010

[53] European Human Rights Court, Niemietz v Germany, 16.12.1992

JUVENILES IN CONFLICT WITH THE LAW:
IS MERE ADOPTION OF THE NEW LEGISLATION SUFFICIENT TO ADDRESS THE ISSUE OF JUVENILE DELINQUENCY IN BIH?

1. INTRODUCTION

Problems of a practical nature are evident in proceedings before the judicial institutions in Bosnia and Herzegovina (BiH) that are instituted against children and minors who are in conflict with the law. This is equally due to fragmented criminal legislation, which in this field is still regulated at four different levels (at the level of BiH[1], the Federation of BiH[2], the Republika Srpska[3] and the Brčko District of BiH[4]), although their provisions are almost identical and mostly based on the same principles, and due to the fact that in the proceedings against them, unless there are specific provisions, the general provisions that are applicable to adult offenders are applied.

Additionally, as part of the Entity laws, and prior to criminal legislation reform in BiH in 2003, there were special provisions concerning the juvenile offenders of criminal acts, that even then, when the investigative proceedings against adult offenders were transferred under the jurisdiction of prosecutors, had not suffered any major changes, because the preparatory process for juveniles remained under the jurisdiction of juvenile judges.

1 Criminal Procedure Code of BiH-Chapter XXV ("Official Gazette BIH" number: 36/03) and Criminal Code of BiH-Chapter X ("Official Gazette BiH" no.: 37/03).

2 Criminal Procedure Code-Chapter XXVII "Official Gazette F BiH" number: 35/03 and Criminal Code-Chapter X, "Official Gazette FBIH" no: 36/03.

3 "Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings", "Official Gazette of Republika Srpska" no: 13/10.

4 "Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings", "Official Gazette of Brčko District" no: 44/11.

Although significant efforts in adopting a uniform law at the State level were made in the past, the Parliamentary Assembly of BiH did not adopt it in 2008, due to the lack of political will, with a justification that the way the law was drafted did not constitute a framework law upon which Entity laws can be adopted. Therefore, the adjustment and drafting of legislation at the Entity and the Brčko District of BiH (BD) level was initiated.

A significant step forward was made when during January 2010 Republika Srpska adopted the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, which came into force as of 1 January 2011. The Draft Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, identical to the text adopted in the Republika Srpska (RS), is still in the parliamentary procedure in the Federation of BiH (F BiH). The Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings in BD was adopted in November 2011, but with slight variations compared to previously mentioned texts. These inconsistent legislative activities, due to both the different time of adoption and the application in the Entities and Brčko District of BiH, as well as different solutions, have already resulted in uneven and unequal status of children and juveniles in conflict with the law, regardless of whether they are a damaged party or a suspect.

It is commendable that by separation from the existing substantive and procedural laws at the levels of the State, of the Entities and of BD, the juvenile offence is regulated in an entirely new systematic way. Specifically, for the first time, a legal text unifies not only the procedural, substantive and executive legal aspects of this area, which are based on international standards and the best practices of the neighbouring countries, but also the social reaction to the problem of juvenile offence, particularly when one takes into account its present situation, forms and tendencies, as well as its often adverse consequences primarily for children and adolescents.

2. THE STRATEGY AGAINST JUVENILE OFFENCE FOR BOSNIA AND HERZEGOVINA (2006 – 2010)

In the course of the 2002, a parallel study on juvenile justice in the Federation of BiH and in the Republika Srpska, entitled "The Young People in Conflict with the Law in Light of Topical Problems concerning Juvenile Criminal Justice System in BiH", produced by the Open Society Fund of BiH and UNICEF was published, and it was amended during 2003 under the title "Review of Practices and Legislation in BiH in Relation to International Standards" developed by Save the Children UK. In the above-mentioned studies, numerous recommendations were given, as well as a proposal for drafting a new law on juvenile offence, introduction of the alternative

measures, opening of new facilities for juvenile offenders, children victims of criminal offences, underage addicts and children with mental health problems.

The "Strategy against Juvenile Offence for Bosnia and Herzegovina" for the period 2006-2010 was prepared on that basis, which is a product of work and research of local experts in the field of juvenile delinquency in the period from 2001-2004, together with the Open Society Fund of BiH, Save the Children UK and UNICEF, all in the context of existing and estimated trends and conditions in BiH, especially social, cultural, political, legislative, etc., as one understood the complexity of the phenomenon - children with socially unacceptable behaviour, i.e. children in conflict with the law and children at risk of coming into conflict with law - as well as the need to devote special attention to the phenomenon and to respond in an adequate manner. Creating conditions for adoption and implementation of a uniform law in the field of juvenile justice, as well as strategic problem solving and harmonization of national legislation and practice in this area with international standards were the first strategic goal of the Strategy.

The Strategy itself encompassed five strategic goals: Legislation, Alternative Measures, Institutional Treatment, Prevention and Application of Criminal Legislation to Juvenile Offenders in Practice, together with 43 planned activities. However, although it was adopted on 27.07.2006 with the Decision of the Council of Ministers of BiH, it was only published on 19.02.2008,[5] while the first steps related to the implementation – the establishment of the Coordination Body,[6] were made only after half of its expiration period elapsed, without previously providing infrastructure for its implementation in practice. Generally, no financial resources for creating preconditions for proper functioning of the stakeholders and implementing authorities were provided, nor for full engagement and coordination of the ministries or for material and technical component, as well as any general funds for the activities of the Coordination Body. Passivity and indifference of local institutions was evident, primarily of ministries at all levels of authority responsible for implementation of activities under the Strategy, the public was completely uninformed, and most of the action plans were adopted in 2009. The Ministerial conference that was held on 09.06.2009 in Sarajevo[7] and the Coordination Body reports for 2008 and 2009 go in support of the

[5] Official Gazette BiH no: 14/08.

[6] Coordination Body for overseeing the implementation of the "Strategy against Juvenile Offence for Bosnia and Herzegovina" established by the Decision of the Council of Ministers of BiH on 08.05.2008, Official Gazette BiH number: 48/08 dated 16.06.2008.

[7] Namely, the mentioned Conference, organized by the Ministry for Human Rights and Refugees of BiH, with support of UNICEF, was convened due to passive attitude of some institutions that have to conduct certain activities from the Strategy and with one goal - to secure political will for the implementation of activities under the Strategy, and in that context certain recommendations and conclusions were adopted.

aforementioned.[8] Therefore, it can be concluded that a few activities that were carried out in the past are the result of the persistence, work and engagement of the professionals and individuals from the relevant ministries, with support from non-governmental sector, certain embassies (Italian), the OSCE Mission to BiH and UNICEF.

Although an expert team that consisted of professionals from all relevant fields was formed as early as September 2010, which in the beginning of 2011 developed the final text of the draft new strategic document entitled "Children in Conflict with the Law in Bosnia and Herzegovina (2011-2014) - Strategic Activity Guidance", even though it was delivered to the relevant ministries at the Entity level, prior to referral to the public discussion, it is still pending adoption. The new strategy consists of three parts: Introduction, the Analyses of the Previous Strategy, while the third part encompasses five goals: Support System, Preventive Activity (as a primary goal of juvenile justice), Legislation, Alternative Models and Institutional Treatment.

3. INTERNATIONAL DOCUMENTS / STANDARDS

Bosnia and Herzegovina ratified the 1989 United Nations Convention on the Rights of the Child, i.e. BiH has taken it over with succession notification on 23.11.1993.[9] In this way, the Convention became legally binding for BiH, and the country has taken on the obligation and responsibility to ensure rights guaranteed under the Convention for every child on his/her way to adulthood, and in the field of juvenile justice. Articles 37, 39 and 40 of the Convention relate to rights of juveniles in conflict with the law. With the signing of the Dayton Agreement in 1995 and the acceptance of the UN Convention on the Rights of the Child, Bosnia and Herzegovina has assumed the obligation to establish, within the framework of the national jurisdiction, a group of laws, rules and provisions specifically applicable to juvenile offenders, institutions and bodies entrusted with the function of juvenile justice, which aim to respond to different needs of juvenile offenders, at the same time protecting their basic rights.

In addition to the UN Convention on the Rights of the Child, international framework for juvenile justice consists of the following: United Nations Standard Minimum Rules for the Administration of Juvenile Justice-The Beijing Rules (1985), United Nations Guidelines for the Prevention of Juvenile Delinquency-The Riyadh Guidelines (1990), United Nations Rules for the Protection of Juveniles Deprived of their Liberty-the JDLs (1990), Guidelines for Action on Children in Criminal

[8] The Report on the work of the Coordination Body for overseeing activities from the Action Plan of the Strategy against Juvenile Offence in Bosnia and Herzegovina for the period from 08.05.2008 to 31.12.2009

[9] "Official Gazette-International Treaties" number:15/90 and "Official Gazette R BiH" no.: 25/93

Justice System-Vienna Guidelines (1997), Standard Minimum Rules for the Treatment of Prisoners (1995), United Nations Standard Minimum Rules for Non-Custodial Measures-the Tokyo Rules (1990).

The aforementioned documents are not directly binding for international, national and local legislative bodies but constitute good practices and their application in administering juvenile justice is desirable.

The International community has adopted other general international human rights documents that are also important for juvenile justice, and which preceded the Convention on the Rights of the Child, such as the Universal Declaration on Human Rights (1948), International Covenant on Civil and Political Rights (1966), the European Convention on Protection of Human Rights and Fundamental Freedoms (1950). The Recommendation of the Council of Europe number R (87) 20 also speaks about the rights of juveniles in conflict with the law and on the society's response to juvenile offence.

In the context of juvenile justice, it is necessary to accentuate Article 40 of the UN Convention on the Rights of the Child and Rule 7 of the Beijing Rules, which prescribes minimum rights to be respected at all stages of criminal proceedings against children and juveniles, because they are key elements for fair trial, and relate to:

- Right to be informed promptly and directly of the charges against him or her,
- Right not to declare on charges (defend him/her self with silence),
- Right to be presumed innocent (presumption of innocence),
- Right not to be compelled to give testimony,
- Right to legal assistance in the preparation of his or her defence,
- Right to presence of his or her parents or legal guardians,
- Right to a legal remedy,
- Right to have proceeding conducted "without delay",
- Right to cross examination of witnesses and obtain the participation and examination of witnesses on his or her behalf under conditions of equality.

The process cannot be considered fair if any of the aforementioned rights are violated. It is essential to point out that the above-mentioned rights, i.e. international standards, are fully incorporated into the new laws on protection and treatment of children and juveniles in criminal proceedings in BiH.

4. LAW ON PROTECTION AND TREATMENT OF CHILDREN AND JUVENILES IN CRIMINAL PROCEEDINGS

The Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings that was adopted in RS and BD, and the draft in FBiH (hereinafter the Law), is, according to the experts, and from the aspect of the UN Convention on the Rights, the Beijing Rules, the Riyadh Guidelines, as well as other international standards and best practices from the region, well developed and conceptualized. It starts with one of the basic principles, namely, that response to juvenile offence should range from less serious to severe measures, in other words, to first apply extrajudicial models and less formal modes of reaction of prosecutors and police, and afterwards impose criminal sanctions. Thus, the emphasis of the Law is that, by applying international standards and accentuating the obligations of the state in this field, with alternative treatment models – the so-called diversion measures - a juvenile offender takes responsibility for what he/she did and understands the importance of unacceptable behaviour, and that after re-education and rehabilitation, returns to the society as its useful member. This is made possible primarily by introducing a completely new mechanism of "police warning", and by modifying the existing mechanisms such as correctional recommendations, principle of opportunity etc.

With the introduction of new solutions and the modification of the existing ones, new competencies of the custodian authority, police, prosecutors, courts, as well as of relevant ministries are stipulated. The custodian authority is provided with a wide range of responsibilities, because, among others, they act as organs of mediation, monitoring and execution of correctional measures, according to the rules that are applicable when correctional measures are imposed, in a situation when they are inadequately trained, in terms of personnel, material and technical aspect. All this will also imply additional reorganization in the ministries of interior. In addition, certain relevant ministries, particularly the ministry of justice are obliged to adopt specific bylaws, in view of the transitional and final provisions, within six months from entry into force of the Law.

A significant novelty is that "Crimes against Children and Juveniles" is provided in a separate chapter of the Law while the hearing procedure was elaborated upon.

In the context of the aforementioned, the Law prescribes the improvement of the training process, having in mind that prosecutors, judges, authorised persons from the law enforcement agencies, but also lawyers, employees of the institutions dealing with activities related to offenders and their criminal justice protection must have special knowledge and skills.

4.1. New authority of the Prosecutors

Particular attention in the Law should be given to provisions that give new powers to prosecutors.

With the abolishment of municipal and basic prosecutor's offices during the judicial reform in 2003, cantonal and district prosecutor's offices were established, with territorial jurisdiction over a number of municipalities, and in a situation where municipal and basic courts continued with their work. Due to widely established real and territorial jurisdiction, the geographic distance of municipal and basic courts before which they act, and because of an insufficient number of prosecutors and a number of other objective reasons, cantonal and district prosecutor's offices have not been able to fully respond to all the tasks set before them.

The most important authority that the Law assigns to prosecutor is leading of the preparatory proceedings - now the prosecutor issues an order for initiating preparatory proceedings and informs the social welfare authority. Given this new legislation, as well as existence of large number of cases in prosecutor's offices, there will be an additional burden on prosecutor's offices, particularly in terms of their efficiency. This justifies the question whether and to what extent cantonal, district and BD prosecutor's offices, with their current organization and number of prosecutors, and with such jurisdiction, would be able to respond to the new authority of prosecutors.

Accordingly, we point to the basic problem that will arise in the way of ensuring the presence of a juvenile at the location of the prosecutor's office, particularly those that have their place of residence in the farthest municipality covered by jurisdiction of a specific prosecutor's office. Bearing in mind the fact that juvenile offenders come from poor families, it is expected that due to financial reasons their arrival at the location of the prosecutor's office will be a problem. Due to the distance of the prosecutor's office and of the relevant court, possible problems may arise in cases of apprehension. In addition, we express doubt that preparatory proceedings against juvenile perpetrators of criminal offences in RS and FBiH can be completed immediately, and efficiently, all this because in the case of the arrest, which is now, instead of 24 hours, limited to only 12 hours. This will pose a major problem, equally to prosecutor's offices with a fewer number of prosecutors (prosecutor's offices with up to five prosecutors), and in prosecutor's offices where there are more prosecutors because there are more cases related to juvenile offenders, especially in a situation where the Law stipulates that preparatory proceedings must be led by specialized prosecutors, which implies that they will only be dealing with these cases.

In addition to the new authority, the rights and obligations of the prosecutor are extended in the proceedings against juvenile offenders in following segments:

– Diversion from the regular proceedings implies the obligation of a prosecutor to avoid formal criminal proceeding, in accordance with principles and rules

stipulated in the Law and other bylaws, but to resolve the criminal case by application of correctional recommendations.

- A prosecutor must have a pronounced interest in education, needs and interests of youth and special expertise (this also applies to judges for juveniles), further, she/he must pass specialized trainings and acquire certificates or certificates about expertise for processing the cases regarding juvenile offence and their legal protection.
- Prosecution office shall have a department for juveniles (this applies to courts, too) composed of one or more prosecutors for juveniles and one or more expert advisors.
- Prosecution offices (as well as courts) shall have expert advisors: social pedagogues-special needs care staff, social workers and psychologists. The BD Law goes beyond this and introduces a wide range of expert advisors, because in addition to the above-mentioned, it is possible to engage special pedagogues, pedagogues, and pedagogues- psychologists.
- A mechanism of police warning is introduced. This mechanism, in RS and FBiH, can only be pronounced when a criminal offence constitutes a fine or imprisonments sentence up to three years, in BD up to one year, with previously developed social anamneses, and only under following circumstances: a juvenile confesses perpetration, that a confession is given freely and voluntary, that there is sufficient evidence that juvenile had committed criminal offence, that no police warning, correctional recommendation or criminal sanction have been pronounced earlier. The police warning shall be pronounced by an authorized official from the competent service within the ministry of interior, with special expertise in the fields of the rights of the child of and juvenile offence, with the approval of a prosecutor. The purpose is the same as for correctional recommendations – to avoid the initiation of preparatory proceedings, and by pronouncing a warning to contribute to the proper development of a juvenile and strengthening of his/her personal responsibility in order not to perpetrate criminal offences in the future. Therefore, after considering the official report and the documented proposal from the authorized official that suggests that juvenile should only be warned, the prosecutor can grant the requested approval and send the case to the authorized official for pronouncing the police warning. If the prosecutor declines approval, then s/he shall notify the authorized official and, before the initiation of proceedings, consider a possibility and justifiability of pronouncement of correctional recommendation, as well as possibility of applying the principle of opportunity.
- Gradual application of criminal sanctions-if neither principle of opportunity nor correctional recommendations were applied, the preference in imposition

of correctional measures shall always be given to warning and referrals, then to measures of intensified supervision, institutional measures and in the end, as the most severe, juvenile imprisonment. It should be noted that a sanction of juvenile imprisonment was modified in the sense that there is no statutory minimal sentence, and the maximum penalty is up to five years, exceptionally up to ten years, with a possibility of postponing the imposition in order to deter a juvenile offender from the future commission of criminal offences.

- The list of the types of special obligations was expanded (there are ten now) that can be imposed by the court (the prosecutor may request them), noting that the Law stipulates them as a special obligation of warning and referral, which has not been the case.[10] It is interesting that the legislator anticipated regular attendance of school or work, as well as volunteering in humanitarian organizations or participating in tasks of social, local or environmental benefit, both as correctional recommendations and as a type of special obligations, which means that they can be imposed as an alternative to proceedings against a juvenile or as a measure that is imposed after the completed proceedings.
- A juvenile must be represented by a defence attorney during the first questioning conducted by a prosecutor or by an authorized official person, as well as throughout the entire proceedings, while the defence attorney must have special skills and experience in the field of children's rights and juvenile offence. If the juvenile or his/her legal guardian does not appoint a defence attorney, the judge shall appoint one, upon a motion submitted by the prosecutor or by the authorized official person.
- Publicizing and reporting on the course of criminal proceedings against a juvenile is limited for the purpose of protecting the privacy – only the final and binding court decision may be publicized without mentioning the personal data regarding the juvenile's identity.
- An obligation of "urgent proceedings" is stipulated for all bodies participating in the proceedings against a juvenile, whereby a standard of urgency was put at the highest level.
- Before the initiation of the preparatory proceedings, the prosecutor is obliged to obtain data regarding age, maturity and other characteristics of the juvenile, his/her living environment and circumstances (social anamnesis)[11] from the social welfare authority, in order to decide whether to apply the principle of opportunity, to suspend the proceedings or to proceed with application of correctional recommendation or issue an order on the initiation of preparatory

[10] So far the court has had the ability when imposing certain corrective measures of intensified supervision to determine one or more special obligations.

[11] Until now this was court's obligation, while the prosecutor was only notifying competent custodian authority on the motion for initiating the proceedings against a juvenile.

proceedings. The mentioned anamnesis shall also be obtained by the authorized official when deciding on applying police warning.

- Wider powers are provided for prosecutors in applying the principles of opportunity, and, in RS and FBiH, it can be applied for criminal offences carrying punishment of a fine or imprisonment up to five years, and three years in BD.[12] A prosecutor may proceed in the same manner in cases of criminal offences punishable by imprisonment of over five years, if such action is in accordance with the principle of proportionality (as well with correctional recommendations).[13]
- A prosecutor in RS and BD is obliged to complete the preparatory proceedings within 90 days and in FBiH two months after issuing an order on initiating the preparatory proceedings[14], and if not finalized within the deadline, the subsidiary application of the Criminal Proceedings Code on suspension and ending of investigation in relation to adult offenders shall be valid.
- In the course of the preparatory proceedings, upon the motion of the prosecutor, the judge may temporarily place the juvenile in a reception centre, or other similar facility, and this measure shall be enforced in accordance with the rules pertinent to the facilities, and as to the duration, review of justification of duration and other rights, provisions of the Law referring to juveniles in custody shall apply.
- The second-instance panel for juveniles, when deciding on the appeal, may reverse the first-instance decision by imposing a more severe measure, only if it is proposed in an appeal of the prosecutor. The appeal against the second-instance court decision shall be allowed only if the Appellate panel for juveniles reverses the first-instance decision by which the proceedings against juvenile were suspended or correctional measure (warning and referral measure, and measure of the intensified supervision) pronounced, and if after the main trial where juvenile imprisonment sentence or institutional correctional measure was pronounced, as in the case where the panel at the session pronounces a long-term juvenile imprisonment sentence or more severe institutional measure than the one pronounced in the first-instance decision. The third-instance Panel

[12] The principle of opportunity could have been applied only for criminal offences carrying punishment of a fine or imprisonment up to three years.

[13] Article 9 of the Law provides: "With the emphasis to the welfare of a juvenile in conflict with law, this law provides the possibility of selection and application of legal sanctions and measures which shall be tailored to personal abilities, environment and circumstances of a juvenile and proportional to circumstances and gravity of criminal offence and with consideration of the rights of the injured party". This definition of the Principle of Proportionality comes from the Tokyo and Beijing Rules.

[14] Although the duty of urgent proceedings was stipulated, so far there were no limitations to the length of preparatory proceedings.

shall decide on this appeal, and the third-instance Panel of the Supreme Court of FBiH, Supreme Court of RS and the Appellate Court of BD, which is a novelty.

- A prosecutor, as well as a judge for juveniles, shall directly supervise and control the enforcement of correctional measures. The competent custodian authority is obliged to submit a report to the court and prosecutor's office on the enforcement of certain correctional measures every six months, while the administration of the institution in which a juvenile imprisonment or an institutional correctional measure is enforced shall submit a report every two months.
- New law contains a separate chapter: Crimes against Children and Juveniles, which stipulates that the prosecutor handling the investigation against offenders of the criminal offences against children/juveniles must have acquired expertise in the area of children's rights and criminal-law protection of juveniles. The RS Law enlists 26 of these criminal offences while the FBiH Law mentions 27. When conducting procedural action an extra caution is required, while questioning is conducted by means of audio and video technology, and assistance of a pedagogue, psychologist or other. These provisions also apply in cases where a child or a juvenile is a witness. It is commendable that procedures of questioning children and juveniles were elaborated in this way, because until now, in this kind of criminal proceedings, questionings were not adapted to their age and psycho-physical development, so there was almost no difference in terms of questioning adults, while the obligatory presence of parents/legal guardians or custodian authority was frequently neglected. This way of conduct is unacceptable, because all children, in accordance with relevant international standards, are entitled to special treatment and protection in criminal proceedings in which they appear as witnesses or victims, respecting their opinions, depending on each particular case. Therefore, by introducing special provisions on juvenile victims in proceedings conducted against adult offenders in the new law, the process of proceedings is precisely arranged, which was one of the biggest shortcomings of previous domestic procedural law.

4.2. Implementation problems

Starting from the fact that the new Law represents a strategic shift in the area of juvenile delinquency, its application in practice requires timely response and training of all relevant authorities, especially police, prosecutors, courts, defence attorneys, social work centres, relevant ministries and specialized educational institutions, and readiness of Entity governments in providing necessary additional budgetary resources, given that the application of the new Law basically requires funds that will directly affect its successful application. Therefore, the notion expressed in the Justification part of the Law on Protection and Treatment of Children and Juveniles in Criminal

Proceedings in FBiH[15] is worrying. Namely, this part states that "no additional funds in the FBiH budget are required for the implementation of this Law". This is incomprehensible because additional funds are necessary in order to create the preconditions for, and enforcement of, the Law.

The new legislation requires additional reorganization, expansion of recruitment and additional equipment for all participants in the proceedings against juveniles, as well as their additional specialized education.[16]

Special attention will be needed in record-keeping in an entirely new way, which primarily implies adjusting of the existing registers in the relevant prosecutor's offices and ministries of interior, as well as developing new statistical tables that will show all relevant data on juvenile issues.

Temporary placement of juveniles in the course of preparatory proceedings shall be paid from the budget of the prosecutor's office, which was not the case before.

Furthermore, the implementation of the correctional recommendations, as well as the alternative models of actions, requires necessary infrastructure to be created particularly in reference to the prescribed six correctional recommendations, whereby the custodian authorities will need to be fundamentally reorganized in terms of personnel and equipment, since they will be in charge of the mediation procedure.

Additional funds are needed for the implementation of provisions related to questioning of children and juveniles who are either victims or witnesses of criminal offence, because they need to be done by means of audio and video technology. This means that adequate equipment and additional specialized trainings on its handling would have to be provided for the police and prosecutor's offices.

Because of the aforementioned, the Entity parliaments should task their governments to urgently plan and provide necessary financial resources for creating preconditions and for the implementation of the Law, with precisely established funds. Prior to this, all relevant ministries and institutions should deliver their needs assessments.

Furthermore, given the current financing method of all stakeholders involved, it is necessary to precisely determine who and in what manner shall make the governments at the lower level obliged to provide financial resources for the bodies which they finance by law, especially having in mind that even now, for some institutions, the jurisdiction between certain Entity ministries and institutions, is not legally defined and delimited, thus neither is the jurisdiction and financing with the ministries at the lower level.

[15] Page 76 Proposed Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings in F BiH, available at the internet site of the Federation Ministry of Justice: http://www.fmp.gov.ba/useruploads/files/zakon_o_zastiti_maloljetnika_i_djece_u_kaznenom_postupku.pdf . Accessed on 11.11.2011

[16] Specialized education is also required under United Nations Standard Minimum Rules for the Administration of Juvenile Justice-The Beijing Rules (1985).

5. CORRECTIONAL RECOMMENDATIONS

Special novelty in the Law refers to the implementation of the mechanism of the correctional recommendations, which constitute a "sui generis" mechanism and, in accordance with their formal and material characteristics, do not belong to a category of juvenile criminal sanctions. Although the common element of the correctional recommendations and the criminal sanctions is the fact that they apply to juvenile perpetrators of criminal offences and that they are prescribed by the law, as are sanctions against juveniles, the basic differences of correctional recommendations in relation to sanctions against juvenile offenders are in determining the legal authorities responsible for their implementation, prescribed conditions for the implementation and determining their purpose and differences in relation to criminal sanctions for juveniles. It can be concluded, precisely on the basis of these differences, that correctional recommendations are a special form of a society's reaction towards criminality of children who are in conflict with the law, whereby the legislators had emphasized the need for practical implementation of this mechanism as a diversion model responding to youth crime.

Domestic legislation found the basis for the implementation of the correctional recommendations in the International treaties and documents, primarily in the UN Convention on the Rights of the Child and the Beijing Rules.

The UN Convention on the Rights of the Child for children that are accused of, or recognized as having infringed the law, encourages, whenever appropriate and desirable, states to "promote measures for dealing with such children without resorting to judicial proceedings, with full respect for human rights and legal safeguards."[17]

The Beijing Rules stipulate that "the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offender shall always be in proportion to the circumstances of both the offenders and the offence."[18] Further, "whenever appropriate, consideration shall be given to dealing with juvenile offenders without resorting to formal trial by the competent authority".[19]

The Tokyo Rules call to divert from formal trial, promote greater community involvement in criminal sanction execution, and promote among offenders a sense of responsibility towards society.

Correctional recommendations, as a new mechanism, were introduced to the Criminal Code of FBiH in 1998 and in the Republika Srpska and the Brčko District in 2003. The Criminal Code of F BiH from 1998 had a separate chapter on correctional recommendations, and included nine types of correctional recommendations.

[17] Article 40 paragraph 3 item (b)

[18] Rule 5.1

[19] Rule 11.1

Also, the Criminal Code of F BiH from 2003 contains provisions that provide eight correctional measures, from which the prosecutor and judge for juveniles can apply four each. The Criminal Proceedings Codes of F BiH from 1998 and 2003 identically provide that prior to filing the motion for instituting the preparatory proceedings, the prosecutor is obligated to consider a possibility of whether the pronouncement of the correctional recommendation is possible and justified, and the judge for juveniles, before he/she decides whether he/she should admit the motion for instituting the preparatory proceedings, is obligated to consider the possibility and justifiability of pronouncing the correctional recommendation.

For all the aforementioned reasons, the strategic document that expired at the end of the 2010, as well as the draft of the new strategic document for 2011-2014,[20] within the fourth strategic goal named: "Alternative methods of work", foresees that correctional recommendations shall be applied before and in the course of the preliminary proceedings, during the main trial and after sentencing. Within that context, the following six activities were planned: media promotion (continuously exploring and raising public awareness), education of professional staff (additional education in view of applying institute of police warning, the principle of opportunity, correctional recommendations, applying prohibiting measure and temporary placement, all as alternatives to the institutional measures), adopting criteria and selecting companies, organizations and institutions in both public and social sector for implementation of a correctional recommendation "volunteering in the humanitarian organization or local community" and enlisting them, drafting special manuals for the alternative methods of work for all parties involved, mediation programmes (i.e. develop a programme of vocational education and training of social care workers in charge of implementing mediation procedure), as well as supporting projects that promote and affirm the alternative methods of work.

In addition to what is outlined above, it should be emphasized that the new Law, also, stipulates obligation for the prosecutor and a judge for juveniles to consider the possibility and justifiability of pronouncing correctional recommendations before passing an order on initiating preparatory proceeding, i.e. passing a decision on acting upon prosecutor's request for imposing correctional recommendation / juvenile imprisonment sanction.

The new Law goes even further, and stipulates that correctional recommendations may be imposed for criminal offences punishable by fine or imprisonment for up to five years in F BiH and RS, and three years in BD, or for criminal offences punishable by imprisonment for over five years, and three years, respectively, if such conditions are in accordance with the principle of proportionality.

[20] Children in conflict with the Law in BiH 2011-2014 (Strategic activity guidance)

At the same time, there is no more limitation that certain correctional recommendations may only be imposed by prosecutor, and others by a judge for juveniles, but both a judge and prosecutor for juveniles may impose all six correctional recommendations, one or more. The prosecutor's office is in charge on keeping records on imposed correctional recommendations and they shall not constitute a criminal record and shall not be used to the detriment of juvenile, as well as in other proceedings conducted by the prosecutor's office or court.

Correctional recommendations are: personal apology to the injured party, compensation of damage to the injured party, regular school attendance or regular work attendance, volunteering in humanitarian organization or working for social, local or environmental benefit, attending either individual or group instructive, educational, psychological and other forms of counselling.

Conditions for applying the correctional recommendations are: that juvenile confesses perpetration, that confession is given freely and voluntary, that there are sufficient evidence that juvenile had committed the offence, that juvenile in writing expressed willingness to make amends with the injured party, written consent to apply correctional recommendations given by juvenile and parents or guardian in case of a younger juvenile, written consent of the injured party when so required by law.

The purpose is to avoid initiation of criminal proceedings against juvenile, and with its implementation contribute to the proper development of a juvenile and strengthening of his/her personal responsibility in order to influence juvenile not to perpetrate criminal offences in future.

If all conditions are met, the particular case shall be delivered to the competent custodian authority that will appoint a person trained in mediation, monitoring and reporting. Selection and application of correctional recommendations is conducted in cooperation with parents, foster parents or guardians and the competent custodian authorities, ensuring that the application does not affect the juvenile's ability to regularly attend school or work and taking into consideration the overall interests of a juvenile. They can be imposed for a maximum term of up to one year and they are calculated in full hours, days and months, and may be either substituted with another correctional recommendation or suspended.

Pursuant to the statutory provisions currently valid in the entity laws, in Federation BiH, first, adopted was a "Decree on Application of Correctional Recommendations against Juveniles"[21] which has the effect of a bylaw, and subsequently, immediately before the ne Law was adopted, the Government of Republika Srpska passed a "Decree on Application of Correctional Recommendations against Juveniles."[22]

[21] "Official Gazette FBiH", no.: 6/09

[22] "Official Gazette RS", no.: 10/10

Mentioned Decrees are based on the principles of willingness, impartiality, immediacy, proportionality and respect for civil and human rights. Transitional provisions provide that competent ministries in the entities are responsible for training of professional personnel, and also, for planning and providing financial resources within their budgets. All competent authorities and bodies are obligated and entrusted with implementation of the Decrees. Also, Federation Ministry of Labour and Welfare, and Ministry of Health and Social Protection of Republika Srpska, are obligated to adopt the General Criteria within 30 days from entry into force.

5.1. Problems in practice

Prior to the adoption of the mentioned Decrees, non-implementation of the correctional recommendations in practice was mainly justified with the lack of a bylaw that would prescribe necessary procedures. However, after adopting such bylaws, problems that refer to lack of infrastructure, complicated procedures, need for additional trainings for all proceeding participants, lack of personnel and inadequacy / unqualified existing personnel, and lack of technical working conditions, are still evident in the implementation.

A particular problem in the implementation of the Decree in Federation of BiH occurred because of the period of time between when the Decree was adopted until the adoption of the General Criteria for selection of institutions and organizations in public and social sector, i.e. companies and institutions. Namely, the Federation Minister of Labour and Welfare adopted the Rulebook on the Establishment of the General Criteria for selection of adequate companies, organizations and institutions in public and social sector in which the correctional recommendation imposed on a juvenile shall be implemented, only a year and a half after the adoption of the Decree.

5.2. Recommendations

For the implementation of correctional recommendations, as a different and a more adequate method of dealing with children and juveniles in conflict with the Law, it is necessary to provide basic conditions, i.e. infrastructure for their implementation by providing financial resources, and especially enable the social welfare institutions, conduct additional trainings for all stakeholders involved in the procedure, and intensify their use through pilot projects. An important element for their successful implementation is public information. In this sense, and in relation to implementation of a correctional recommendation on regular school attendance, it is of importance to take care of informing and educating so-called "lay public", which includes pupils, parents, pedagogues, school principals and NGO representatives.[23] We consider very

[23] In more details on application of a correction measure of regular school attendance in

purposeful the use of the planned pilot projects in this field that will be funded by International Organizations.[24]

In relation to implementation of a process of mediation, the Law foresees a possibility that if competent custodian authority does not have a person trained in conducting mediation, there is a possibility to involve an organization authorized to conduct mediation (i.e. the BiH Association of Mediators). In this context, the question is whether the Association of Mediators has adequately trained personnel and profile professionals that would pursue this specific form of mediation, as well as adequate space for such activities. Also, although we can consider this possibility as an interim solution until the custodian authorities acquire necessary skills for conducting the mediation process, we believe that it should be defined who in this case will bear the cost of mediation.

Because of the problems that, in practice, have arisen due to complexity of the correctional recommendation implementation procedure, we believe that it would be desirable and necessary to simplify it through bylaws. Since the enactment of relevant bylaws in the Federation BiH and Brčko District is yet to come, we suggest that this should be taken into account during their preparation.

6. DEPRIVATION OF LIBERTY, CUSTODY, SERVING JUVENILE IMPRISONMENT SENTENCE

Special attention in the new Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, is dedicated to creating new solutions that relate to deprivation of liberty and ordering custody, i.e. serving juvenile imprisonment sentence, because out of all stages of the judicial proceedings against juveniles, the deprivation of liberty and duration of custody / prison afterwards, constitutes the most sensitive phase of the proceedings. The provisions of international instruments in this field, i.e. the application of standards in this part is very important, because no one, even a child, can be unlawfully or arbitrarily deprived of liberty, and it is certain that children because of their level of mental development, their sensitivity and specific needs should not find themselves in custody or prison. In this respect, out of the international documents, we should especially emphasize the Tokyo Rules[25] and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.[26]

"Strengthening of Juvenile Justice in Bosnia and Herzegovina: Application of alternative measures", doc.dr. Elmedin Muratbegović, Sarajevo 2011

[24] Project overview "Protection of children under risk and children in contact with the law in BiH", supported by Swiss Development and Cooperation Agency (SDC), Swedish International Development Cooperation Agency (SIDA) and UNICEF.

[25] Rules 10.3 and 13.3

[26] Rules 27, 31, 38-46, 47, 48, 49-55, 59-62, 64, 65 and 66

6.1. Application of International documents / standards

Following the above provisions, where there is no absolute prohibition towards deprivation of liberty and detention, the Law goes in the direction of giving preference to alternative methods and placement of children outside of closed type institutions, whereby for the first time a method of execution of criminal sanctions is prescribed in detail.

Particularly, it should be noted that the deprivation of liberty in police stations has been shortened from 24 to 12 hours; the same applies to the deprivation of liberty in the prosecutor's offices and courts in RS and F BiH. The BD has retained the earlier legal solution, and the deprivation in the courts and prosecutor's offices lasts 24 hours. A juvenile deprived of liberty, while in the police station and prosecutorial custody, shall be placed in a room separated from adults. In the course of making the detention proposal, the prosecutor shall always give precedence to prohibiting measures (there are five types prescribed), or temporary placement into reception centre or a similar institution. In F BiH there is no institution foreseen for this purpose, and according to available information, neither there is one in RS and BD. Custody can last up to 30 days with the court review upon the expiration of every 10 days, along with the statement of the prosecutor about actions taken in the period prior to review. Following a motion by the prosecutor, custody may be extended for up to 30 days in F BiH, and for no longer than two months in RS and BD. In the course of preparatory proceedings and before expiration of the deadline for custody, the judge, upon the prosecutor's proposal, terminates custody and immediately releases a juvenile. After the submission of proposal for pronouncement of criminal sanction, as well after pronouncing institutional correctional measure or juvenile imprisonment, the custody may be, upon Panel decision, extended in FBiH for additional two months, and in RS and BD for additional 90 days with the review of justification conducted every month, specifically every 30 days.

Legal provisions stipulate that a juvenile in custody shall be separated from adults. Also, juvenile imprisonment sentence shall be enforced in a juvenile correctional facility that is separated and in no contact with the correctional facility in which adult offenders serve the sentence of imprisonment. A sentence of juvenile imprisonment imposed on female juveniles shall be enforced in a separate juvenile correctional facility for females or in a separate ward of the juvenile correctional facility.

Also, juveniles who attain maturity in the course of juvenile imprisonment shall continue to stay in the institution for juveniles or in a ward for young adults unless their social reintegration will have better effect if they are placed in an institution for adults. Young adults that have been imposed a sentence of juvenile imprisonment shall be placed in an institution with conditions similar to those of an institution for juveniles.

6.2. Recommendations

It is indisputable that international standards in the field of juvenile offence are largely represented in the new Law.

However, as mentioned above, in this area, there are problems in their application, which cannot be eliminated, without previously securing financial funds, in other words, creating preconditions for implementation of legal provisions in practice. This refers to the lack of adequate institutional treatment in a sense that, in general, there are insufficient accommodation capacitates, or if there is accommodation, then inadequate space for placing juveniles is evident, especially space for the purpose of realization of temporary placement into a reception centre or a similar institution, for the purpose of a custody measure or a juvenile imprisonment sentence, and for the purpose of enforcement of a correctional measure – serving in a juvenile correctional facility, as well as untrained and insufficient staff.

7. GENERAL CONCLUSION AND RECOMMENDATION

Although the legislation in the field of juvenile offence is of the highest quality, if competent authorities at the Entity and BD level do not finally realize that it is high time to create at least minimum requirements for the implementation of the Law, and those at the state level that we desperately need, as soon as possible, the adoption of a strategic document in this field, then this Law, as many others, will remain a dead letter. It is also necessary to point out the problem of prevention that is completely ignored, even though in the previously valid Strategic document, and also in the one that is pending adoption, prevention is treated as a separate strategic objective. Specifically, in education of children and youth, the prevention should play a decisive role, in order to avoid that, as they grow up, they become offenders, i.e. come into conflict with the law, and in that sense the authorities at all levels should undertake adequate measures and adopt programmes that they would be able to implement.

Most importantly, the attention is given to following issue – the adoption of different legislation, as mentioned above, has created, from the beginning, legal inequality of treatment in relation to children and juveniles, irrespective of whether they perpetrated a criminal offence or they were victims of one. It is, therefore, necessary to urgently respond in terms of harmonization of legislation in the Entities and BD, as the European Commission[27] points out. Since the Law on Protection and Treatment

[27] On the issue of equal access to justice for all, including juveniles, the European Commission calls upon "all relevant stakeholders to complete and harmonise the relevant legal frameworks with a view to ensuring equality before the law". First set of preliminary recommendations from the European Commission on Structured dialogue on Justice between the European

of Children and Juveniles in Criminal Proceedings in FBiH is still in the parliamentary procedure, it is the authorities in the Federation that should take into account the above-mentioned when adopting the final text.

It is certain that International Organizations in BiH, in turn, are prepared, in the future, to provide financial support and implement specific projects in this field. On this occasion it is worth mentioning a project "Strengthening of Juvenile Justice in Bosnia and Herzegovina" funded by the Cooperation Office of the Embassy of the Republic of Italy in Bosnia and Herzegovina 2009-2011. Of special importance in the project was the training of professional staff, primarily of judges and prosecutors in the Federation of BiH and the Republika Srpska in January of 2010 and February 2011, when, in addition to local educators, Italian experts, juvenile judges and prosecutors from the Republic of Italy, participated and presented their experiences in this area and in legislation.

In this context it is necessary that local authorities do not remain passive, to prioritise this issue, as soon as possible, and based on collected statistical data on the number of registered cases of juvenile offenders and analysis carried out by the relevant stakeholders and institutions, plan adequate budgetary funds. Also, one should bear in mind the current internal structure of the relevant stakeholders and institutions, as well as the number of employees, and accordingly, the obligation to establish special juvenile departments in prosecutor's offices, courts, internal affairs, social welfare organs and others as well as additional employment of new profile experts. In addition, it is necessary to provide adequate material conditions. As was noted above, it is necessary to pay attention to the current state of institutional treatment of juveniles, with special emphasis on the lack of accommodation partially or completely (temporary placement into reception centre, custody, a juvenile correctional facility, serving juvenile imprisonment sentence). Furthermore, there is a need for specialized training for all stakeholders in the proceedings against children and juveniles. In order to improve communication and coordination between all stakeholders in the proceedings, there is a rising need for harmonized and specified record-keeping, with the possibility and obligation to share information and feedback. Also, during the bylaw drafting process by the competent ministries, as provided in the transitional and final provisions of the Law, for the purpose of prescribing application procedures and, in particular, alternative models of action, making sure that they are not complicated, but simplified and efficient. We believe that it would be purposeful to make specific manuals for the application of alternative models of action for all stakeholders in the process.

Union and Bosnia and Herzegovina, held on 07.06.2011 in Banja Luka available at http://www.pravosudje.ba/ in Bosnian. (for the English version, go to http://www.delbih.ec.europa.eu/Publications.aspx?id=60&cat=12&lang=EN)

IV
Human Rights in Media

HUMAN RIGHTS IN PRACTICE: OVERVIEW AND ANALYSIS OF THE SELECTED THEMATIC TOPICS IN BIH MEDIA IN 2011

1. INTRODUCTION

The media image of BiH is strongly determined by the complex structures of the political system and divisions which are made up of multiple characters: political, national, religious, regional, ideological, etc. A difficult economic situation, high unemployment rate, and social discontent make the situation even more complicated. Visible, politically motivated, and system-based fragmentation of the media market, which is a consequence of a state and social division along ethno-national lines, is the most basic characteristic of media market in Bosnia and Herzegovina. Another feature is the saturation of media offers, which is illustrated by the fact that for less than 4 million inhabitants there are 9 daily newspapers, 4 news magazines, 6 news agencies[1], and as many (6) professional journalists associations. When it comes to electronic media, along with the public service which is also complex (composed of Federation TV and radio, TV Republika Srpska and corresponding entity radio, and the umbrella broadcaster-BHTV1 and BH radio 1) there are 46 television stations and 151 radio stations[2] with broadcasting licences in BiH.

The editorial policy of most of the above-mentioned newspapers represents the exclusive interests of one of the three ethno-national groups in BiH. Although the general elections in BiH were held on 3 October 2010, one should be reminded for several reasons of a media "engagement" and treatment of certain political entities in BiH media. First, the analyses of the media monitoring of the campaign showed a high degree of the ethno-political affiliation of BiH media. Second, this was reflected in the value of orientation reporting of specific political subjects, and preference to

[1] Information from the internet site of Press Council in BiH http://www.vzs.ba, accessed on 31.01.2012

[2] Information from the internet site of the Communication Regulatory Agency, http://www.cra.ba/bih/index.php?uid=1273787399, 31.01.2012

topics, values, and principles represented by political favourites, thus criticizing (often lacking arguments) those that the given media did not support. Third, the pre-election campaign in 2010 has led to the creation of media constellation, specifically a division of media groups, which remained in place throughout 2011, and significantly affected the media reporting on various topics. Fourth, such a distinct orientation of values and ethno-politically based editorial policy were reflected in the coverage of topics that related to the (non)-formation of the Council of Ministers over the course of 2011, inter-party relations, the position of BiH within the region and internationally, internal relations within BiH society, etc. And, fifth, when talking about media professionalism and publicity were devalued where the entity public services, the Federation television and Radio-television of Republika Srpska,[3] completely ignored the principles of professionalism and openly expressed their support for a specific political party. During 2011, it became clear that the public service of the Federation BiH "has turned into" a spokesperson of one political option, SDP BiH, while the public service of the second entity, the Republika Srpska, still openly promoted the current ruling SNSD Milorad Dodik.

After the pre-election campaign, there were a few changes on the media scene in BiH. Fahrudin Radončić, the owner of the highest-circulation daily newspaper in BiH "*Dnevni Avaz*" established a political party – Alliance for Better Future BiH - with serious aspirations of coming into power. Thus "*Avaz*" as the most influential newspaper in BiH, not only amongst Bosniaks, became the *de facto* party organ which reflected during the pre-election campaign and afterwards as well. It is evident, based on the monitoring of this daily newspaper that it was distancing from their "favourites" Party for BiH of Haris Silajdžić, and SDA Sulejman Tihić, and grew closer to SDP BiH and the editorial policy of the FTV and its editor Bakir Hadžiomerović.

On the other hand, another example of the "pre-election media project" in BiH was a newly established news-television station called "TV1".[4] The owner of this media project is Sanela Jenkins who originates from BiH, but a certain share belongs to Safet Oručević. The initial capital investment attracted a considerable number of popular journalists. It is interesting to note that this television station, during the pre-election campaign, was very close to Haris Silajdžić and his political option, as Sanela Jenkins openly stated in Sarajevo media.[5]

[3] The preliminary research results on state of media freedoms in BiH in 2011, jointly done by the Press Council in BiH and Association "BH journalists", especially in-depth interview analyses, confirmed such practice of public broadcasters, while statistical support was given in an analyses of the pre-election campaign in media, that during September and October of 2010 was conducted by the analytical team of Mediaplan Institute.

[4] The main determinant of this television will be five-minute news screened each day, every hour, from seven to 24.

[5] In an interview for "Slobodna Bosna" Sanela also mentioned that she supports Haris Silajdžić,

A new media block which was established after the elections in 2010, along with the FTV, openly supported the election winners, SDP BiH, and uncritically reported on them. The new block was consisted of the magazine "*Dani*", daily newspapers such as "*Oslobođenje*", and other portals. On the other hand, even the daily "*Dnevni list*" which during the campaign in 2010 was close to HDZ 1990, adopted its editorial policy to that of this new group.

Along with media from the Republika Srpska, magazine "*Slobodna Bosna*" frequently expressed an open anti-SDP editorial policy often not choosing the words when reporting on frauds and scandals whose (according to them) culprits were high-positioned SDP BiH officials.

Hate speech as we remember it from the war and post-war period was mainly gone[6], but was replaced by more sophisticated forms of extreme political bias and street language, abuse, persuasion and manipulation of national feelings and emotions of the victims. Free and independent journalist reactions are affected by the lapidary unethical language, which unnecessarily very often serves as an argument. Use of such language may be detrimental to the effects of combating violence, corruption, and injustice and may affect the credibility of information.

However, despite erosion in professional standards the media in BiH is still an immeasurable source of information as the creator of public opinion. Thus the intention of this analysis - respecting the diversity and specificity of media in BiH - is to explore how such oriented media reported on important topics that could be placed in a wider field of human rights.

2. METHODOLOGY

Although our last 2008 Report on Human Rights in Practice was designated to quantitatively measure the presence of all topics relevant to the field of human rights (themes were based on the content of the European Convention on Human

because she thinks that he is a man who fights for BiH and does not allow anyone to humiliate his country, although she pointed out that "TV1" as refreshment on BiH media scene, should be politically neutral.

[6] Communication Regulatory Agency (CRA) considered the complaint from the Association of journalists of the RS in relation to informative programme of Dnevnik 2 and a TV show 60 minutes – Special "Rump Greater Serbia", broadcasted on FTV on 9 January 2012 and concluded that the station has not acted contrary to applicable rules and regulations, and in reference to this case shall not undertake any further action. In the complaint against this series, and content of the informative show on FTV, it mentions that TV FBiH has "trampled upon all ethic and journalistic principles and in the basest way and undoubtedly, with stories and journalist comments openly encouraged and spread national, racial and religious hatred and intolerance" (published at: http://www.sarajevo-x.com/bih/rak-negativno-odgovorio-na-prigovor-udruzenja-novinara-rs/120203159, accessed on 30.11. 2012)

Rights), this time the methodology approach has changed. Rather than quantitative, we focused on the qualitative analysis of selected cases; those that during 2011 have attracted the most public and media attention. From the perspective of a researcher it was important and challenging to include and analyze them in this report.

There were twenty cases selected. They included following topics: the treatment of sexual minorities (viewed from the perspective of two cases, a murder of homosexually oriented couple, and writing of SAFF magazine); minority issues (Sejdić-Finci case); security in BiH and media treatment of issues related to it (case of weapons found in the BiH Presidency building and terrorist attack on the USA Embassy committed by Mevlid Jašarević); decision of the Sarajevo Cantonal Assembly to finance the defence of war crimes suspects; court proceedings against politicians, focusing on Dragan Čović case, or a case of a media campaign against the deceased prosecutor Dijana Milić; a case of religious education and turbulent debate in Canton Sarajevo; "Racketeering" affair and a fine issued to magazine "Slobodna Bosna"; attacks and threats against journalist Bakir Hadžiomerović, Slobodan Vasković, and the director of Centre for Cultural Dialogue, Sanja Vlaisavljević; political party financing, corruption, nepotism and bribery in BiH; rape cases in Tuzla Canton; domestic violence; homeless children and incorrect reporting on Roma children; and the impact of economic crises on the socio-political reality in BiH).

The topics and cases listed were processed through 10 thematic sections: discrimination, minority rights, the right to life and human dignity, the judicial processes and state of judiciary, freedom of thought, conscious and religion, freedom of expression (with two sub-sections: media freedom and attacks on journalists), political rights, domestic violence and violence over women, children's rights, and economic, social and cultural rights.

3. DISCRIMINATION

The Bosnia and Herzegovinian society, divided by ethno-national groups and issues concerning equal respect for fundamental human rights, reflects its views through the media. In 2011, the minority groups were represented through media reports in different capacities and were discussed through a variety of journalistic forms. Ethnic minorities in different areas were a frequent topic of daily and weekly print media that were usually published with the aim of highlighting the deprived position of a constituent people on the territory where a majority of the population is of other constituent people[7], while real national, ethnic and religious minorities were

[7] Sources: http://depo.ba/magazin/u-sarajevu-se-srbi-i-hrvati-teze-zaposljavaju-od-bosnjaka; 26. juni 2011 (accessed on 08.01.2011);

rarely mentioned, mostly in cases of social issues or in connection with the commission of delinquency or criminal offences.[8]

Sexual minorities appeared sporadically in the media in 2011, mainly through reviews of events in neighbouring countries; Serbia, Croatia, and Montenegro. Journalists observed the topics only briefly, giving their conclusions in a sentence or two, without providing detailed or researched analysis on the position of these groups or reasons for their actions.

The event which combined the specific way of writing on sexual minorities and criminal behaviour, thus attracting great public attention, occurred in the beginning of October of 2011 when a double murder was committed in a village on the slopes of Mt. Romania. The first account that came from news agencies reported that two men were found dead in a village Miošići, while three suspects were detained.[9] The next day media headlines featuring attention-grabbing question and exclamation marks revealed that the victims were homosexuals[10], stating that this was the reason behind the crime, suggesting that the killer was a third jealous lover. Despite unconfirmed speculations, the journalist concluded the article with following text: "the bodies of the two lovers have been taken for an autopsy"[11], undoubtedly drawing the readers' attention to the sexual orientation of the murdered persons. In the first two days following the incident all daily newspapers produced identical reports. Therefore, the editor-in-chief of "*Nezavisne novine*", with irony has criticized the public opinions and work of journalists that reported on the murder[12]: "Two young men were killed in a village on the slopes of Mt. Romanija. Of all the essential information for resolving this crime, the public was concerned with the news that they were homosexuals. Only later did the details emerge on their age, their names, and even that they were lying dead in a deserted house for three days. Afterwards, we learned that they were killed by another homosexual out of jealousy and that a young man was seen dead on the floor

http://www.poskok.info/index.php/Obad/index.php?option=com_content&view=article&id=28595:diskriminacija-srba-u-sarajevu&catid=137:drustvo&Itemid=199; (accessed on 09.01.2011); http://www.bportal.ba/index.php?option=com_content&view=article&id=741:hafizovi-uloio-veto-diskriminacija-bonjaka-u-kolama-u-rs&catid=40:vijesti-bih&Itemid=58 (accessed on 12.01.2011);

8 "Helping Romas with 600.000 KM", 22 September 2011, Dnevni avaz, p. 4
"Roma robbed a pharmacy", SRNA Agency, 26.08.2011.
http://www.bljesak.info/web/article.aspx?a=38bcc08d-cdd6-4eab-b092-d7b8eafe8c5a&c=a76d03e1-6e68-46ef-9626-00aa1c12c7ae, (accessed on 13 January 2011)

9 "Two young guys shot dead", 3 October 2011 Nezavisne novine, p.13

10 "Found two dead homosexuals, a lover killed them?", 3 October 2011, Dnevni list, p. 24;
"Mysterious murder of Furtula and Pašalić", 3 October 2011, Dnevni avaz, p. 15

11 http://www.mojevijesti.ba/novost/99034/ubijeni-furtula-i-pasalic-bili-u-homoseksualnoj8230 (accessed on 14.01.2012)

12 "Gays do not shoot", Nezavisne novine, 3 October 2011, p. 3

by a neighbour who did not want to report the case to the police. I suppose that the woman did not want to interfere with "gay business" as this was a disease they lacked in the village. (…) It is incredible that in a society that has recently suffered a terrible war, which is struggling with corruption, ethnic intolerance, poverty, and unemployment, the only important thing was who was sleeping with who. In the end it would be to bad if it turns out that no one was with anyone and that there will be no catastrophic consequences only because two human beings exchanged tenderness, and not slaps or bullets.(…)." At the end of the article the journalist reveals the findings of the case as police officially released to the public after the investigation. The very same public who without prior facts, thanks to media, assumed wrongly, and was guided by the usual stereotypical reasoning and intolerance towards minorities: "There is sadness on the slopes of Mt. Romanija because someone killed his cousin and his friend over 3.000 Euros." Namely, on the fifth day after the murder (the second day after media allegations that it was a murder motivated by jealousy of a homosexual partner) the police said that men were murdered because the killer suspected that two years ago they stole a gun, 3.000 KM, gold ring and 30kg of smoked meat from him.[13] The police official that released this news commented that media writings were unprofessional and discriminatory: "Media reports included repulsive texts that make one family tragedy even more difficult. The police in East Sarajevo by shedding light to this crime, in short time denied such articles."

The media, after such a drastic violation of fundamental ethic principles which resulted in the discriminatory portrayal of two murdered men have never in any way acknowledged the mistake, nor made an apology to the families of the victims.

This event, as well as the way of reporting on sexual minorities, is not a unique example of discriminatory public speech. Unfortunately, the mass media is frequently used in order to humiliate and stigmatize this group of the population.

In Bosnia and Herzegovinian society there are individuals and organizations which frequently use the availability of the media, whose editorial policy supports their views and stances towards a certain minority population, with the aim of spreading their views. Fatmir Alispahić is a writer and a journalist for *SAFF*, a magazine that mainly deals with topics related to Islam; its postulates and applicability in every day life. In this magazine one can read instructions on "the only right" way of life, and condemnations of those who do not follow it. On several occasions, Alispahić wrote about homosexuality in *SAFF*. Given the fact that this magazine does not have large readership, the text published there only sparks a reaction when picked up by some of the more influential media, such as daily and weekly press or other dominant portals. Alispahić published an article in *SAFF* in July 2011[14] titled "Gayness: War against

[13] "Furtula killed because of a robbery?", Press RS, 4 October 2011, p. 7

[14] "Gayness-war against God and Man", 29 July 2011, SAFF, p. 18 – 21

God and Man" discussing a homosexual march in Zagreb which was held in order to attract attention to gay rights. This article was picked up and published by some of the more influential media in BiH. The discriminatory tone of the article is characterized by the insulting vocabulary that Alispahić uses in his column. The author repeatedly uses terms of colloquial character, such as "gays" and "gayness" to humiliate and insult members of this sexual minority. The author, in his text, writes that "gayness is a global project for the degeneration and enslavement of mankind!"

After this statement, which the author shared with the auditorium, the text continues with claims that are dominated by hostility, intolerance and hateful speech and ending with a conspiracy theory: "Who is the one that cares about the degeneration of mankind, the dissolve of motherhood and fatherhood, the hoist of the so-called third sex which became common in fashion industry, and now is conquering the Western nurseries where a role of a male and female heroes is taken over by a bisexuals of a "teletubbies" type, while the role of family is played by divorced parents and picture book named "A friend of my dad…"?; is this a conspiracy plan to reduce the population on the planet, or Zionist project that goes for global destruction of culture of family, so that saved Jewish family can remain as a stronghold to the new rulers of the World…?-are all questions that can one write about.", the author writes.

This is not the only discriminatory article from the magazine *SAFF*. Phrases such as "gayness" continued to appear in the *SAFF* texts in November and December. Namely, in early November, the *SAFF* published their own interpretation of the news about forty four Masters' students from the programme Gender Studies at the Centre for Interdisciplinary Postgraduate Studies of the University of Sarajevo[15]. The magazine informed the readership that this is a study programme which deals "with the history of gayness, supporting same sex marriages and the adoption of children by gays and lesbians".

After publishing this text, the public were outraged and demanded a punishment for the hate language used by the authors in *SAF*F. A few days later, the Press Council punished the magazine for drastic breach of the Press Code of BiH. *SAFF*, despite the opinion of the Council and, more importantly, the citizens of BiH, continued with hate language and on 18 November publishes text "European unity against the queer mafia", which was signed by the entire editorial staff of *SAF*F. On three pages (22-24) the editorial office, in following way, describes the reasons why they were sanctioned by the Press Council of BiH: "Gayness strives toward drastic forms of endangering democracy and freedom of speech in order for the gay to be protected as a sacred cow in India, or Big Brother in Orwell's "1984". A gay became a synonym for democracy and human rights, and one who dares to brown fagot, shall be criminally, politically

[15] "The Magistrate of Gayness Promoted in Sarajevo: 44 Debauchery Experts, 2 November 2011, SAFF, page 12

and media haunted as the worst criminal." Individuals in other media, using irony and sarcasm responded to these writings.[16]

During months long public correspondence, the media in BiH showed that in public speech there is still room and possibility for disseminating ideas spoken by hate language, and also that public is not completely deaf to such stances and statements, and that there is a way to oppose and insist on their sanctioning.

4. MINORITY RIGHTS

So far a lot has been written and researched on the treatment and perception of national, sexual, and religious minorities.[17] The focus, mainly, was on Roma minority, as the largest in BiH, but also the minority that enjoys separate treatment because of severe economic and social position, and permanent existential, social, and political marginalization.

During the 2011, special media attention was drawn to (attempts) implementation of the Court ruling in "Sejdić and Finci against Bosnia and Herzegovina" case. This case was adjudicated before the European Court of Human Rights in Strasbourg, following application from Dervo Sejdić, a member of Roma, and Jakob Finci, member of Jewish community in BiH, on 3 July 2006, who as members of national minorities were unable to run for the Presidency of BiH and House of Peoples of BiH. The Court in Strasbourg issued a judgment on 22 December 2009 in favour of Sejdić and Finci.[18] The Court ordered BiH to harmonize disputed provisions with the European Convention on Human Rights, to which it was also bound by the Stabilisation and Association Agreement with the EU, signed on 2008, where a deadline for these changes was set from one to two years. Unfortunately, BiH has not fulfilled its obligations within the stipulated timeframe.

As media reported, on 29 April 2010, the Parliamentary Assembly of the Council of Europe adopted a Draft resolution and Draft recommendation whereby the authorities of BiH have been called to seriously engage in amending the BiH Constitution, in accordance with the judgment of the European Court of Human Rights in

16 "Is Fatmir Alispahić a gay?", 11 August 2011, Oslobođenje, p. 11.

17 Extensive and continuous research was conducted by Sarajevo's Mediaplan Institute (in the period from 2006 – 2009), and during 2010 and 2011 Sarajevo's Media centre conducted a research related to perception of minorities in media space in BiH, and the region, focusing on Roma. Tuzla's Bureau for humanitarian issues also dealt with the research of the perception of minorities in media.

18 The full text of the judgement in the case "Sejdić and Finci vs BiH" is available on the internet site of the Ministry for human rights and refugees, http://www.mhrr.gov.ba/ured_zastupnika/novosti/?id=1008

the case Sejdić and Finci." However, despite the fact that the BiH Council of Ministers appointed a working group for drafting the amendments to the Constitution and addenda to the Election Law, these changes never happened. The reason is the lack of consensus on the core of constitutional changes where the politicians from both entities expressed large disagreements.[19]

During the summer, "*Slobodna Bosna*" reported that Council of Ministers of BiH began preparations for the implementation of the judgment of the European Court of Human Rights, and has tasked the Ministry of Justice of BiH to form a working group that will deal with the implementation of the judgment in the case "Sejdić and Finci v. Bosnia and Herzegovina."[20] In certain moments, the scepticism and doubts were expressed that not only that the judgment will not be implemented until the end of the calendar year, but also that interdepartmental working group that would begin with amendments to BiH Constitution will not be formed. Certain politicians in BiH, like a representative in the House of Representatives of the BiH Parliamentary Assembly Šefik Džaferović expressed their "fear of the session of the Committee of the EU Council of Ministers."[21]

In the meantime, the Joint Ad hoc Committee of both Houses of the BiH Parliamentary Assembly was formed. As "*Oslobođenje*" reported, "the deadline for making a decision that would be in accordance with the judgment of the European Court of Human Rights and that would decant to the amendments to the Constitution of Bosnia and Herzegovina should be the end of November of 2011." By then, the Committee should have offered a solution for the implementation of the 2009 judgment. To this parliamentary body, "a delegate Krstan Simić was appointed on behalf of SNSD, and delegate Borjana Krišto on behalf of HDZ BiH"[22], while appointments of other members of the Joint Ad hoc Committee from the House of Representatives of the PA BiH was completed at the first next session, on 10 October. Following MP's were appointed: Saša Magazinović (SDP), Šefik Džaferović (SDA), Borislav Bojić (SDS), Ismeta Dervoz (SBB), Beriz Belkić (Party for BiH), Božo Ljubić (HDZ 1990), Zvonko Jurišić (HSP), Mladen Ivanković Lijanović (Peoples Party Work for Progress), Vesna Krstović-Spremo (PDP), Petar Kunić (DNS), and Nermin Purić (DNZ)". The representatives have adopted two conclusions, upon Šefik Džaferović's proposal, that in case no consensus of all members on the amendments to the BiH Constitution is reached, but agreement is reached amongst two thirds of the representatives, such proposal shall be

19 "They are kicking us out of Council of Europe", 27 February 2011, Dnevni list, p. 6.

20 "BiH Council of Minsters started with preparations for implementation of the judgment of the European Court of Human Rights, and adoption of the State Legal Aid Law", 21 July 2011, Slobodna Bosna p. 41 - 42.

21 "Sejdić – Finci again in the beginning", 9 September 2011, Oslobođenje, p. 3.

22 "Deadline for amendments 30 November", 4 October 2011, Oslobođenje, p. 9.

forwarded to the parliamentary procedure. Second conclusion suggests that the Ad hoc Committee should involve the National Minority Council of BiH in its work.[23]

With the support of the Konrad Adenauer Stiftung, in mid October a debate on the implementation of "Sejdić and Finci" judgment took place in the BiH Parliamentary Assembly. Besides the parliamentarians, members of the BiH Election Commission, National Minority Council of BiH, and members of governmental and non-governmental institutions attended the debate. Christian Schwartz-Schilling, former High Representative in BiH, on behalf of the organizers, stated that the Committee should specifically adhere to the judgment of the European Court of Human Rights and not go into other areas.[24] Dervo Sejdić, the President of the Roma Union of BiH, by tearing apart the Parliament's conclusion, expressed his dissatisfaction with the work of the Ad hoc Joint Committee of both Houses of the Parliamentary Assembly of BiH for implementation of the Judgment of the European Court of Human Rights.[25] Sejdić warned that International Community had to exert more pressure on the BiH authorities in order to implement the judgment of the European Court and it should not have allowed that this task remains unfinished for almost two years after the ruling. Jakob Finci, too, warned of the unacceptable situation where a voice of minorities in the Committee will not be heard, i.e. none of the Committee members belong to the minorities.[26] Zoran Malešević, notary and an expert on the European Convention on Human Rights, condemned the act of Sejdić and said that he has violated the very same Article under which he filed an application to the Court, because, in front of cameras, he tore apart the conclusion of the state legislative authority. Malešević states that with this act Sejdić has discriminated public "political or other opinion" and that by his freedom of expression he violated the right of another to express".[27]

"As much as Sejdić was exposed to accusation for inappropriate behaviour and humiliation, the decision of both Houses of the BiH Parliament, numerous uncertainties, diametrically different notions of the "tailored" constitutional changes, conflicting political concepts and irreconcilable visions of the future of BiH, give him the right, as well as to citizens of BiH, to be pessimistic about the final lunge in creating functional BiH, conceptualized as the main target and intervention strategy to overcome the Constitution of BiH", a journalist from Mostar's "*Dnevni list*" commented".[28] The

[23] "First step for the implementation of "Sejdić Finci" judgment", 11 October 2011, Nezavisne novine, p. 2-3.

[24] "Primary task eliminate discrimination", 14 October 2011, Nezavisne novine, p. 7.

[25] "Sejdić tore apart the conclusions", 14 October 2011, Dnevni avaz, p. 8.

[26] "Sejdić tore apart the conclusion of the BiH Parliament", 14 October 2011, Oslobođenje, p. 6-7.

[27] "Sejdić violated the Convention on Human Rights", Nezavisne novine, 17 October 2011, p. 5.

[28] "Local politicians will not even agree on "adjustment" of the Constitutional change", 19 October 2011, Dnevni list, p. 6-7.

chronology of events that culminated in tearing apart the parliamentary document, with analyzes of the "fraudulent behaviour of local political leaders and passivity of international community" owing to which "the essence of implementing the Strasbourg judgment-elimination of all kinds of discrimination from the BiH Constitution-is lost", was followed by BiH magazines, as well.[29] For failure to implement the judgment, the media from Banja Luka look for culprits amongst actors from Federation, by defending, on the other hand, the "discriminatory" constitutional structure and giving amnesty to political actors from RS. As the editor of "*Novi reporter*" writes, the judgment is a different story, and it is "never further from realization, since instead of considering congruous, minimal interventions in the electoral process for the BiH Presidency, the parties from Federation and non-governmental organizations from Sarajevo began to compete in political madness, initiating crazy "initiatives" for megalomaniac reconstruction of the entire system on which so far joint institutions of Bosnia and Herzegovina have been based. Even Dervo Sejdić was not spared in this commentary, for who it was written that he "dreams of BiH with one president, which tells enough of the false reasoning of intention why, together with Jakob Finci, he launched an avalanche on the occasion of the judgment. Because, that "one president" surely would not be a Roma, but, following the local ethnic mathematics, perverted interpretation of the "European principles" to this position inevitably would bring Bakir Izetbegović, Željko Komšić, Sulejman Tihić, Zlatko Lagumdžija or someone else, but in any case someone that would unequivocally advocate for outvoting, loyal to Bosniak maximalist concept".[30]

As media reported, a week before the deadline (end of November), the Joint Ad hoc Committee of both Houses for implementation of the Judgment of the European Court did not produce any concrete results. "Although it was planned that representatives of political parties, National Minority Council and non-governmental sector present their commentaries to the previously given party positions on the election of the Presidency members and composition of the House of Peoples of the BiH PA, this did not happen, and instead the representatives of the political parties, again, presented their proposals". As Committee Chairman Šefik Džaferović stated "the aim of the constitutional reform is not to make BiH even more dysfunctional, but one where all citizens will be equal".[31] However, even after the tenth session of the Ad hoc Committee, no consensus on concrete amendments to the BiH Constitution was reached. As media from Banja Luka reported, the only concrete amendment proposal came from a Committee member belonging to SNSD, Krstan Simić, but no vote on the mentioned amendment took place. Simić proposed that the Committee of both

[29] "Dervo and Jakob against the rest of the World", 21 October 2011, Dani, p. 32-34.

[30] "Small country for a big holiday", 9 November 2011, Novi reporter, p. 12-13.

[31] "No progress on election to the state Presidency", 23 November 2011, Dnevni list, p. 8.

Houses of the BiH Parliament should consist of 17, instead of current 15, members whereby two new members would be belonging to the national minorities and ethnically uncommitted citizens, in a ratio one from F BiH and one from RS.[32]

Although the Committee has failed within the given deadline (end of November) to harmonize different and politically connotative positions and propose concrete steps and measures for implementation of the judgment in the "Sejdić and Finci" case, the representatives of the House of Representatives of the BiH Parliamentary Assembly, during discussion on the Committee report, stated that it should continue with its work in 2012. One of the few steps ahead in its work on the course of 2011 was the opinion of the majority to form a caucus of the "others" at the House of Peoples of the BiH PA.[33]

However, the Committee was not spared of criticism. So in one of the last editions of "*Dani*" magazine, it was mentioned that even the Committee members, at the time of their appointment on the 13 October, did not believe that the work will be completed by the end of 2011. "Once again, in fact, it showed that the Constitution and the laws, especially court judgments, here, serve for interpretation and not implementation. In a style of a great demagogue, chairman of the former committee Šefik Džaferović confirmed this to "*Oslobođenje*", "*Dani*" conveyed".[34]

5. THE RIGHT TO LIFE AND HUMAN DIGNITY

When reporting on security issues, the media mainly report on daily events by copying press releases from the ministries, police departments and prosecutor's offices or quoting the representatives' statements from these services with very little research engagement, frequently using the principle "if it bleeds it leads". "Sensationalism" is another dominant trend in reporting on topics that relate to security and crime. An example from "*Nezavisne novine*" a newspaper from Banja Luka shows the importance of the position of the media, target audience, and closeness to specific political circles. The journalist from this newspaper portrayed Sarajevo on a few occasions as a "dangerous city". Thus, the text "Armed Conflicts Again on the Streets of Sarajevo", published on 4 February, noted negative content and a negative attitude towards the authority and the police, neither of which contribute to resolving any problems. Based on the analysis, which was conducted by the Mediaplan Institute[35] in early 2011, it can

[32] "They are asking for more time for the amendments", 2 December 2011, Nezavisne novine, p. 2-3.

[33] "The Committee for implementation of Sejdić Finci judgment continues work", 23 December 2011, Nezavisne novine, p. 2-3.

[34] "The judgment that nobody cares about!", 23 December 2011, Dani, p. 13.

[35] With the method of analysing the media content produced was qualitative-quantitative report based on the time sample of six weeks-from 1 January to 12 February 2011. The sample was

be concluded that the media (daily newspapers, TV news and web portals) is dominated by themes such as homicides and robberies, rapes and other physical assaults. The reason for such reporting lies with the fact that these topics are the most common type of crime that happens in reality. The most illustrative examples of reporting within this category are reports from the media on gun fires on the streets of Sarajevo, activated explosive devices and robberies. The exceptions are periodic magazines that do not report on daily events, but are more devoted to topics that require more research such as organized crime, terrorism, or issues of the general state security. A qualitative analysis showed that these themes are subject to different interpretations, equally in accordance with a specific value system and political orientation of the magazine itself.

The themes that concern the general state security also touched upon: the issue of the BiH Presidency (finding weapons in the building of the BiH Presidency), the presentation of the statistical data from the MoI on security in Canton Sarajevo and F BiH, media campaign *Stronger, faster, better*, unsafe military facilities in BiH and ammunition stockpiles. Among these themes, the most interesting topic was certainly the weapons found in the BiH Presidency building and the way media reported on the incident. The BHTV1 broadcast two stories that contained negative connotations of the journalist. The first story from 12 January contains an unusual announcement: "It was not an ordinary day today in the BiH Presidency building. News circulated at storm-like speeds - explosive found. In the end it turned out that there was too much ado about nothing." The author continues in the same sarcastic tone, which is unusual for BHT: "Where did the military equipment in the BiH Presidency building come from? This question would be posed in any well-established state in the world." Even though it was emphasized in the article that there was no danger of explosion, or need for evacuation, many questions remained unanswered. On the second day, 13 January, the BHT criticized relevant security institutions with the same tone: "Authorities remain confused after yesterday's scandal revealing that weapons and military equipment, more than a decade old, were found in a room of previously unknown content in the highest state institution building, the BiH Presidency. The police agencies unanimously claim that they are neither responsible nor have jurisdiction. They shifted the blame on each other. The Presidency demanded more serious protection from those that safeguard them and other high state officials and highest officials of foreign states

2.713 news/web text and 323 TV announcements. As explained in the methodological section of this report, there were indications that media in a campaign way and superficially write on security problems in BiH focusing on tragic and shocking vents, often in a sensationalistic way, which affects the overall unfavourable political and security situation in BiH. Therefore, the research should determine to what extent and how the most significant media in BiH report on topics that are determined by safety aspects. The research is scientifically designed platform for further dialogue with stakeholders and media that can be both an incentive and corrective to the activities implemented by the EUPM in BiH.

that reside in our country". The author of the story attempted to raise readers' fears even more, remarking: "Who claimed that the ammunition was left over from the war? Can it be said with certainty that it was not brought to the building afterwards?" Once again, the article included many unanswered questions even though the point of the media should be to respond to questions. On the other hand, RTRS broadcast four stories on the weapons found in the BiH Presidency building. On 12 January, the anchor opened with following words: "Instead of the lost original document of the Dayton Peace Agreement, military weapons and material technical devices were found in the BiH Presidency building today. It remains unknown who stored it there. But the question remains whether the Presidency building was a civilian target in the war." The following day, the same topic was on headline news: "Weapons and military equipment were found in the BiH Presidency building, which from 1992 to 1995 was the headquarters of the Presidency of the Republic of BiH and most important part of the command structure of the RBiH Army. The recovery of these weapons and equipment destroys the common belief that it was only the Serbs attacking the Bosniaks, who did not have any means to defend themselves". In the story, the author comments on the fact that no one in Sarajevo seems to show any interest in this case. As evidence of "disinterest and neglect" of citizens in Sarajevo, a press statement was released from the Spokesperson of the Canton Sarajevo Prosecutor's Office who stated that there will be no investigation in this case because there are no elements for it. Another media that is largely "consumed" in Republika Srpska is a daily paper called "*Euroblic*". The newspaper has carried a commentary that was negatively coloured. Commenting on the weapons found in the Presidency building, the journalist wrote: "Translated into simple terms, this is proof that the building which accommodated the War Presidency of BiH, and the top of the so-called BiH Army, was a military location from which plans were made, and attacks carried out".[36]

The topic of terrorism has not been represented extensively in the media (during the period subject to analysis by the Mediaplan analytic team) including Islamic terrorism and its manifestations in BiH. These manifestations have proved to be serious threats to the security of the country and its citizens in the past. In the feature story published on 1 February on RTRS, published on the occasion of a call to BiH authorities to investigate a case of human organ trafficking of killed Roma in the last war (Sijekovac), a journalist very skilfully combined statements of the experts on the fight against terrorism and organized crime and concludes: "The expert team has warned that a recruitment of potential terrorists for attacks similar to recent attacks in Russia is an ongoing threat in BiH. At the end of 2010, the UN Security Council included BiH on its list of potential terrorist threats." In a few cases where terrorism is concerned, parallels are drawn between BiH and events around the world (such as

[36] "Basements of Sarajevo", 15 January 2011, Euroblic, p. 2.

the demonstrations in Egypt and bomb attack on Moscow airport). Thus, following Moscow tragedy, a text was published in "*Nezavisne Novine*" in which people of different profiles, such as Marko Nicović from Serbia, or Dževad Galijašević from BiH, warned the public about terrorism in BiH.[37] In the 2 February edition, while the Egyptian revolution was still ongoing, Galijašević, with the support of colleagues from the expert team for the fight against terrorism, warned of the presence of the Muslim Brotherhood in BiH.[38]

An extraordinary terrorist attack on the USA Embassy in the centre of Sarajevo by Mevlid Jašarević on 28 October 2011 was followed by a flurry of media attention. In her commentary published in *Oslobođenje,* Borka Rudić (the Secretary General of the Association of "BH Journalists") said that media have put on a performance for their audience, especially media from the RS. It seemed as they were waiting for something like this to happen in order to further criticize state institutions, Federation TV, and some privately owned media. To give an example of appropriate reporting, she mentioned the services Sense, TV Sarajevo and TV1.[39] The portal "Sarajevo-X" was amongst the first to report on the attack. "Mevlid Jašarević from Novi Pazar in Serbia shot at the American Embassy in Sarajevo with Kalashnikov at around 15:35. After a half an hour of drama he was shot from a sniper," reads the highlight of the news which was published only six minutes after the shooting started (which was later confirmed to have lasted for a full 40 minutes). Without prejudice and journalist assessments, this portal relayed a factual course of the events including photographs and video recordings.[40] Additionally, the media reported, that after being shot the attacker was taken away by ambulance. The SIPA Spokesperson, Željka Kujundžić, confirmed to "*Srna*" news agency that the person who shot at the American Embassy was arrested. After the initial confusion, additional complications were caused by the fact that the city was blocked off for several hours from the Alta shopping centre as far as hotel Bristol. Some media, mainly those with Serb affiliations, never failed to mention his religious affiliation, i.e. belonging to Wahhabi movement. "*Glas Srpske*" reported that a "Wahhabi shot at the American embassy"[41], while *Kurir* emphasized the fact that this particular Wahhabi was from Novi Pazar.[42] In its 9 November edition, Banja Luka's "*Novi Reporter*" warned readers of the danger of Islamic radicalism. "After Mevlid

37 "Terrorists target BiH", 26 January 2011,Nezavisne novine, p. 4-5.

38 "Muslim brothers present in BiH", 2 February 2011, Nezavisne novine, p. 4.

39 "Who to believe: FTV or your own eyes?", 31 October 2011, Oslobođenje, p. 6-7.

40 www.sarajevo-x.com, "American Embassy in Sarajevo under attack, the attacker wounded", 28 October 2011.

41 www.glassrpske.com, 28 October 2011.

42 "Wahhabi from Pazar shot at the American embassy", 28 October 2011, Kurir, http://www.kurir-info.rs/vesti/vehabija-iz-pazara-pucao-na-ambasadu-sad-u-sarajevu-142218.php.

Jašarević, a 23-year-old Wahhabi, shot at the American Embassy building in Sarajevo, attention was drawn to Islamist groups in BiH and the Western Balkans, seemingly more than before. Perhaps because the target was the territory of the most powerful embassy in BiH, and not some local facility as it was the case in Bugojno, Vitez, Gornja Maoča, Bočinja, not to mention all of the incidents when members of the local population were killed or 'only' intimidated by the radical Islamists."[43] Reporting on the post-festum of the terrorist attacks in Sarajevo, a journalist from "*Slobodna Bosna*" wrote about the "crazy, seemingly meaningless, and frantic" gunfire that Wahhabi fanatic Mevlid Jašarević was firing for an entire hour on the USA embassy building located in centre of Sarajevo. This has opened up a number of problems, security, and political in nature. Question whether Jašarević was a random case or all preconditions for his arrogant demonstration of violence were prepared years before emerged. This event also has sparked an argument at the meeting of the BiH Presidency. As this paper published, Bakir Izetbegović had a fierce argument with Almir Džuvo, director of the Intelligence-Security Agency, who "openly accused a Bosniak member of the BiH Presidency for attempting to minimize the fact that Mevlid Jašarević, too, as terrorists from Bugojno, was a member of the Wahhabi movement. As a real son of his father", further writes the paper, "Izetbegović junior throughout the entire meeting was emphasizing that Jašarević was an "ordinary" criminal, referring to his police record from Austria, where in 2005 he was sentenced to three years of imprisonment, for robbing 100.000 Euros".[44] Mostar's "*Dnevni list*" came hard on Party for Democratic Action (SDA) accusing it for being on the way to be declared a "criminal organization" and guilty for flourishing of terrorism and radicalism in BiH.[45] "*Dnevni list*" stands in defence of Islamic Community in BiH, where certain media correlated them with this terrorist attack (because it tolerates existence and activities of radical Islamic groups in BiH), so for this purpose an interview with Dr. Zuhdija Adilović, Dean of the Islamic Pedagogical Faculty in Zenica was published.[46] In the interview for "*Oslobođenje*" done by Vildana Selimbegović, a Bosniak member of the BiH Presidency Bakir Izetbegović appeals to the highest state authorities to react, and preventively act to avoid such situations.[47]

[43] "The frequency of isolated incidents", 9 November 2011, Novi reporter, p. 14-16.

[44] "Fierce arguments in the BiH Presidency", 3 November 2011, Slobodna Bosna, p. 16-19.

[45] "Criminal past of the SDA: They brought Mujahidin's, stole dollars, and ordered murders", 4 November 2011, Dnevni list, p. 6-7.

[46] "ICBiH cannot solve the problem of tekfir-ideology on behalf of the state", 5 and 6 November 2011, Dnevni avaz, addition Week, p. 6-7.

[47] "A crime in Sarajevo demands a strong response from the BiH state", 8 November 2011, Oslobođenje, p. 2-3.

The first wave of the reaction on the terrorist attack was followed with some reports that were at the verge of being bizarre, such as those that reported that after his mother visited and "criticized" him in prison, Jašarević cried.[48]

It is interesting that, daily newspapers and web portals, when reporting on crimes and security issues in general, are dominated by informative-narrative headlines that are usually most appropriate for informative reporting. Other forms of headlines used were those of sensationalistic nature. In order to attract readers, daily papers and portals frequently use sensationalistic headlines and, generally speaking, use sensationalistic way of reporting. Thus, "*Dnevni Avaz*" frequently uses such headlines-"A sister of a monster from Hlapčević testified: A day before the massacre I saw his face distorted, I sought help from the police and doctors"[49], "A frantic junky demolished a corner shop with a pick and went wild in the police"[50], or "Struck his uncle with the Swiss knife in the back"[51], with frequent use of jargons and argoism (a car slashed women, a cistern grinded a car and the driver, junky went wild in the police, "Sieved Emir Jašarspahić Dosa"). There were few examples of sensationalistic headlines reported in "*Glas Srpske*" -"Powerless old woman brutally raped"[52], but also fictional-"Bakir seeks Suzana's head"[53]. There were also emotionally toned headlines, such as the one of Sanja Vlaisavljević's column-"Traumatized confession of a citizen in fear of her life"-in which the author describes her unpleasant Sarajevo experience (verbal insults, physical attack against her Centre for Culture of Dialogue), and somewhat ironically compares herself with Slobodan Vasković who immediately before that claimed that his life in Banja Luka and RS was in danger. Some headlines were designed in a way that they revealed certain peculiarity, such as-"He stole a car and smoked meat".[54] Also in "*Večernji list*" we found examples of sensationalistic headlines, which suggest the uncertainty of citizens in general or exaggeration on some events, for example-"Horror in Brodska Posavina: Explosions and fire in Bosanski Brod oil refinery: Citizens of Brod were a seconds apart from a disaster", although the article gives data that confirms the seriousness of the situation in the oil refinery, words such as "disaster" and "horror" in the headlines have blown the event out of

48 "Mevlid Jašarević cried because his mother "criticized" him?", www.24sata.hr (accessed on 03.01.2012);
"Mevlid Jašarević cried before his mother", www.nezavisne.com (accessed on 03.01.2012).

49 "A sister of a monster from Hlapčević testified": A day before the massacre I saw his face distorted, I sought help from the police and doctors", 11 February 2011, Dnevni avaz.

50 "Frantic junky demolished a corner shop with a pick and went wiled in the police" 5 February 2011, Dnevni avaz,.

51 "Struck his uncle with the Swiss knife in the back" 8 February 2011, Dnevni avaz, p. 15.

52 "Powerless old woman brutally raped", 3 February 2011, Glas Srpske .

53 "Bakir seeks Suzana's head", 10 February 2011, Glas Srpske.

54 "Stole a car and smoked meat", 2 February 2011, Glas Srpske.

proportion.[55] Illustrative is an article titled-"Bosnian Fritzl and stepmother for seven years have starved and abused two girls" which resembles the case of Jozef Fritzl from Austria.[56] Some articles use very questionable vocabulary that borders with sensationalism, even gruesomeness: "She killed her husband with rakes, while a lover killed her with Yule-log".[57] On the other hand, a number of fictional headlines were observed in daily "*Oslobođenje*". Such include those that used unusual way of describing criminal activities ("They borrowed fuel from the dredger"[58], "Operated in weekend houses"[59]), quoting someone else's statements or messages ("Meša, the game is over"[60]), or descriptive, using the metaphors, to describe the perpetrators of crime ("Septuplets from Živinice remain behind the bars"[61]).

In 80 percent of the cases the daily newspapers and portals used only one source of information, while the lowest percentage with a single source was recorded in "*Nezavisne novine*"-57 percent. Also, in the central television news broadcast, the majority of content was with a single source (on FTV and TVSA more that a half). Another observation of the Mediaplan analytic team was that even in the texts with more sources, in over 70% of cases the sources are uniform, meaning that they give identical picture and interpretation of the event that is the subject of the report. The only media that in this period had a greater number of competing sources was 24sata.info. As for the sources themselves, the most common source of information are spokespersons or press offices of the entity ministries of interior, cantonal police departments or prosecutor offices, lead by the BiH Prosecutor's Office. To a lesser extent used citizens, police inspectors, various experts (psychologists, criminologists, experts), and unanimous sources were used as sources.

The articles on organized crime were very common in magazines. One of the most common topics was the investigation and trial against the "criminal organization of Zijad Turković". "All crimes of Zijad Zika Turković" was a headline of an article published in "*Slobodna Bosna*" in early January, which mentioned the murders backed by this group, with clearly negative attitude towards Turković ("Coldblooded murderer Turković at the time, skilfully using the long-standing friendship with Tolić,

55 "Horror in Brodska Posavina: Explosions and fire in Bosanski Brod oil refinery: Citizens of Brod were a seconds apart from a disaster", 29 January 2011, Večernji list, p. 2.

56 "Bosnian Fritzl and stepmother for seven years have starved and abused two girls", 30 January 2011, Večernji list, p. 2.

57 "Killed her husband with rakes, while a lover killed her with Yule-log", 12 January 2011, Večernji list, p. 20.

58 "They borrowed fuel from the dredger" 11 February 2011, Oslobođenje.

59 "Operated in weekend houses", 29 January 2011, Oslobođenje.

60 "Meša, the game is over", 25 January 2011, Oslobođenje.

61 "Septuplets from Živinice remains behind the bars", 5 January 2011, Oslobođenje.

was convincing a desperate woman, how he was trying to locate her husband in any possible way, whose execution he ordered just a few days earlier").[62] In January Turković is mentioned again in this magazine, while reporting on how the BiH Prosecutor's Office raised an indictment against Turković as an organizer of the International criminal group. Negative attitude can be characterized partly from the article- "…indicative is a matrix by which all "business" associates and people of trust of Zijad Turković, sooner or later, end their career with a bullet in a nape or as dismembered bodies buried in Bosnian cliffs".[63]

6. COURT PROCESSES AND JUDICIARY

The area of judiciary, right to fair trial and equality before the law are topics where the media in Bosnia and Herzegovina are frequently involved, so that at least one of these topics can be read daily in the media. In addition to regular reports from the trials in The Hague, journalists cover trials of politicians, criminals, professors, even layers and judges, which meet the public interest in Bosnia and Herzegovina, and are often the reason for purchasing certain newspapers or watching a programme to an end.

Although the war finished 16 years ago, Bosnia and Herzegovina still faces the problem of large number of unresolved war crimes, therefore the question of guilt and responsibility are often the focus of the attention of citizens. Often the news on new indictment and initiating new processes against war crimes suspects cause great interest of the audience. Thus they are followed in details, especially in the daily media.

Usually unable to resist unprofessional siding, the BH media commenting on such cases usually falls into trap of ethno-national groupings. Guided by the principles of distinction in the trial where the accused are "ours" media are becoming benevolent in reporting, while in circumstances where the accused are "theirs" unprofessionally use condemnation before the official court decision. The audience never or rarely raises their voice against this kind of media reporting, and it can be assumed that this is because they share the opinion with the preferred media, and therefore do not question its professionalism. It seems reasonable to believe that reasons for siding to one or another side in media reporting on war crimes trials is of the political nature and ultimately strengthens the populist ideas of belonging and loyalty to "his" side and "his" people.

One illustrative case occurred in late November 2011, when upon the order of the State Prosecutor arrested were eight men accused of committing war crimes in Hadžići, near by Sarajevo. A few days later, during the session of the Sarajevo

62 "All crimes of Zijad Zika Turković", 6 January 2011, Slobodna Bosna.

63 "Turković under investigation for the murders of Torlaković and Ćelo Delalić", 27 January 2011, Slobodna Bosna.

Cantonal Assembly majority of delegates condemned the way and process of arresting the accused and authorized one of the ministries to financial help the defence attorneys by determining the amount of money that will be transferred from the budget. "*Dnevni avaz*" published the report on the arrest[64] on two prime pages, conveying that in Hadžići there is a "shock and disbelief among population due to equalization of quilt". The journalists from Avaz spoke to veteran's associations and conveyed that they believe that this was a political game. Given the fact that the accused are Bosniaks, this newspaper, known for giving unequivocal support to this constituent people in BiH, even a day after, continues with defending the accused.[65] Following the developments in connection to this event and summing them up in her commentary[66], a journalist from *Avaz* concluded that the "a person that kicked in a butt a prisoner in Silos was arrested, and one that crushed skulls of Bosniaks in Bratunac was not", thinking that those who did not committee crimes are held responsible, and those who without a doubt committed crimes are not even arrested. In the same edition, *Avaz*, on two different pages and through two different journalistic forms has dealt with the topic, and in both cases stood on the side of the arrested[67] guided by the thesis that one of *Avaz* interlocutors said: "Individual crimes should be punished, but priority must be given to mass destruction that happened to us, Bosniaks."

Also "*Oslobođenje*", in days after the arrest of eight accused, gave a lot of space in the papers for interpretations of the event and interviews with individuals that believed that this was unjust. Thus, on additional pages of this paper[68] over a whole page published was an interview with the President of the Union of the brigade associations of the 1st Corp of ARBiH. The article was titled with dramatic overtone "If they continue to arrest, we will respond radically", in which the interlocutor said that it was necessary to help citizens who are arrested on suspicion of having committed war crimes, because the government in the other entity-Republika Srpska did the same, and criminals should be treated equally in both entities. The attitude towards giving money for those accused of war crimes in Hadžići prevailed in the statements of those that supported the decision of the cantonal authorities, and which was broadcasted by media in the Federation.

However, in media there was also space for the reactions of individuals, equally for the delegates from that very same Assembly, as well as directors, journalists and writers that were not sharing the opinion with majority and were not in support of financing

64 "Wartime leaders from Hadžići arrested for crimes in "Silos"", 23 November 2011, Dnevni avaz, p. 2 and 3.

65 "Defence argues that crime in Silos was engineered", 24 November 2011, Dnevni avaz, p. 8 and 9

66 "Crime and punishment", 27 November 2011, Dnevni avaz, p. 3.

67 "Why real criminals are not arrested?", 27 November , Dnevni avaz, p. 5.

68 "If they continue to arrest, we will respond radically", addition "Pogledi", p. 26.

the defence of those accused for war crimes. Their comments were published mainly in media that in BiH are considered civil, and less dependent on ruling parties and adherence to one national option, so the position of a journalist Nidžara Ahmetašević, who for years was monitoring war crimes trials in The Hague, could be heard and read on Radio Free Europe[69] and portals such as radiosarajevo.ba[70], which is known for texts that criticize official conduct of the authorities and politicians in general. Similarly, Sarajevo's "*Oslobođenje*" published a text of a writer Boris Dežulović[71] in which the commentator ironically refers to the authority's decision governed by the fact that the arrested belong to a national group that represents the majority. "*Oslobođenje*" conveyed a reaction of a director Dino Mustafić[72] who called the government decision "disgraceful and manipulative", explaining that "immoral and irresponsible lack of social conscience and consciences towards the importance of truth and investigations conducted against the war crimes suspects, are continuation of evil that humiliates victims and deepens the gap between ethnic communities". Similar to this opinion, editor-in-chief of a weekly magazine "*Slobodna Bosna*", Senad Avdić, in the text[73] „Oh, Silos, Silos, what happened-it happened", wanders, without finding a reasonable explanation at the end of the text: "Why, why should the taxpayers of the Old City pay the judiciary wages to the attorneys of some savages from Hadžići who "beyond reasonable doubt" in the camp "Silos"- Tarčin held detainees?".

"*Dnevni list*", joined daily reporting on these events and reported on the arrest of eight Bosniaks in the context of evidence that Bosniaks committed "monstrous" crimes against Croats too, for whose prosecution there was neither political will nor courage,[74]. Also, Banja Luka's "*Reporter*" reported on the event[75]. This weekly, in the article on four pages reminds of the existence of the official report on the events in Silos from 2005, states brief testimonies of those that survived, with a brief description of the murders. The article quotes comments of the victims in which they say that the main criminals were not arrested.

Having in mind the main characteristics of each media reporting on the aforementioned events, one can say that they were reporting as expected, in accordance

69 Source: http://www.slobodnaevropa.org/content/osuda_pomoci_osumnjicenima_za_zlocine_u_logoru_silos/24410443.html (accessed on 04.01.2012).

70 Source: http://www.radiosarajevo.ba/novost/70830/nidzara-ahmetasevic-usudi-se-usprotivise (accessed on 15.01. 2012).

71 "Kangaroo court", Oslobođenje, 1 December 2011, p. 27.

72 "Love your criminal neighbour", Oslobođenje, 5 December 2011, p. 11.

73 "Oh Silos, Silos, what happened-it happened", Slobodna Bosna, 8 December 2011, p. 6 and 7.

74 "The processing of war crimes still goes against small Bosniak "fish"", Dnevni list, 16 December 2011, p. 12 and 13.

75 "A cry behind the dungeon walls", Reporter, 30 November 2011, p. 21.

with their editorial policies, which almost in all cases they indulged to the preferred political options and trends. As for daily reporting, one can say that it generally stays in the field of neutrality, especially when it comes to just news and short reports. However, when it comes to comments, the way of writing is clearly different between newspapers that come from the part of the country to which convicts belong and the one to whom victims belong.

In addition to war crimes, from the year 2000 media attention was pointed out to trials of politicians, first trials for abuse of office where a special place in the newspapers was left for proceedings against Dragan Čović, a politician from Croat. Emphasizing the ethnicity for the purpose of this research is intentional due to the fact that this characteristic had influenced the writing of some, especially daily newspapers, on this politician and his appearance before the court. During 2011 Dragan Čović was the main actor of court proceedings on two occasions: first time by mid year when he was acquitted of charges for illegal privatization of Eronet, one of the three state telecommunication operators, and the second time, in a continuation of a trial in which Čović was accused for abuse of office in the so-called "Lijanović case".

When reporting on these events Mostar's "*Dnevni list*", which bears a prefix of Croat orientated daily, was the only newspaper that, in its reports, revealed bias[76]. The journalist in an article sides with the accused Čović, putting in the focus, apart from the main news that the accused was acquitted, characterization that a judge who explained that due to the formal deficiencies of the indictment it was not possible to make a judgment, in reality has mocked the indictment that was raised against Čović.

The topic of the independence of the judiciary is very common in BiH media. Apart from factual reporting from certain trials, journalists often comment the ways on how certain processes are conducted (like the one against Zijad Turković, The Hague indicties Radovan Karadžić and Ratko Mladić), and publicly emphasize the questionability of the independent judiciary and prosecutor's offices in the country. Thus, "*Dnevni list*" in early December published an article[77] in which it claims that politicians and judges interfere with the work of the State Prosecutor's Office and destroy its dignity, and by doing so they go "hand in hand with those advocating for the abolishment of the BiH Court and Prosecutor's Office".

In addition to the aforementioned, a case of the Tuzla Cantonal prosecutor Dijana Milić, who has worked on a case of sex-affair in which professors of the Law Faculty participated, attracted a lot of media attention. After prosecutor Milić took over the investigation against the suspects, media began with detailed monitoring of her work. It was this case where it became evident how media in BiH can be hypocritical and unfair. When reporting on the work of the prosecutor, the Federation

[76] "Čović acquitted, the judge mocked the indictment", Dnevni list, 28 June 2011, p. 6.

[77] "Bosniak elites destroy local judiciary", 5 December 2011, Dnevni list, p. 9.

television (FTV), in an attempt to get any statement from Dijana Milić, often used harsh qualifications in describing her work. So on this television, on Sunday 8 May 2011 in a report journalist claimed that the prosecutor was hiding the evidence in sex-affair on Tuzla Law Faculty, and because of her they will be collected with a lot of deficiencies, and because of her negligence the case will fall in the court. In a dramatic way the journalist describes that "more than conveniently hiding her eyes, prosecutor Dijana Milić hides the facts that could bring the professors of the Law faculty, certain attorneys, prosecutors and judges behind the bars", and towards the end of the report journalist accused her for stalling the investigation.

This biased and critical approach which is clearly unacceptable in the profession of journalism was used by one of the most visited portals in BiH žurnal.info. In their text from 7 June 2011, a journalist wrote that a prosecutor plays a victim, in fact-she is obstructing the investigation.

The set of circumstances led to the indictment against prosecutor Milić in April 2011, based on the charges of soliciting a witness to change her statement that she gave on the case of sexual abuse in the process of sex-affair. Shortly after, Dijana Milić got ill and died in early August. Daily media, including those that previously used to condemn Milić, followed this events with undivided attention, reporting neutrally and mainly short and concise, in a form of news, or report, not commenting the procedure of raising the indictment and events that followed. Media that, during her work, used to criticize and condemn her, sporadically published few articles where the prosecutor was mentioned in a positive context, and those that were supporting her all the times, openly criticised their colleagues. Thus, weekly magazines such as "*Dani*" and "*Slobodna Bosna*", through the comments of their journalists, gave support to the prosecutor through the form of a comment and personal reflection of the events. "*Slobodna Bosna*"[78] published an article where the author called the process against the prosecutor as "amateur-constructed", and her work "consistent with the profession and Prosecutor's honour". After her death, media referred to these events with a number of fiction titles[79] that directly or through metaphors speak about injustice that late Dijana Milić endured through.

[78] "Illness as a metaphor; diagnosis – mark it as failed", Slobodna Bosna, 04 August 2011, p. 6 and 7.

[79] "Farewell Dijana; honour is honour, but power is power", Slobodna Bosna, 12 August 2011; http://www.poskok.info/index.php?option=com_content&view=article&id=29346:smrt-bosanskohercegovake-tuiteljice-ovdje-se-i-umire-da-bi-se-ivjelo&catid=133:old-school-new-rules&Itemid=175; "Honestly speaking – she was murdered"; (accessed on 14.01.2012); "Dijana Milić was murdered", Dani, 12 August 2011, p. 18 and 19.

7. FREEDOM OF THOUGHT, CONSCIOUS, AND RELIGION

No event during the 2011 has raised so much polemics or attracted such media attention as an attempt of Canton Sarajevo Minister of education Emir Suljagić to have a religious teaching subject graded in descriptive terms in both primary and secondary schools in the Canton, and as such not having it included in the final average score. The decision, in a form of an Instruction that was sent out on 22 April, was supposed to be implemented retroactively, meaning used with grades that pupils have been given throughout the school year that was not finished as of yet. Explaining his decision, the Minister called upon the Article 9 of the Framework Law on primary and secondary school education, which was being implemented "selectively", because while "the first three paragraphs of the Article pertaining to the rights of children to attend religion teaching in accordance with their parents wishes", the fourth paragraph was omitted, and equally important one according to the Minister, "which prescribes that those children who do not attend the class shall not be discriminated upon, was simply omitted. As Suljagić explained, and "*Oslobođjenje*", a friendly newspaper quoted, this Instruction is "about values, but also about an implementation of the Law and commitments that this state has to all its citizens, including children, to ensure equality before laws."[80]

While the democratically orientated institutions, a great number of intellectuals, NGOs, and the media close to the Ministers' Party SDP BiH supported Minister's decision, strong reactions came from the institution of Islamic Community, its affiliate media, and radical religious officials and academics.

The first protesting reactions to the decision followed at the Cantonal Assembly session by an SDA delegate. Elmedin Konaković, SDA delegate, unhappy with the Minister's explanation, emphasized that he does not understand the decision and that "every pupil has the right to say do they or do they not wish to attend the class. If this instruction was sent out because of the normative grades, which are in most cases positive, then other subject with such grade enhancing pattern should be considered as well. Maybe we should then consider discontinuing the grading of physical subject as well ", said Konaković.[81] The Riyasat of Islamic Community and BiH Office of the Archbishop soon reacted with their statements, with making an ultimatum for the decision withdrawal. In their statement they say that the Minister's decision was taken without a valid argument, that it halted a social verification of school activity in that subject and hence directly harmed all attendees of religion teaching in Canton Sarajevo, and the efforts made in the class up to now.[82] Minister Suljagić, in his authors'

[80] "No division of children to the equal and 'more equal'", 30 April 2011, Oslobođenje, p. 5

[81] "Equally through education" 28 April 2011, Oslobođenje, p. 22.

[82] "IC Rijaset and Archbishop on grading of religious teaching", published on a web portal Radio

column published by "*Oslobođenje*", and copied by numerous portals, emphasized how he shall not agree to ultimatums and shall not withdraw his decision. "The ultimate language used in the joint letter of the Islamic Community and Catholic Church shows that religious communities see the state as a tool to making their wishes come true. This is perhaps where we differ: I see the state as a protection mechanism of the public interest and the tax payer and I cannot be impressed by a cassock or other clerical clothing to the extent that I allow anyone to make the religious teaching a polygon for battling their imaginary ideological opponents. As long as I am doing the job that I am doing, I am not obligated to report to any religious authority. Furthermore, I represent a political authority, to some extent and in some part of the country and as such I am obligated to the people only. And the people will voice their opinion in three and a half years, about this decision as well. That is namely how democracy functions. And secondly, does one actually need any consultations if, and it is, an apparent discrimination of children in question?" the Minister wrote among other things.[83]

The media, who at the time when the Minister brought the decision, were his fierce critics, such as "*Dnevni avaz*", were providing news space to everyone trying to cancel this decision. In that respect, Bilal Hasanović, a professor at the Faculty of Islamic Pedagogy in Zenica, warned that in this way "Suljagić has seriously jeopardized the status of Religion as a school subject and discriminated against those pupils who attend it", adding also how "very strange, if not pretentious, was Minister's explanation that 'in this way, pupils who attend the class but also those who do not, shall not be placed in either favourable or unfavourable position'".[84] A President of the Assembly of the Islamic community in BiH Safet Softić, in his interview to "*Dnevni avaz*", stated that the aim of Minister's Suljagić' decision was to "extract religion from our educational system through the back door". He substantiated that with a fact that the Federal Minister of education Damir Mašić, a Party colleague of Suljagić, "had called all other cantonal ministers in FBiH to follow Suljagic's example", making it clear to Softić that this was a "coordinated action of SDP in the whole of FBiH". To him it was "crucial that when the decision was being made, consultations with religious communities have been completely circumvented, and Suljagić was obligated to consult them and the parents who "by their decision send kids to attend the class."[85]

Sarajevo, available at http://www.radiosarajevo.ba/novost/51978/rijaset-iz-i-nadbiskupija-o-ocjenjivanju-vjeronauke.

83 "Minister Suljagić to the Reis: I do not agree to ultimatums", published on a web portal www.radiosarajevo.ba, 11 May 2011, available at http://www.radiosarajevo.ba/novost/52947/ministar-suljagic-reisu-ne-pristajem-na-ultimatume-.

84 "Message to the children that it is not desirable to study religion", 30 April 2011, published in Dnevni avaz, p. 14.

85 "The aim is to lead the religion out the back door out of our educational system", 13 May 2011, Dnevni avaz, p. 11.

Extremely active during this time was a web page the Riyasat of Islamic Community BiH (www.rijaset.ba), which tried daily to ridicule the decision of Minister Suljagić, not choosing means for the fight, discrediting his personality, his family, and his private life. "Cuckoo egg of Minister Suljagić" (29 April), "12 reasons for resignation of Minister Emir Suljagić and changing his decision" (6 May), "No dogs and religious officials allowed in the Cantonal Government" (11 May), "Bosniak Youth from Denmark: Open letter to the Minister" (16 May), "Letter of protest from the parents to Minister Suljagić" (18 May), "Does Minister know what he brought: a decision or an instruction?" (19 May), "60 Minutes, or human stupidity is indeed limitless" (24 May), are just few of the article titles published on this site. The pinnacle of this media lynching of Minister Suljagic was a text of Muhamed Velić, an imam of the Medglis of the Islamic Community Sarajevo, who called out the Islamic Community of BiH to issue a fatwa to fight Islamophobia and people like Minister Suljagić. Velić suggested that IC BiH introduce a principle of a 50 or 100 year lasting fatwa, which would clearly mean that certain names would be placed on the list of "shame" for their hatred against Islam. "Such people would be denied all religious rituals that a Muslim deserves or seeks for", wrote Velić, and as an example he named Minister Suljagić, emphasizing, "that according to this fatwa, neither his children or grandchildren could prepare his funeral 'because of the evil he brought to Islam and Muslims'". This commentary was published in a column on 16 May, on the official site of IC BIH Rijaset, and afterwards withdrawn upon author's request[86], yet it can still be found on numerous portals and media that pass it on.[87] According to Banja Luka "*Nezavisne novine*" Ekrem Tucaković, editor of the web portal of the Riyasat IC BiH, this column does not reflect the opinion of Riyasat, and that Velić has the right to express his personal views. Tucaković added that he does not see the hate speech in Velić column, and that various texts from other media are being published on the Riyasat official web site.[88]

"*Dnevni avaz*" published a sermon from a Sarajevo Mufti's office that said–"Clearly religious teaching in school is disputable only where Muslims are a majority. The message to Muslims is: where you are a minority there are no conditions set for your religion, and where you are a majority you cannot be allowed to learn about your faith".[89]

The fiercest reaction to Minister's decision and some kind of culmination of this debate, came from Reis Mustafa Cerić, who used his speech in front of 30.000 pilgrims

[86] Author gives an explanation in his other text also at web portal of the Riyasat, < http://www.rijaset.ba/index.php?option=com_content&view=article&id=11110:graanin-opasnih-namjera> (accessed in January 2012).

[87] "A Riyasat fatwa against the Minister" (original title is "Fatwa as a principle of institutional memory"), available at: http://www.depo.ba/vijest/41472, (accessed in January 2012).

[88] "Denying a funeral to shameful people", 17 May 2011, web portal of Nezavisne novine, < http://www.nezavisne.com/novosti/bih/Uskratiti-dzenazu-sramnim-ljudima-89779.html>

[89] " We do not accept that our religion gets killed in school", 14 May 2011, Dnevni avaz, p. 11.

at Blagaj Tekija, at river Buna, to send a message to Sarajevo politicians to withdraw the decision or they would have a "Sarajevo summer". This open call for lynching, the religious leader substantiated, according to the media, with an emotional speech fiercely pointing at the fatality of this decision of not making this grading counted into the final average grade in schools. "I hereby call Minister Suljagić to change the decision on religious teaching. I call him to do that or to resign, to give place to someone who does not hate Muslims and Islam. Only over Bosniak some kind of discipline is being implemented and that is because we are asleep, because our politicians have left us to fight for our rights by ourselves. None of Bosniak politicians are supposed to even take notice, let alone come out and say something. Shame on them! They left their people behind and betrayed it! In Western Mostar or Banja Luka no one even dares to touch the religious teaching", was a part of Reis speech, which was just an overture into even fiercer attacks on Minister and his decision. "Religious teaching is a natural right that no one can give or take away", added Reis, and continued: "Those public schools are our schools too. They are not Minister Suljagić's patrimony. And religious teaching is to be in those schools! I am sending them a message, if they still pursue the issue of religious teaching, which means they would move onto the mosques, medresa soon after, into our homes, they shall have "Sarajevo summer" on the streets of BiH capital!".[90]

Numerous institutions and individuals supported Minister Suljagić, expressing their views publicly in media and different portals. Minister received support from the Cantonal Board of Naša stranka, PEN Centre BiH, ACIPS, Helsinki Committee, Association of citizens Zašto ne, and from Emir Imamović, Arijana Saračević, Marko Vešović, etc. Political weekly magazine "Dani" in their issue on 27 May 2011 published a large interview with Minister Suljagić, where he explained his decision, his views, sharing with the readers all the terror inflicted upon him from the "defenders" of religious teaching, and constant pressure he was exposed to daily. The interview author is his former colleague and as stated in the introduction - "a friend", Faruk Borić.[91]

Some reactions had elements of comedy and satire such as a text published on the portal Protest.ba which contained a following appeal–"Let us bring religious teaching into shopping malls and hire enough teachers, who will be standing at the (usually) automatic moveable door at the entrance to each mall in Sarajevo and wider, and spread knowledge and findings of religious content; to have the visitors of these crucial institutions of today aware in each moment of the sins they were about to commit, perhaps in their ignorance, and by doing so fail to win their ticket into the gardens of heaven."[92]

[90] "If they mess with religious teaching, they shall have a 'Sarajevo summer'", 15 May 2011, Dnevni avaz, p. 8.

[91] "I am ready to forgive insults", 27 May 2011, Dani, p. 17-19.

[92] "Petition: Let us bring religious teaching into shopping malls", published on a web portal www.protest.ba, 13 May, 2011.

Along with the web site of Riyasat IC BiH, reactions against Minister's decision came from the Association of religious teachers of Tuzla Canton, Inter-religion Council of BiH, and from numerous persons close to the Islamic Community.

Those who did not publicly express their pro and con views, but rather aimed at making as objective judgement as possible regarding Minister's decision and reactions to it, were some intellectuals declared as religious, rather men of the clergy or professors in universities. Thus, we have an example of Friar Petar Jeleč ("Schools are not the place for religious teaching") or of a professor of Faculty of Islamic science in Sarajevo Dževad Hodžić ("Two sides that complement each other").

The media not directly tied to either of the opposing blocks regarding religious teaching have placed their focus on some other issues. For example, "*Nezavisne novine*" from Banja Luka, reported how "an issue of grading religious teaching in primary and secondary schools undermined the unity of Canton Sarajevo Government that consisted of Ministers from SDA and SDP BiH". The author of the article concluded this based on "completely opposite statements coming from SDA and SDP BiH regarding the debate and the decision of the Cantonal ministry".[93]

"*Novi reporter*" magazine from Banja Luka has in a way expressed support to Suljagić and his decision, in their issue dated 1 June. The text here begins with the following words: "We did not rush. We waited for all the media, journalist associations, governmental and non-governmental organizations, representatives of religious communities to express their views, say what they had to say, spend all their poisonous arrows and rhetoric. We decided to write now, after a month, as long as it lasted this unseen hunt on Minister of education of Canton Sarajevo Emir Suljagić, who was informed by IC that fatwa may be issued on him, so when he dies he would not be buried by Islamic customs. Nothing similar has happened since 1989 when Salman Rushdie, an Indian novelist has earned a death fatwa from Ayatollah Khomeini because of his novel "Satanic verses" and was forced to hide for a full decade in Great Britain– until Iranian President at the time Mohammad Khatami withdrew the fatwa in 1998".[94]

The "*Slobodna Bosna*" weekly analyzed in detail "the case of religious teaching" in their issue dated 26 May, not taking either side explicitly and clearly criticizing both. Most objections concerning the Minister Suljagić's block, this magazine places on the absent and delayed reaction and public support from his political party SDP. A part of the text said that "Minister Suljagić also publicly thanked the SDA leader Sulejman Tihić, who defended him from the aggressive speeches of Reis Cerić far more than his own Party Chief Lagumdžija – precisely what numerous Sarajevo intellectuals, professors, actors, directors, reporters, Naša stranka members, NGOs, governmental organizations, citizens initiatives, Helsinki Human rights committee have been doing all

[93] "Religious teaching divided SDA and SDP BiH", 20 May 2011, Nezavisne novine, p. 2.

[94] "Fatwa for Suljagić's 'satanic' instruction", 1June 2011, Novi reporter, p. 24-26.

the time…all before SDP".[95] Web portal Radio Sarajevo had systematically collected a large number of texts and reactions to this subject, and published them as a "Dossier of religious teaching".[96]

In the journalist circles on 19 May news spread throughout that Minister Suljagić might resign due to the pressure and lack of support from his Party. Namely, during the entire hunt, only SDP municipal Board in Stolac voiced their support, while the very top of his Party stayed mostly "mute", up until 19 May when the Party announced support to its Minister.[97] Simultaneously with SDP declaration, comes a support from 31 civil society organization: Religious teaching: 31 organization and NGOs in an open letter. Although there were indications that the Minister would resign, he did not, but he has withdrawn his decision after the meeting with President of SDP Zlatko Lagumdžija and Cantonal Prime Minister Fikret Musić.

After the summer break, a new school year began with a bit different approach, the status of religious teaching remained unchanged, and alternative subjects were introduced. The Ministry of education and science Canton Sarajevo had sent out a letter to all schools in the Canton, giving the pupils a choice between religious teaching and an alternative subject, or neither. "The point is that pupils' parents may choose religious teaching, alternative subject – Society/Culture/Religion (primary school), rather Culture of religions (secondary school) or may not choose either of the two. Those are three options", as Ministry confirmed to *Fena agency*.[98]

8. FREEDOM OF EXPRESSION / FREEDOM OF THE MEDIA

8.1. Freedom of the media

Freedom of the media and respect for them in BiH are at a very low level, and the situation is getting worse from year to year. The media serve as means of promotion and mutual fighting of ethnic-political elites, while the journalists become victims of verbal abuse, media, and physical attacks, open threats (often death threats). Additional concern is the fact that certain representatives of local authorities, police, prominent members of religious communities, parliament members and business persons, are also involved in attacks on the journalists.

95 "Instead of Valter, comes back Reis", 26 May 2011, Slobodna Bosna, p. 16-19.

96 http://www.radiosarajevo.ba/novost/53380/dossier-vjeronauka (accessed in January 2012)

97 "Condemning attacks on personality of Minister Emir Suljagić", published on portal www.sdp.ba , available at http://www.sdp.ba/novost/12854/Osuda-napada-na-licnost-ministra-dr.-Emira-Suljagica (accessed in January 2012).

98 Published on Radio Sarajevo portal, http://www.radiosarajevo.ba/novost/62381/vjeronauka-alternativni-predmet-ili-nista-od-toga-, 6 September 2011 (accessed in January 2012).

While analyzing the legislative framework in BiH pertaining to the media, and established after the war, it seems that the freedom of expression and freedom of the media, on paper, are firmly guaranteed and protected. Yet, in practice, neither media nor journalists have been adequately protected from political pressures, especially on local level. In addition, particularly problematic is relation and interference of media owners in their editorial politics, and very clear and explicit connection between media and certain political options. Such situation results in bringing back the hate speech into the media space, not only in private but in public media as well, which should serve the public and all citizens of BiH. We witness breaches of professional and ethic standards on daily basis, media self-censorship, and reporting serving exclusively the interests of specific political, religious, national, or economic lobby.[99]

Court's central registry is still not functioning in BiH; based on which one could get an exact number of court proceedings against journalists, rather, exactly what kind of "acts" are the journalists being sued for. One of the most frequent reasons for judiciary persecution of journalists is "inflicting of emotional pain", i.e. slander. Slander has been decriminalized in BH legislation, and thus regulated through entity laws of protection against slander and identical law in Brčko District. One of the biggest dilemmas in the implementation of the law is the question whether the person interviewed is considered the author of the statement and can they be held responsible for it, considering journalists, editor-in-chief and other professionals in some other ways effectively in fact controlled the contents of an interview.[100]

The research shows that there are a lot of unsolved cases at BH courts pertaining to this right, and reasons for that as stated are that they are time-consuming, that they are taken against individuals, that courts decline such law suits, rather that judges themselves are not specialized enough to lead such cases and thus make fair judgements, which would be in accordance with the national and international legislation.

[99] In such situation, the key media organizations in B&H, advocating media freedoms and rights of journalists, like BH Press Council and Association "BH Journalists", were active during the 2011 in developing mechanisms to monitor media freedoms and their implementation. The researching methodology and evaluation mechanisms for the levels of media freedoms, have been done according to the Indicators of media freedom evaluation, the European Council members (Decision 1636 (2008)). This decision stipulated analysis of media legislation and laws implementation, followed by interviews with media and legal experts, interviews with media owners and journalists, politicians, authorities in BH, and surveys of public opinion through focus groups in BH. The second part of the research, pertaining to the empirically based "report in a shadow" was still running when this analysis reached its final phase (January 2012). The idea was to have the "shadow report" continuously, year after year, along with analysis of the context and actual situation of media freedoms in BH, contain also a recommendation for the local authority, public institutions and the media community on how to improve the legislation, journalist working conditions and initiate an active role of the authorities in promoting media freedoms.

[100] In legislative and judicial practice of other European countries mostly there is no such dilemma, it is considered that one who makes a statement is primarily responsible, and possibly after those who perform functions in the media that published a particular statement.

An illustrative example of a court ruling not yet in effect, is the one of the Magistrate of Sarajevo that ordered "*Slobodna Bosna*" magazine to pay for a "slander" 3000 KM each to the three high-positioned politicians, which shows that state officials are more protected in relation to journalists. The fact that "*Slobodna Bosna*" published a photograph of these politicians with their families, a photograph taken from Facebook social network (posted by one of their wives) shows not only elementary ignorance of the law, ignorance of international legal acts on freedom of expression, but shows also a privileged position of politicians in comparison to ordinary citizens.

Linked with the law suits against journalists is also their right not to reveal their sources. Although the right to protect the anonymity of a source is not explicitly stated in the Article 10 of the European Convention, it is covered by the laws in FBiH and RS, and according to which a journalist and any other physical person professionally involved in journalism, when given an information from a confidential source, has the right not to disclose the source's identity. This right is also ensured by the Code on radio and television broadcasting, which transparently stated that if a journalist does not wish to reveal the source, he/she is not compelled to do so. A research made by Press Council of BiH and Association "BH journalists" showed that most who were surveyed believed how laws regulating source confidentiality are not followed in practice (over 50% of surveyed), and individual cases must be analyzed in order to interpret this in detail. Problem is partly in the fact that legislation bodies on occasions fail to respect legal regulations, as shown in the case of "*Slobodna Bosna*" who lost such case in court because the journalist refused to disclose the source he used for the text writing about a criminal report against SDP President Zlatko Lagumdžija and his close associates. Reasons can be found in other numerous pressures on journalists to reveal their sources. On the other hand, as surveyed noticed, it is the journalists too who abuse this right in order to protect themselves when they use various information of questionable authenticity, sometimes even insults or total fabrications.

On the other hand, comparing them with politicians, ordinary citizens enjoy greater protection of their privacy, greater than public officials and persons. A public entity is not allowed to file a request for compensation in case of slander, and if a public official does so, he/she can file a complaint only as a private person. Both private and family life of political persons and public officials should be protected, but information about their personal life can be published when it has direct public importance for the way they performed or still perform their functions. In connection to that issue, Article 5, paragraph 3 of the Law on protection from slander is important ("A public official may privately and exclusively as a physical person file a request for compensation due to slander"); Article 3 of the Declaration on a freedom of political debate in European Union (persons in public functions must be ready to take higher criticism because they serve in public functions) and Article 8, which regulates the Rights to respecting private and family life.

8.2. Attacks on journalists

According to Article 10 of the European Convention, the state as well is obligated to guarantee a freedom of expression, by creating a safe environment for journalist rights to be enjoyed, and in cases when journalists and distributors end up injured, abused or even killed, respond to requests for investigation and protection from such acts. The Strasbourg Court established this as a principle and such obligations of the state are stipulated in the Guidelines of the EU Council of Ministers Board on protection of freedom of expression and information in crisis situation. The most frequent criminal acts subject to law suits with journalists as victims are: minor bodily injuries, severe bodily injuries, causing of general danger, and violent behaviour. The conducted surveys show that prevailing opinion is that journalists are not properly protected from verbal, physical, and even attacks that may jeopardize their socio-economic position. Some believe that certain journalist play victims in order to gain popularity. As "*Slobodna Bosna*" wrote, and many media reported (those close to SDP BiH have either kept quiet or lessened the story significance), the security service around Bakir Hadžiomerović and his family, cost citizens of Sarajevo over a million BAM. As Fatmir Hajdarević, Sarajevo CMoI Police commissioner Chief of staff stated at a press conference, during the period from 15 January 2007 to 13 December 2011, "for a personal protection of Hadžiomerović, we used 12.900 hours of police work, and police official vehicle mileage amounted to 38.399 kilometres. For his apartment, 35.700 hours of police labour. For both methods of security, we had 4 to 6 police engaged on daily basis". If one calculates the price of policemen labour hours, use of equipment, police vehicle, "we reach a figure of one million and 164 thousands BAM", wrote "*Slobodna Bosna*".[101]

Considering the attacks on journalists, three cases, rather persons were often in focus and were most frequently a topic of interest in the media broadcasts: threats to Slobodan Vasković, at the time still a reporter for FTV "60 Minutes" serial, and to his editor Bakir Hadžiomerović, and attack on the office of Centre for culture of dialogue run by Sanja Vlaisavljević.

Attacks and threats towards Slobodan Vasković, while he was FTV reporter, were a frequent topic in informative programmes of this media. To illustrate, here is an example that from 1 January to 12 February 2011, the FTV Central news reported 13 times about attacks on journalists (which makes 18% of total safety related reporting), out of which 12 TV shows dealt with the safety of this, now former, FTV journalist.[102]

Second half of January looked more like a battlefield of FTV and RTRS, than like news reports of entity news desks. Volatile 'skirmishing' between the two TV media

[101] This text of "Slobodna Bosna", was published by Banja Luka "Nezavisne novine" on their online forum http://www.nezavisne.com/forum/index.php?topic=1939.1965

[102] Analysis of the Media plan on safety issues in BH media, January / February 2011.

became open when "*Nezavisne novine*" published a story that Slobodan Vasković, the reporter, and Bakir Hadžiomerović, "60 Minutes" editor, have used media racketeering on 'distinguished' businessmen from Croatia and RS. In its prime time, the start of Dnevnik 2, FTV was trying to expose a corrupt RS government which buys off media, and those that are independent tries to remove, even physically. "The '60 minute' magazine has been again a target of lies about racketeering. After the editor Bakir Hadžiomerović, in focus is the reporter Slobodan Vasković as well. We are not surprised by the start of media hunt from the centre which denies genocide, which wants to abolish the Court of BiH or create an alleged territorial unit where apartheid will gain its legal frame. Unlike those who are worried by writings, because they are true, we do not fear lies, but we fear apathy and rare reactions to the attacks on freedom of the media and independence of journalists...."

On the other side, RTRS have in their central news responded in the same way, that FTV is one-man television, that of Zlatko Lagumdžija, President of SDP, and that both Bakir Hadžiomerović and Slobodan Vasković were corrupt journalists who were racketeering many public and prominent persons. But they also emphasized that Slobodan Vasković is not in danger in Banja Luka and that no one is threatening him. To that respect, there were always new confessions of public persons of RS, who were victims of "60 Minutes" racketeering broadcasted in Central news.

As a guest commentator in "*Nezavisne novine*" Denis Kuljiš, otherwise a columnist of Zagreb "Globus", has published a text as an open letter to the Communication Regulatory Agency BiH, where he said that "they must not allow a speech of hatred on public broadcasting network". That was after a debatable broadcast of "60 minuta" when editor Bakir Hadžiomerović associated some leading Croatian and Serbian politicians in BiH with fascism, using the song of Darko Rundek "Ay Carmela".[103] "*Nezavisne novine*" have continuously and in negative manner reported about Bakir Hadžiomerović and FTV, claiming he was a "racketeer", using the hate speech ("DORH will investigate racketeering of INA", 1-2 February; "Information put out by Bakir Hadžiomerović", 3 February; "FTV must stop Bakir Hadžiomerović", 9 February).

One of the commentaries, whose author was Goran Maunaga, was published on 14 January, titled "Protect Vasković", where this journalist wrote about claims of Slobodan Vasković that his life is threatened in RS, with clearly negative attitude.[104] Vasković was not spared in the Federation either. At the beginning of April, this reporter was fired by FTV. As editor of "60 minutes" Bakir Hadžiomerović initially stated at portal depo.ba, FTV management has brought a decision to cease cooperation with the long-term associate because of the video which showed "Vasković interviewing a scared man from Srebrenica about Naser Orić, correctness of liberating

[103] "Nezavisne novine", 19 January 2011.

[104] "Protect Vasković", 14 January 2011, Glas Srpske.

Serbian army, torture prior to arrival of Ratko Mladić". The video published on a web site patriotskaliga.org, was filmed on 12 July 1995 in Potočari, and in it Vasković spoke to Abdulah Purković Dulac, with couple of other journalists. Hadžiomerović, his former FTV editor, said he was familiar with the case.[105]

Radmila Karlaš, a journalist and writer from Banja Luka wrote a commentary on the case of Slobodan Vasković for "*Start*" magazine – "when everyone held to forbidden marking of national interest of Serbs equals hunger of Serbs, Vasković moved those frontiers. He has been praised. In Sarajevo they asked for him. How he was doing, is his life in Banja Luka so hard, when he wails so much? He became an icon. The style he used in his reports spoke about him too". Analyzing "circumstances" and reasons for which he was laid off, Karlaš wrote how "it was all known". "Known was the fact also how Vasković worked during the war, and I am sure FTV management must have known that as well," said Karlaš, and added "Slobodan Vasković had his use of value, his expiry date. Now it has expired. The product went bad and noses are being pinched around. Has Slobodan Vasković produced himself? He surely has not. The circumstances produced him. The same circumstances which gave him few minutes for Srebrenica interview. The same, which will facilitate him to work for FTV".[106]

While RS media almost always reported about Hadžiomerović and Vasković with negative attitude, a positive attitude, rather some sort of solidarity was recorded in reporting about an attack on Centre for culture of dialogue in Sarajevo, run by Sanja Vlaisavljević ("Investigation of attack" 26 January; "Condemnations of attack on Sanja Vlaisavljević", 27 January).

9. POLITICAL JUSTICE

Transparency International has established in its report on methods of financing of political parties in Bosnia and Herzegovina that it was to great extent a non-transparent one. Such practice was allowed by insufficiently reformed system of public institutions, justice, and laws. Due to omissions in the national Law on financing of political parties, the parties have easily managed to get large donations from abroad, not having to have to explain for which purposes, who sent the donations, or how they would be spent. For that reason a great media attention was given to the announced changes to most of articles of this Law.

This subject was extremely professionally followed by "*Oslobođenje*", without needless personal views and commentaries of authors. This paper has clearly distinct itself by regular coverage of every event connected to this legal action. Hence, in the

[105] "Vasković fired by FTV", 13 April 2011, Nezavisne novine, p. 4.

[106] "I talk about hypocrisy and you?", 19 April 2011, Start, p. 23.

beginning of December paper wrote about specific changes being proposed, such as obligation of parties to declare all their sources of income, in the country and abroad (according to the legal act still valid, to this moment sources of income from abroad could have been easily abused, due to a simple procedure of breaking them down to a string of donations, each smaller than 50 BAM for example, thus it was not mandatory to report them, meaning a Party could have large income that does not have to be declared). With the events by the end of the year, there was a clear tendency to further large budget expenditures for each Party, and politicians were still favouring the rights of accepting donations from abroad without limits.[107] Changes to the state law were supported as well by GRECO (Council of European countries against corruption)[108]. Newspapers have dealt with this event frequently, especially by the end of the year when activities, public debates and comments in connection to the changes were on the rise. Due to the diligence of "*Oslobođenje*" newspaper, this procedure was thoroughly followed, and thus explained to the reader. They followed the theme objectively, reporting on development of events and gradual proposals to changes of the Law.

Unlike these papers, "*Dnevni avaz*" obviously persisted in their reporting on the subject, by unnecessary multiple insisting on the fact that that SDA (a direct political opponent of the Party of Fahrudin Radončić, owner of Dnevni Avaz) had been breaking the Law on financing of political parties in previous years, acquiring a few tens of thousands BAM illegally for their Party. However, "*Dnevni Avaz*" failed to report that almost all other Parties in the country have been doing the same, according to the Central Election Committee (*Avaz* published the news at the beginning of the year[109]). In this way, a partially presented truth becomes adjusted to those who have the power to spread the news, and by doing so have the power to influence the public opinion. This approach inevitably represents a hard attack on the trust of the reader, considering that ones own readers become units of preferred electoral flavour.[110]

More intense talks about the changes to the Law began by the end of November. The capital idea of the Ministry of Justice was to increase control and sanctions to Parties that break the Law, which leads to a stronger role of auditing service as well.[111] Prior to this story, media followed expenditures of the budget money distributed to the Party clubs, witnessing illegalities occurring under the umbrella of the unchanged Law.[112] A dominant trend in media reporting was in the form of momentary occasional news on

[107] "CIK bothered by donations paid to bank accounts?", Oslobođenje, 4 December 2011, p. 3; "Monthly 250 KM for SNSD", Oslobođenje, 21 November 2011, p. 7.

[108] "Financing control", Oslobođenje, 21 November 2011, p. 2.

[109] "Election results confirmed", Nezavisne novine, 3 January 2011, p. 3.

[110] "The black funds of ruling Parties getting bigger!", Dnevni avaz, 26 December 2011, p. 9.

[111] "Firmer control of Party activity", Oslobođenje, 20 November 2011, p. 3.

[112] "Around 130.000 KM going down the drain" Dnevni avaz, 12 July 2011, p. 15.

this group of topics, which through short texts in a daily paper, prevents the reader to grasp a wider picture on real amount of money extracted from pockets of BH citizens, ways of spending the money or how, if at all, are sanctioned those who break the Law.

Rare texts that analyze a wider picture, illustrated by individual data on expenditures, have been published in daily papers, again mostly in *Oslobođenje*, paper that gave its most attention to the subject.[113] In this way, the daily paper has overcome the limitations dictated by daily journalism–acting fast without analyzing data, fast processing of data, volumes information, and small space. All this dictates limited possibilities to offer a more detail picture on the whole subject to the reader. These natural limitations of daily journalism have been successfully overcome by cooperating with media that are focused on research journalism and with their help Oslobođenje managed to give their readers a wider picture on financing of political parties in BiH, and the amount of money the citizens give for their politicians and their Party activities.

Hand-in-hand with the issue of changes to the Law on financing of political parties stands another issue of great significance for the BH society in the last few years. Corruption, nepotism and bribe are frequent degrading phenomena in societies in transition. In Bosnia and Herzegovina, usually rated 90th out of 175 countries in matters of perception of corruption, corruption is one of the most emphasized daily issues. Given that corruption is hard to prove before the Courts, hence in media as well, the media often reluctantly publish alleged involvement in any corruption case, bearing in mind that it is being done without verified evidence. And when these circumstances are linked with a person in public office, political persons or other privileged individuals in the society, which implies money and power, the situation becomes complicated but appealing as well because that means bigger sale of paper.

Because of that reason the media do not give up on publishing content that implies corruption, bribe and nepotism, so they mention this phenomena as parts to the reports which concern all levels of society, from politics[114], through education[115], to public administration[116]. They are found in all forms of journalist expression, from news[117] and reports[118], through interviews, to commentaries[119] and columns.

[113] "First to yourself, then to others", Oslobođenje/Centre for research journalism, 13 June 2011, p. 6 and 7;
"Half a million BAM! Why!?", Oslobođenje, 22 February 2011, p. 9.

[114] "Špirić and Zirojević hire a fugitive from investigation", Dnevni avaz, 3 January 2011, p. 9.

[115] "Džombić and Kasipović in favour of property of professors audit", Nezavisne novine, 18 December 2011, p. 8; "A disaster at University", Nezavisne novine, 15 November 2011, p. 12.

[116] "Refusal to a son of shehid, a job to a son of municipal delegate!", Dnevni avaz, 6 April 2011, p. 7.

[117] "Radivojević without comments on nepotism", Dnevni avaz, 8 June 2011, p. 6.

[118] "Borases ship lost compass in restless political waters", Dnevni list, 9 June 2011, p. 14 and 15.

[119] "Nepotism and corruption", Dnevni avaz, 19 August 2011, p. 3.

Sometimes these topics are just superficially mentioned, as a constant reminder of their presence in the daily life[120], and sometimes they refer to specific cases going towards their judicial epilogues.[121]

However, although extremely cautious in their allegations, the media often move on safe grounds of reporting, which in result brings double benefits for the media in question: on one hand, corruption is being mentioned, which means that the public curiosity is formally answered – even if usually one reaches no clear answer in the text on corruption. On the other hand, this kind of approach enables a protective attitude to the preferred interlocutors. This protective relation of the journalist or media centre with their guest may often be completely obvious to the reader, thus all these texts could be read with clear idea about political stands of the editor. That cannot be a good option for the newspaper. A clear example of such interview one finds in Mostar *Dnevni list*, whose journalist in the Christmas edition speaks to Mladen Ivanković Lijanović, Croatian people representative, and asks a general question on nepotism, retreating to the safe territory of not offending the interviewee: "They accuse you of nepotism as well, rather that you give all important functions to your relatives and friends? Your comment?" The interviewee answers in the same manner, correcting the alleged wrong idea of the public on the nepotism as a term: "Everywhere in the world, every businessman or manager wants to have a competent and responsible person with great references as manager. The problem is when a person without those references gets hired to such position. That is nepotism. We did not hire any person that does not meet these requirements, that is why I believe this is not about nepotism. We are a large family, we have a lot of friends and acquaintances, and company Lijanović exists for several decades now, so everyone at all times can be, in some way or the other, linked to Lijanovići." The journalist does not react to such an answer, yet he just touches upon a serious topic of nepotism, giving to the interviewee both time and space to convince the reader in his truth, and quickly retreats from slippery grounds. Without further attempts to shed light on the topic, he then turns to casual holiday messages to the readers, and seemingly provides an effective ending of propaganda material for the Party of Lijanović and him personally.[122] Other papers have very frequently mentioned and directly named politicians for nepotism[123], unfortunately most of them rarely have in their text the so called "other side", the basic guideline of journalism aiming at presenting all sides in a specific case, without taking a stand or

120 "Dangerous flirtations", Dnevni avaz/The Week, 15 October 2011, p. 11.

121 "SIPA and Prosecutor Office investigations requested", Oslobođenje, 14 October 2011, p. 4.

122 "Instead of a Croat, BH Council of Ministers Chairman is a Serb", Dnevni list, 24, 25 and 26 December 2011, p. 6 and 7.

123 "A son of Behmen ended up in The Board of University of philosophy", Dnevni avaz, 19 August 2011, p. 4.

judging the case, regardless if they have or have not the arguments for final conclusion. As untypical for the BH media reporting as may be, the final conclusion must be left to the public to decide.

One of the stories of direct accusations for nepotism was the appointment of Mirsad Nikšić, the brother of Federal Prime Minister Nermin Nikšić, as acting Executive Director for administration and maintenance in the Public enterprise "Autoceste" Federation BiH. In this case too, the media showed a lack of persistence, given the fact that this story was covered for a few days, while it was the central news. After Prime Minister Nikšić stated that he would not replace his brother because the Law said there was no conflict of interest, the media dropped the issue.

Previous year witnessed several affairs as well, rather, public events which were interesting and surprising to the public, because of their character and content. Under media spotlights, we found stories on alleged travels of the Prime Ministers wife and a delegate of RS in a governmental airplane, for shopping abroad[124], then the affair of the Banja Luka factory "Kosmos" exporting weapon to the countries under embargo[125]. Media however paid special attention to two affairs, mostly because the main actors were at the time in leading political positions in their Parties, but in the country as well, both during and after the process.

The first was the so called "Reket" affair, when Nihad Imamović, Director of ASA Holding at the time, company with many lines of work, one of them being the largest import and general agency of the leading car manufacturers, reported an attempt of extortion of 2.2 million BAM. Imamović accused the SDP leadership Damir Hadžić and Zlatko Lagumdžija. The State Court which was in charge of the case, transferred its jurisdiction to the Cantonal Court in Sarajevo, and terminated the investigation against the influential politicians.[126]

Other cases of blackmail have run through the media during the year, with some of the prominent BH politicians as main actors[127], but none of them got their court ending, as the "Reket" affair had.

Similar fate and in the same moment, at the beginning of June, lived an investigation against the current President of RS, Milorad Dodik. The State Prosecutor Office ran a procedure against him accusing him, with other officials, to have overpaid the construction of Administrative centre of RS Government by giving over 200 million BAM[128]. Similar to "Reket" affair, so was "Dodik" case redirected to lower level and

[124] "Wives of Prime Ministers and RS delegates used the airplane for a shopping tour to Vienna?!", Dnevni avaz/ The Week, 12 November 2011, p. 2.

[125] "Kosmos" was selling rockets to Gaddafi", Dnevni avaz, 18 November 2011, p. 9.

[126] "Racket which is not", 8 June 2011, Oslobođenje, p. 4.

[127] "Both Americans and Tihic hold a grip on Bakir Izetbegović?", 18 November 2011, Dnevni list, p. 8.

[128] "Dodik on a lower level, racket next week", 4 June 2011, Oslobođenje, p. 4.

handed over to the Special Prosecutor Office RS. Despite the case importance, the media did not report about the case not a day longer than required by principles of journalism–after having the public initially informed, this case was yet sporadically mentioned to the end of the year, mostly in context of being one of the cases illustrating the levels of (non)success of judiciary.

10. DOMESTIC VIOLENCE AND VIOLENCE OVER WOMEN

Domestic violence is the most common form of a gender-based violence. The phenomenon is global, but it gets special connotations in societies which are patriarchal with the system of values based on "tools to the man, kitchen to the woman". Although this leads to the relativization of the problem, which is global regardless to the culture, social system, religion, class. The victims of this violence, at least according to the available statistics and media reports, are most commonly women, and/or children (mostly female).

In connection to that, the Council of Europe has adopted a new Convention on prevention and fight against domestic violence and violence over women, which is obligatory for all the signee countries. The Convention is in fact, founded on human rights principle, not on criminal law, and insists on the fact that domestic violence is gender-based, rather, women suffer from domestic violence disproportionately in relation to men. Likewise, the Convention predicted all the measures of protection, support and caretaking, such as free legal and medical aid, SOS line and safe houses, which were until then just recommended, while now becoming an obligation taken by the signing countries.[129]

As stated in the Report of the State Department on human rights situation in BiH, "as high as one third of women are victims of domestic violence, and only 10% of such cases were reported to authorities. RS SOS hotline received 1.516 calls and Federation 519. NGO "Vaša prava" estimate that there are 4.500 unregistered children in the country, who therefore have no access to aid, education, and health care."[130]

"Out of 108 murders in RS over the last 11 years, 60 of them were committed over women who were victims of domestic violence. In the last 4 years, 516 women and 763 children were placed in safe houses in RS, and 20.262 calls were made to 1264 SOS hotline from 2005 to 2011. In 98% of cases the victims were female", wrote Banja Luka "*Novi reporter*" magazine in their introduction piece on domestic violence. It was also stressed in the article that there were many who "suffer physical and psychological

[129] "A hard process of changing awareness", 7 December 2011, ", Novi reporter, p. 24.

[130] "In BH, most commonly violated rights of prisoners and refugees", 10 April 2011, Dnevni avaz, p. 2.

abuse for years, but because of fear, lack of support from their immediate environment, or for some other reason they stay silent. Practice says that those victims, who after all decide to report violence before they become a statistics, usually endure many years of torture."[131]

In this view, domestic violence is on its incline, and only salvation for many victims is staying in the safe houses. According to the media "although the number of victims gets higher, there are not enough housing capacities in the three safe houses in Banja Luka, Modriča and Prijedor." Currently there are three safe houses that meet the criteria prescribed by the law and bylaw and their total capacity counts 57 places, while 70% of their financing comes from RS budget. It is planned to open safe houses in Trebinje, Bijeljina and Eastern Sarajevo, which would improve the position of victims. According to the effective laws, it is possible to stay in safe houses from 3 to 6 months, with possible extension until an exit strategy is devised for women and children there. [132]

Some examples taken from the analyzed newspapers also prove to the fact that reporting on the domestic violence issues had quite sensationalistic connotations. For example, "Dnevni avaz"- 52 year old woman from Prijedor testifies to the violence and beatings she got from her husband. The article starts by a claim that "victims of domestic violence are not only women of weaker economic means and those from rural area", which is confirmed by the story of their interviewee, whose husband (characterized as aggressor in their text) is a highly positioned person in Prijedor. "I was somewhat naïve and believed that his behaviour would be sanctioned. Unfortunately, it was not. He is still respectable, kind to other people, even publicly engaged in issues against violence... And just last time he hit me with a glass full of water. To the people who know us, even to my relatives, he is trying to prove that I am insane, that I am making it up. He is really crafty in that, and most times he calls me names like slut, whore…", said the interviewee for this paper, who also filed for divorce.[133]

A reaction of Ženska mreža BiH to the text on Judge Lejla Fazlagić was quite interesting. The article was published by "*Slobodna Bosna*" on 31 March 2011, titled "A giant scandal of an easy woman of Sarajevo judiciary". In their reaction to the article, which the magazine published in full, it is stated how this article was "intolerable for it represents an act of violence against human and professional values. Starting from the title, the whole article is attempting to slander the name of Sarajevo Magistrate Judge Lejla Fazlagić, against whom numerous allegations were listed with descriptions such as "queen of spades and alternative daughter", "favourite of the 'low-platform' judiciary", "multiple divorcee", "an absolute ignoramus", "severely corrupt judge"..., "finally

[131] Ibid.

[132] "Abuse stronger than help", 5 September 2011, Nezavisne novine, p. 11.

[133] "A prominent Prijedor citizen beating his wife for year", 23 October 2011, Dnevni avaz, p. 10.

nested into an apartment her husband gave her...", "easy woman for difficult cases", "forced out of the apartment of her short-term husband...", "Lejla Fazlagić, a judge who can reconcile pleasure with what is useful" etc.[134]

The media gave a lot of coverage to the rape cases in context of violence with mostly women as victims.

In the central news broadcast of TV "Hayat", dated 01 February 2011, the anchor woman informed that a manager of a shop in the Alta shopping mall was arrested for raping his employee, who reported him. This was an introduction into a news story, that was announced like this: "There were rapes before, but there are either more of them now or the victims are braver to report them, but also to confront the social stigma and shame, which is typical to this area." Then the story follows, listing how many rapes happened during the year in each canton. A Prosecutor from Tuzla speaks about blackmail of the raped girls, referring to a case when a girls was threatened if she reported, the video of the rape will be published on the internet. The journalist states how judges give mild sentences to the rapists, adding an example of Judge Enes Malićbegović from Zenica, who sentenced a man to 18 years in prison for an act of single rape, as a way to prevent this crime. In the news story citizens speak too, asking for bigger sentences for the rapists and opposing to any kind of stigma around the victims.

"Tuzla prison is already full as a box of matches, and new 'guests' are Elvis Krajnović (23) from Tuzla, suspected of raping a 19-year old girl at a gun point on a stairway behind "Mejdan" Sports Centre, and Muhamed Kalajevac (20) from Živinice, for attempted murder of UNO bar owner, by pouring gasoline on her and setting her on fire", reported a "*Dnevni avaz*" journalist, adding that this was just one of the cases that "shook" this town. Elaborating on this "escalation of sexual violence", Jasna Zečević, a Director of NGO "Viva žene", which helps rape victims, believes that the problem lies in inadequate treatment previous cases received. "Mild sentences are a motivation for potential offenders. Courts often give sentences below the legal minimum. It is intolerable to have any rapist sentenced to only six months of imprisonment", explained Zečević, adding that causes might be found in a bad economic situation, events of war and a disturbed system of values as well. Zečević was even somewhat severe in her criticism of mechanisms, which in a way "protect offenders of this crime", and said their names should be published in media, as well as photos, and "even make jumbo posters, to have all citizens see who those people are".[135]

The rape cases in Tuzla were a focus of "*Oslobođenje*" journalists several times. Thus, they report in the beginning of January, in a somewhat sensationalist tone, how horror took over Tuzla and how in "Tuzla streets a student girl was raped too" (4 January). What draws attention in this title is the "too" (a student) because it implies

[134] "Your writing produces violence over women", 14 April 2011, Slobodna Bosna, p. 81.

[135] "Prison cells filling up on rapists", 5 January 2011, Dnevni avaz, p. 14.

that not only students are rape victims (which is also true), but this title open for interpretation, contains a certain suggestion–there might be more victims, the only question being "who is next"? "*Oslobođenje*" journalist Almir Šećkanović reports on major protests of citizens of Tuzla because of an impaired safety in the town ("1.500 citizens of Tuzla protesting because of rapes", 9 January; or an interview with Jasna Zečević, Centre "Vive žene", where she claims how "outrageously small punishments for rapists are", 13 January). Šećkanović in his commentary emphasized how two students, rape victims, were forgotten by "various NGOs (with exception of "Viva žene"), women rights fighters, University leaders and town authorities where they suffered this wrongdoing, by those whose support they desperately needed", for, as he explained, "NGO sector in Tuzla almost does not exist, or if it does they are merely branch offices of political parties , which react only then when the postulates of the party are in jeopardy, which donates money as well as brains", meanwhile "associations for women rights stay silent, not wanting to get involved in issues they do not understand, for one might find out the ignorance on which basis EU sends donations". On the other hand, in her interview to "*Oslobođenje*", Zečević emphasized that the biggest problem was in the Criminal Code, which does not prescribe sufficiently high sentences, announcing initiative for the changes to the Code–to set a minimum rape sentence at 5 years, and for brutal rape 8 years as a minimum.[136]

11. RIGHTS OF CHILDREN

The modern world, with a dominant principle of hierarchic system based on which rights are protected, but also a principle of insisting on duties of each citizen, despite all its advantages has not managed yet to find mechanisms of total protection for those population groups who are most likely to be exposed to discrimination and abuse.

The children inevitably fall into this category, however in spite of dozens of regulations guaranteeing a long line of rights and freedoms, BH media constantly witnesses examples of those rights threatened, first and foremost through the stories of child abuse in forced begging, juvenile delinquency and sexual abuse.

The problem of children who live and work on the streets has long been a problem which has not been dealt with systematically, due to relevant institutions being unable to act unanimously and in a planned manner. One could read sporadic stories in BH media during 2001 about children-beggars in various towns in the country, but there was no serious intervention of responsible institutions or services. The public was mainly informed about children to whom the streets were a second

[136] Media Plan Institute research on safety issues in the BH media, January – February 2011.

home, who do not attend school, and who are mostly forced by their parents to beg and give the money to them at the end of the day.

In these stories, same reasons for this fate of children are repeated – their families are poor, and usually not involved in regular streams of society, and it is not rare to find that their parents are alcoholics or abusers. These stories have mostly mapped out the main tasks which responsible services must urgently undertake, reminding to a necessity of having a comprehensive registry of names of beggars, more efficient system of their surveillance, and opening of shelters.

However, in comparison to the number of texts written about other issues, their content and given volume of information, analysis showed that the media rarely covered the rights of these children, their status in the society and projections of future positions.

Regardless to the fact that it is often emphasized in daily media coverage how important it is to secure a good life for children, enable them to become equal citizens, whose rights must be respected from their birth, judging by the volume and content of issue coverage last year in BH media, this subject does not seem to be of vital importance to BH society.

To be exact, the texts on this issue are extremely rare, published sporadically–in daily media mostly as some news about an event where children were discussed or just mentioned, while the weekly papers had few interviews with persons dealing with these issues.[137] When they ask a related question in such cases, journalists usually get commonly known statements as answers ("This is a delicate problem in a sense of giving the money to the children who beg or not. On one hand, you thereby help this phenomenon to continue, and on the other hand the children may be punished if they do not get money. That is why a comprehensive approach is required finding the roots of the problem, and seek for organizers."[138]); instead of answers not offering a clear solution, along with ambiguous naming of institutions responsible for this problem.

There is another problem in media coverage on this topic–that is, opposite to the advocated idea on equal rights of every individual, equality, and condemnation of any discrimination, it seems that the media have unintentionally and recklessly broken a number of these rules in 2011, by reporting about children. In most texts covering the issues of begging, petty thefts and robberies, they emphasize that the juvenile offender is–Roma. Simultaneously, if the story is not about a Roma, a journalist will omit this fact; rather, fail to mention it, as he does when the story is about members of this ethnic group. This journalistic approach implies discrimination and inevitably leads to already firmly established prejudice about Roma as homeless and beggars.

[137] "We must target organizers and those who profit", 4 November 2011, Dani, p. 52-55.

[138] Ibid.

In order to illustrate the mentioned claim, in most individual texts, even if one hears the beggars voice directly, if it is a story coverage where journalist talks to an interviewee from the streets, they tend to use an example of interest, and extreme example which will be read–such as–that beggars are not really poor at all, but rather opposite they own a considerable property.[139].

Some media mentioned the begging problem several times[140], always referring to the same, basic problems regarding this issue, and those were: extremely high number of beggars on the streets of BH towns, with a growing tendency, the helplessness of the institution system which would need to solve the problem gradually in coordinated actions, lack of registry of people who become beggars and those who have been doing it for long. Almost all texts mention that this issue is regulated by the law, but the sanctions are usually not applicable in the field[141], hence it seems that the law and its regulations do not correspond with the reality, and that they are adjusted to different system of institutions.

Not a single text analyzed for this occasion, had offered a particular solution to the problem, neither had it offered full information about the actual situation of this population group. Instead, it was always about periodical statistics given by police at the moment some operations of arrests of beggars ended[142] or after analyzing of situation and surveys done by some of the responsible institutions. Apparently, in their reports about the issue journalists have not used anything else but a factual form of reporting, and they do not try to give an answer as to why. Rare are the so called "human-interest stories", reports that would depict the lives of these people, offer additional first-hand answers on reasons for leading such life style, and thus help the public to get informed about the fellow citizens.[143]

Social framing inside which these social phenomenons occur are not being considered, but just superficially repeated such as other referring to the poverty issue or dysfunctional family. Some media highlights brought out an issue of sexual abuse of children. Exclusively because of these stories, the public was kept informed about tragedies of these children throughout the year.

In BH society, considering the low education and high poverty level, these circumstances bring about some basic conditions for various forms of child neglect.

139 "Luxury Mercedes taking them to street begging", Dnevni avaz, 3 November 2011, p. 15.

140 "More children begging", Nezavisne novine", 1 April 2011, p. 13;
"Street begging flourishing", Nezavisne novine, 3 November 2011, p. 14;
"Most children are street begging in Prijedor", Nezavisne novine, 13 May 2011, p. 9;
"Hundreds of baggers on the streets", Nezavisne novine, 30 July 2011, p. 11.

141 "More that 500 baggers daily on the streets of Sarajevo", Dnevni list, 21 October 2011, p. 12.

142 "She sold her daughter, and forced other children to beg", Oslobođenje, 19 March 2011, p. 8;
"He sold his under-aged step-daughter for 400 KM", Oslobođenje, 26 February 2011, p. 10.

143 "Protection from life", Reporter, 7 September 2011, p. 20-24.

These cases are common, and rarely spoken of, even then it is done randomly, superficially, through the use of partial information and voicing on special dates, for example Universal Children's Day (20 November), or Children's Weeks (RS 03-09 October). Those are days that the media reserve, with the help of official data given by responsible institutions, to publish news or a report, more seldom a story or an interview, but never a detailed interpretation and analysis of the current situation. Parts of official speeches are being published, invitations, but after that the issue is dropped, consequently we have not noticed in any analyzed media a tendency to follow up on events from the moment when situation in the field was first learnt, using strategy and planning, to their very realization. In fact, it remains a superficial transferral of official or unofficial information and citing of speeches of officials.[144] A hearty media engagement aiming at making the public deeply informed about the issue and its solution did not exist.

The BiH media have covered some other issues during the 2011 concerning children problems in a somewhat similar volume to that of children begging. A juvenile delinquency falls into that category with a number of its forms.

Therefore, through analysis of various texts on these issues, we have reached a couple of main conclusions:

- Reports and news are scarce, and when published they lack information;
- The media tend to publish on the issues only when some official in a speech mentions children and their rights violated [145];
- A concern is always emphasized about the trends of constant increase of juvenile delinquency, and some attempt at solving this problem.[146]

It was noted in the analysis that the themes of this issue that the media most intensively covered were those published in a black chronicle section, rather in section of most severe criminal acts of rape or other physical abuse committed between children [147] or committed over children by an adult.[148]. Here falls a topic which was especially interesting for the media this year as well, considering it particular sensitivity– an issue of sexual abuse in catholic institutions.[149]

144 "Children must not be neglected", Nezavisne novine, 3 October 2011; p. 9.

145 "12 juveniles processed in a year", Dnevni list, 30 September 2011, p. 16.

146 "Police curfew for juveniles", Nezavisne novine, 16 November 2011, p. 10.

147 "Children humiliated and objects were pushed up their anuses", Dnevni avaz, 21 December 2011, p. 16.

148 "Parents await Director's decision", Dnevni avaz, 21 December 2011, p. 16;
"It is an illusion to believe that there are no molester fathers in BH", Dnevni avaz, 21 November 2011, p. 9;
"Every fifth child sexually abused", Nezavisne novine, 22 November 2011, p. 5;
"Social worker arrested for molesting a boy", Nezavisne novine, 24 June 2011, p. 4.

149 "Thousands of children sexually molested in convents", 17 November 2011, p. 24 and 25.

Given the content of the texts covering children rights and adhering to them during the 2011, it was obvious that they covered this issue twice as much as stories dealing with other segments of child rights protection or violation. By looking through the contents, it was concluded that the events were rarely duplicated, leaving us to conclude either that the number of sexual abuse cases among children is a lot higher than the number of other children rights violations, or that the national media is more interested in publishing such stories, regardless as to how unpleasant and unacceptable they are to the reader.

When publishing such texts and supporting photographs, the editorial staff mostly adhered to protecting the identity of children that the journalists wrote about, thus not having their photographs published, and texts contained only child initials, while the photographs were merely illustrations, and not a factual presentation of those involved.

The journalists used a neutral language, without unnecessary qualifications of acts or publishing of unacceptable headlines.

12. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

During the 2011 the economic crisis that came upon the world in 2009 continued. Its consequences in Bosnia and Herzegovina were becoming apparent month by month in terms of growing unemployment rate, general decline in citizens life standard, decreased purchase ability, decreased foreign investments, a great fall of industrial production, more rigorous bank criteria for allocating loans to citizens and economy in general, and decreased capital influx for starting up new production in enterprises and maintenance of the existing ones.

In such conditions, BiH economy was marked by a line of unsuccessful events, some of which got media and then public attention even for several months during the year. The issue was, above all, about the growth of Swiss franc, which carried along an increase in loan instalments tied to this currency.

Newspapers in BiH have covered the consequences of this event in detail in their texts–interviewing economists they offered potential solutions to the public. In 2011, the problems of loan guarantors, cheated for years by both the banks and loan users, have escalated. The situation they found themselves in being forced to pay huge instalments for loans they guaranteed for, were often a topic of many media stories in the daily and weekly newspapers in BiH.

Apart from these, topics which permeate for years as some of the burning issues with gravest consequences in BiH economy, are issues of privatization [150] and

[150] "How the value of 'Krivaja' came from 300 down to 4,2 million KM", 18 June 2011, Dnevni avaz, section The Week, p. 12 and 13.

of workers who are faced with lay offs, with a bankruptcy of the factory[151] and its termination[152].

Daily media covered these issues more frequently, attempting with sensationalistic announcements and peoples tragic life stories[153] to label those who were responsible for the situation. Dnevni Avaz journalists were leading in these topics and this approach, and were placing full responsibility, both directly and indirectly, to the Parties in power[154], and conclusions in most texts were derived without a voice from "the other side" – a basic principle of journalism.

At the same time, attempting to show the public the misfortunes their story actors found themselves in, this newspaper journalists have often used the so called "human interest story", stories that concern daily lives of people, describing their struggle and threatened existence[155]. Such stories effect emotions of readers (one of workers of Konjuh company on hunger strike, who recently suffered a stroke, says: "I gave my life and health to the company, now I got nothing"[156]), thereby clear the path to condemnation of authorities, that Dnevni Avaz journalists solely and undoubtedly hold responsible for the events they write about.[157]

Considering a political engagement of this newspaper owner, and the fact that by running first time at the October 2011 elections, he became one of the leaders of opposition–mainly by advocating a decrease in unemployment and incline in big investments works, one concludes by judging the newspaper analytically during the 2011, that the editorial politics of *Dnevni avaz* undoubtedly has a purpose of engaging forces of social dissatisfaction to the use of the new electoral body of the papers owner. Because of this ratio of forces and interests in political arena, by reading their texts on politics and economy, Avaz was given a special attention in this analysis in relation to other daily newspapers.

151 "Unwanted bankruptcy wardens", 15 December 2011, Dnevni avaz, p. 19;
"We are no wizards", 10 June 2011, Oslobođenje, p. 4;
"Salaries not in sight", 16 August 2011, Nezavisne novine, p. 4.

152 "Status of 2000 workers again under threat", 16 and 17 April 2011, Nezavisne novine, p. 5;
"Workers left on forced time off", 25 May 2011, Oslobođenje, p. 6.

153 "Smashed the head of his rival with a bat", 16 November 2011, Dnevni list, p. 24;
"Beat him with a bat after an argument about the wife and bank loan", 23 June 2011, Dnevni list, p. 23;
"Weepingly admitted who the murderer was", 15 November 2011, Nezavisne novine, p. 14.

154 "Last attempt to get rights", 13 September 2011, Dnevni avaz, p. 13.

155 "We shall fight to the very end for the bread we have earned", 15 September 2011, Dnevni avaz, p. 13.

156 Ibid.

157 "SDA and SDP councillors not interested in Konjuh", 14 September 2011, Dnevni avaz, p. 8.

The weekly magazines, unlike the daily, were more elaborate in presenting economic trends in 2011, due to their characteristics that give a journalist more time and space in the magazine to work on selected topic. Under a basic assumption that this work domain in its original form and original time frame is vague to most readers, the journalists of weekly magazines continuously tried with their texts throughout the year to simplify and explain to the public some complex economic relations, causes and consequences of events that affect each and every citizen.[158]

When analyzing the media headlines on economic issues, two dominant trends were apparent: firstly, all the media, except from the mentioned example of *Avaz* in specific cases, wrote neutrally on this sphere of social activity, without taking sides. Secondly, this analysis proved a claim that economy in its reach greatly transcends political goals. That is, economic themes and above all global economic crisis theme, high unemployment rate and poverty in society, have united the media, which according to the previous analysis were clearly divided in their reporting along the ethnic lines.

From the aspect of the structure of published texts, the journalist conclusions placed there and generally offered solutions, the economy was an adhesive factor of BiH citizens and the only topic on which aspects the journalists and the media of both entities and all three ethnicities agreed upon.

[158] "Swiss Franc grows, debtors sink", 11 August 2011, Slobodna Bosna, p. 44;
"The Swiss left on their own," 19 August 2011, Dani, p. 45;
"Loan Interests, stop the Franc", 18 August 2011, Slobodna Bosna, p. 48;
"Action 'Balon', 31 August 2011, Reporter, p. 20 and 21;
"Without specific measures", 24 August 2011, Reporter, p. 38.

V
Awareness about Human Rights among citizens of Bosnia and Herzegovina

PUBLIC OPINION SURVEY ON HUMAN RIGHTS SITUATION IN BOSNIA AND HERZEGOVINA:
COMPARATIVE DATA FOR 2008 AND 2011

1. INTRODUCTION

Human rights, as a universal legacy of modern society, are guaranteed to every person in the World. However, in order to fully and authentically exercise human rights they have to be protected by the system, and as such should break through the individual perception and become part of value system of the individual and the society. Therefore, the research of public perception in certain area provide information to all concerned on how much certain community knows what are the human rights in the first place and how they perceive the activities in one state that are in favour of or at the expense of human rights. Only on the basis of objective information on how the public perceives human rights and what they consider human rights to be, the decisions related to public policy reform and information of citizens can be made.

Citizens learn and make their opinion on human rights mainly based on the information received from the media, from conversations with other people or from their own experience when their human rights were threatened. Apart from the subjects of "Democracy and Human Rights" and those of social-humanist group, pupils, within the education system, acquire low understanding and skills related to knowledge and protection of human rights. On the other hand, the frequency of human rights violations and inadequate sanctioning make citizens accustomed to human rights violations and thus feel no need for civil action to sanction such violations.

The perception of human rights and attitudes towards human rights (especially of the minorities) is affected by the events that occur at certain periods, specifically interpretations of these events and attitudes within social groups to which an individual belongs. For example, being part of a group with a negative attitude towards

the event that promotes rights of homosexuals, especially if such attitude was socially accepted, makes the perception of the rights of homosexuals further radicalized towards negative sex and vice versa. The change noted on the question "Are the rights of homosexuals violated?" (we have an increase of 5% of those who think that their rights are violated), and the question on the position of women compared to men (we also noted increased public sensitivity), shows that with public action and by incriminating a behaviour that violates someone's rights, the change in public opinion can be achieved. Therefore, when interpreting changes that happened in the perception and attitudes of citizens towards human rights between 2008 and 2011 we should also keep in mind (non)events and interpretations that contributed to these changes.

This survey indicates that the BiH public is still unacquainted with the concept of human rights universality. According to the respondent's answers in 2011, approximately 40% stated that human rights issues are internal matter of the state, which certainly indicates the need for further public education on the human rights universality.

People usually see what hurts them; therefore it is not surprising that a right to work, the economic rights, and the right to equality before law are perceived as least respected, while the economic status and political problems are seen as biggest threat to life of citizens.

The society in Bosnia and Herzegovina is highly tolerant to violence, which directly and indirectly affects the objective human rights violations as well as justifying these violations as successful method of sanctioning. So 40% of BiH citizens believe that the use of force is permitted in order to get confession from the accused for grave criminal offences. Generally, responses related to questions on judicial system suggest that there is need for more public campaigns and citizen's education on the structure and functioning of the judicial system.

Questions on the citizen's trust in public institutions produced most interesting responses. Citizens do not have full confidence in public institutions. Some 40% believe that we have bad judges who do not differ much from politicians. They also do not excessively believe in printed media. Around 40% believe that organisations that deal with human rights protection are either treacherous or useless organisations. Citizens especially have bad opinion on trade unions. Some 22% believe that unions are a cover for manipulations, while 47% believe that they are unorganized and weakly represent interests of workers. We also see that changes occurred in the perception of the political system. A higher percentage of citizens believe that the multi-party system is only formal, most probably influenced by the results of the previous elections and all post-election events. In general, public has no confidence in politicians and most of them believe that they do not represent the interests of citizens.

A large percentage of citizens do not know their rights related to movement and possibility of expulsion from the territory of BiH. Even 38% of citizens think that they can leave the territory of BiH only with the permission of competent authority, and as many as 16% thought that a citizen of BiH may be expelled from the territory of BiH if he committed a crime.

Based on the aforementioned we can conclude that the story of human rights in Bosnia and Herzegovina is by no means a closed issue. In order to act more adequately it is necessary to carry out comparative studies that would allow comparison of perception of human rights and level of confidence of citizens of BiH with other countries in the region and Europe. Only in this way measures of active policy on human rights protection and increasing awareness of citizens about universality of human rights and equality in their achievement can be adopted.

2. METHODOLOGY

The public opinion survey on human rights situation was conducted in two parts: first data collection was done during the period from 01 to 09 December, 2008 on a sample of 1101 respondents, while second data collection was conducted in the period from 30 September to 10 October 2011 on the sample of 996 respondents. The respondents were adult citizens of Bosnia and Herzegovina, while data was collected by the method of face-to-face interview. The respondents were not filling out the questionnaire by themselves but responded to questions that were read out by the interviewer.[1] This type of research appeared most efficient in great part of questions, and also, the respondents answered the questions in a familiar environment (their homes), meaning there were more relaxed and in the mood for honest discussion.

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.

[1] Fieldwork was conducted by controllers and interviewers of Prime Communications Agency from Banja Luke.

Research[2] was conducted in following municipalities:

The Republika Srpska

- **Region Banja Luka:** Banja Luka, Srbac, Laktaši, Kneževo, Mrkonjić Grad, Šipovo, Prnjavor, Kotor Varoš
- **Region Prijedor:** Prijedor, Novi Grad, Kozarska Dubica
- **Region Doboj:** Doboj, Modriča, Teslić, Petrovo
- **Region Bijeljina:** Bijeljina, Brčko, Ugljevik
- **Region Zvornik:** Zvornik, Vlasenica, Srebrenica
- **Region Eastern Republika Srpska:** Istočno Sarajevo,Pale, Višegrad
- **Region Herzegovina:** Trebinje, Ljubinje, Bileća

The Federation of BiH

- **Una-Sana Canton**: Bihać, Cazin, Kladuša
- **Tuzla 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
- **Canton 10:** Tomislavgrad

All questionnaires are subject to logic control, while 20 percent of questionnaires are checked by the Agency. Additional 15 percent is checked by supervisors-controller either by direct fieldwork together with interviewer or by phone.

[2] In the first research that was conducted in 2008 500 respondents from 27 municipalities were questioned in the Republika Srpska, while in the Federation of Bosnia and Herzegovina 601 respondents in 25 municipalities. In the second research in 2011, 1000 respondents were questioned, 400 respondents from 20 municipalities in the Republika Srpska, and 600 respondents from 25 municipalities in the Federation of Bosnia and Herzegovina.

DEMOGRAPHIC DATA

Table 1. Sex

	2008		*2011*	
	Frequencies	%	Frequencies	%
Male	566	51.4	489	49.1
Female	535	48.6	507	50.9
Total	**1101**	**100.0**	**996**	**100.0**

Table 2. Age

	2008		*2011*	
	Frequencies	%	Frequencies	%
From 18 to 29 years	270	24.5	304	30.5
From 30 to 44 years	374	34.0	292	29.3
From 45 to 59 years	281	25.5	224	22.5
Over 60 years	171	15.5	170	17.1
Refuses	5	0.45	6	0.6
Total	**1101**	**100.0**	**996**	**100.0**

Table 3. Education

	2008		*2011*	
	Frequencies	%	Frequencies	%
Primary school	119	11.8	108	10.9
Craft	212	19.2	235	23.7
High school (IV level)	504	45.7	386	39.0
Junior college and university	249	22.6	262	26.4
Refuses	17	1.5	5	0.5
Total	**1101**	**100.0**	**996**	**100.0**

Table 4. Region

	2008		*2011*	
	Frequencies	%	Frequencies	%
Republika Srpska	500	45.4	397	39.9
Federation of BiH	601	54.6	599	60.1
Total	**1101**	**100.0**	**996**	**100.0**

Table 5. Type of settlement

	2008		*2011*	
	Frequencies	%	Frequencies	%
City	607	55.1	578	58.0
Village	494	44.9	418	42.0
Total	**1101**	**100.0**	**996**	**100.0**

Table 6. Total monthly income of the family

	2008		*2011*	
	Frequencies	%	Frequencies	%
Up to 250 BAM	194	17.6	37	3.7
From 251 to 500 BAM	207	18.8	156	15.7
From 501 to 1000 BAM	413	37.5	398	40.0
Over 1000 BAM	286	26.0	192	19.3
Refuses	1	.1	212	21.4
Total	**1101**	**100.0**	**996**	**100.0**

Table 7. Your religion

	2008		*2011*	
	Frequencies	%	Frequencies	%
Islamic	413	37.5	440	44.2
Catholic	212	19.3	160	16.1
Orthodox	467	42.4	365	36.6
Other	9	.8	31	3.1
Total	**1101**	**100.0**	**996**	**100.0**

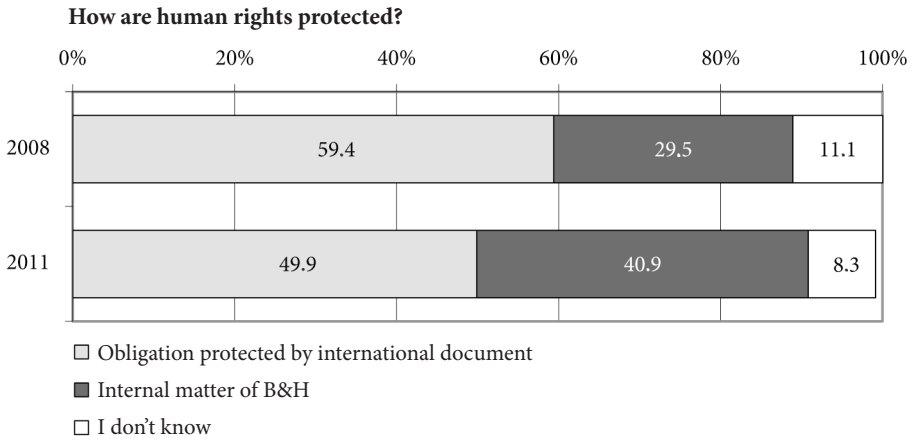
Table 8. Nationality

	2008		*2011*	
	Frequencies	%	Frequencies	%
Croat	201	18.3	167	16.8
Bosniak	422	38.3	435	43.7
Serb	460	41.8	364	36.5
Bosnian	11	1.0		
Other			8	.8
Refuses	7	.6	22	2.2
Total	**1101**	**100.0**	**996**	**100.0**

This research has some limitation imposed by sampling, i.e. stratification without state census. Information on true ratio of men and women, as well as data on age and ethnic composition is not available, so we leave room for the possibility that this stratification does not fully correspond to the situation in the population.

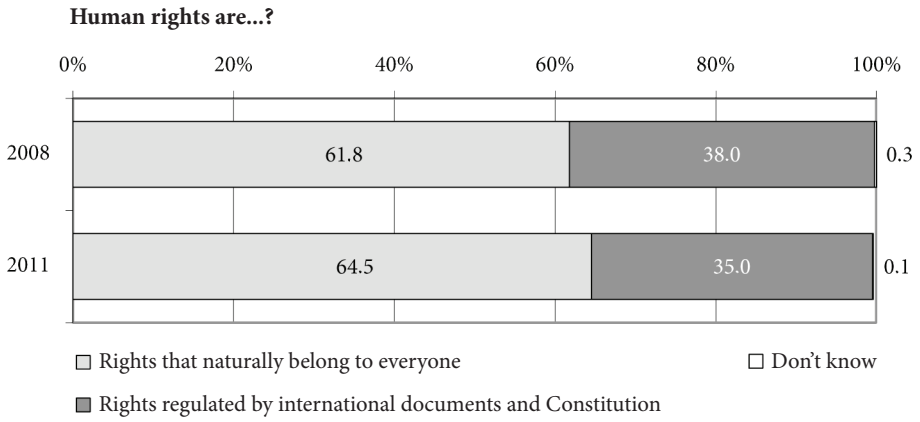
Furthermore, we observed differences in the structure of the samples from 2008 and 2011, e.g. in already mentioned ratio of men and women (in 2008, 51.4%:48.6% and in 2011, 49.1%:50.9%). Also, two samples differ to the criterion of the level of education of respondents, so in 2011 compared to 2008, we note that the sample includes 3.8% more citizens with higher education, while there is a 6.7% fewer citizen with high school education. It is possible that some small difference in two measurements were obtained just because of these reasons.

FREQUENCIES



Graph 1

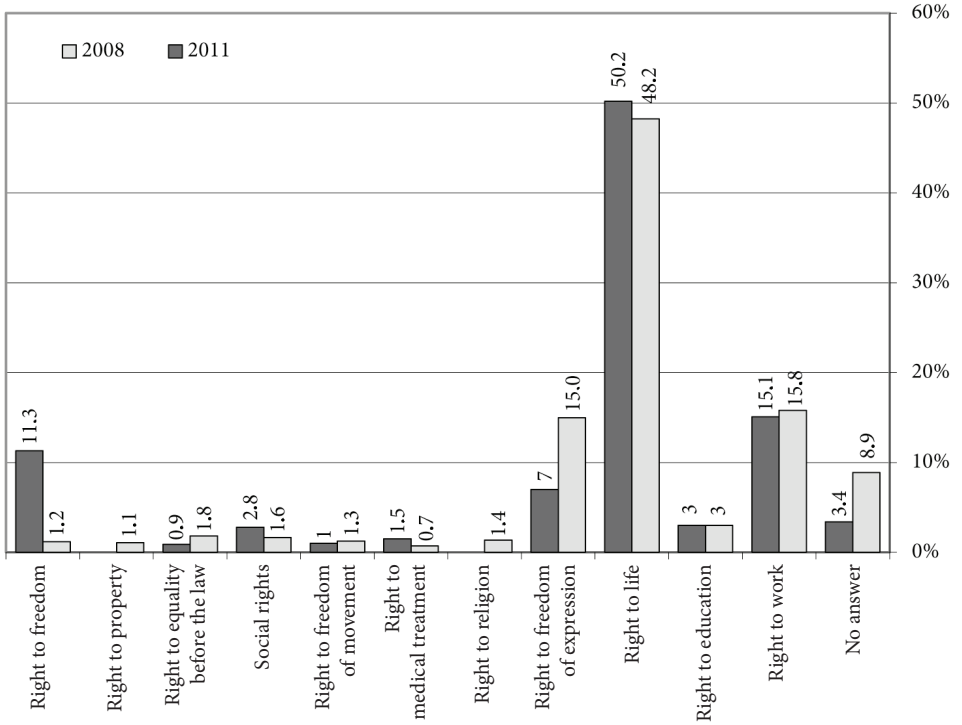
In comparison to 2008, in 2011 there has been an increase in percentage of respondents who believe that the protection of human rights in BiH is an internal matter of the state, which serves as a proof of great ignorance of the facts about international legal foundation of human rights. Poor awareness in 2011, compared to 2008, points out that the state institutions responsible for giving information on the principles and legal foundation of human rights have not succeeded in doing the job entrusted to them.



Graph 2

In comparison to 2008, in 2011 there was a slight increase in convictions of the BiH citizens (around 3%) that human rights are the legacy of all people, and not something that is regulated by the international documents or the Constitution.

Which human rights come to your mind first?



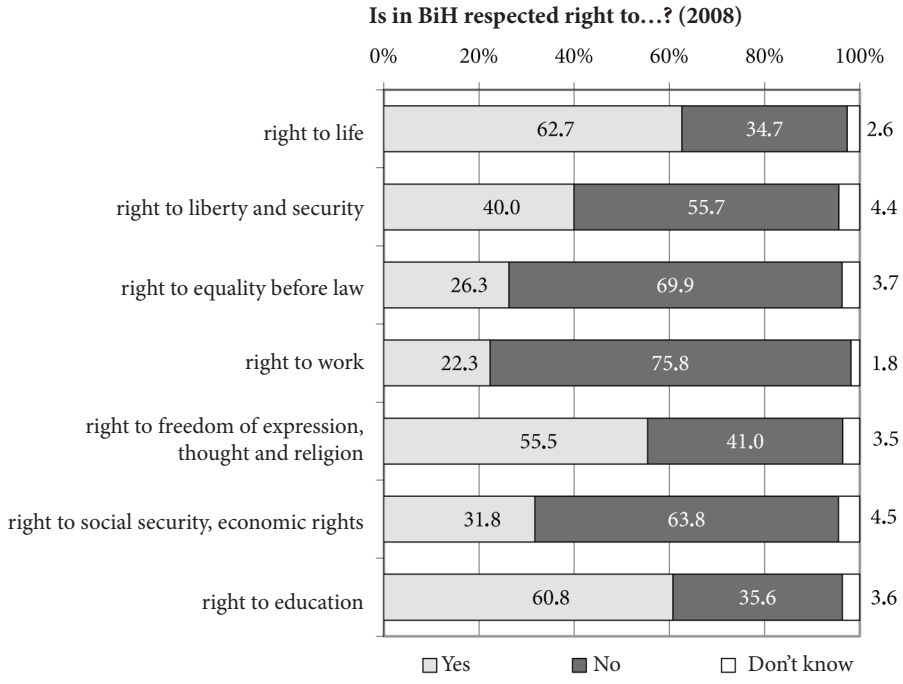
Graph 3

Human rights that come to mind first to citizens of BiH, in both studies, are: right to life, right to work and right to freedom of expression. In 2011, the citizens have pointed out another one, namely the right to freedom.

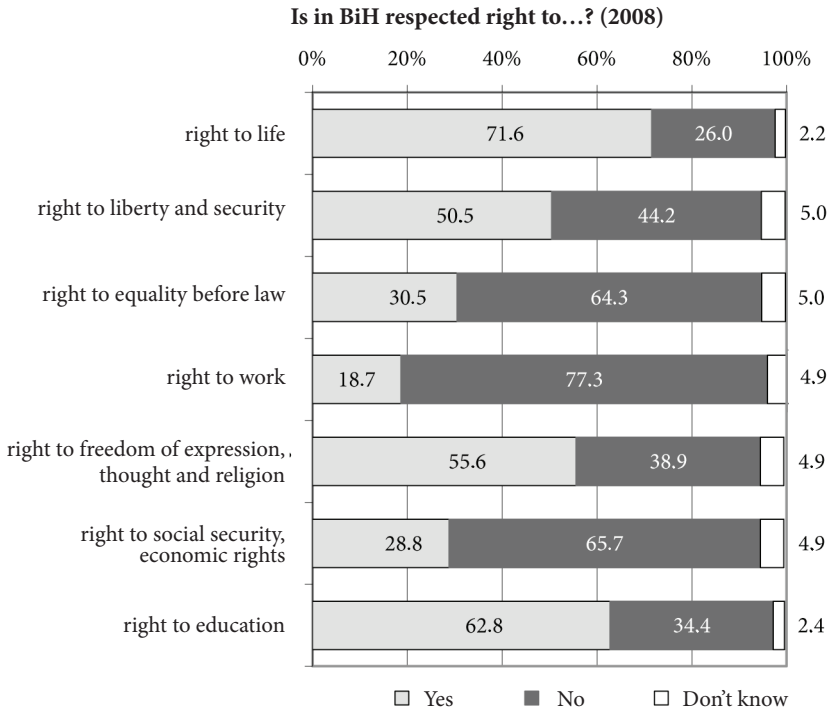
Rank in order of importance 1 (most important), 7 (least important) mentioned human rights:		
	Average 2008	***Average 2011***
Right to life		1.3
Right to liberty and security	2.75	2.73
Right to equality before law	4.03	4.02
Right to work, choosing work	4.08	4.06
Right to freedom of expression, thought and religion	5.29	5.2
Right to social security, economic rights	5.37	4.99
Right to education	5.29	4.85

** As the average value is less then certain right is more important!*

In general the order of importance of certain human rights in 2008 and 2011 is almost identical, including the intensity. The results are as expected and rating of individual human rights has not changed much between the two measurements. It is interesting that citizens of Bosnia and Herzegovina in 2011, rated the right to education and social security significantly higher, respectively gave more importance compared to 2008.

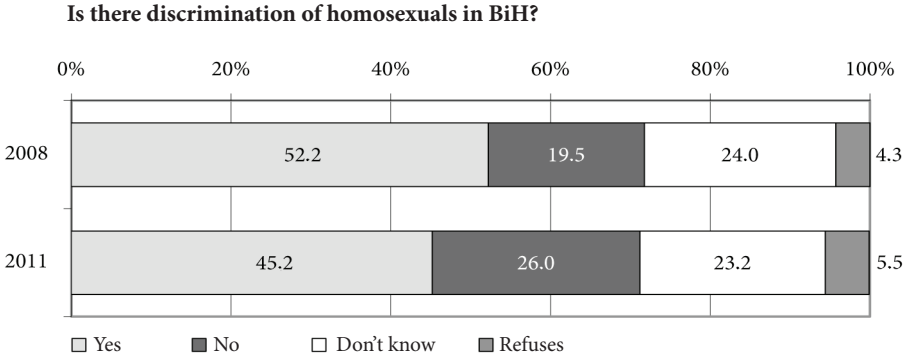


Graph 4



Graph 4a

The results on respect of human rights in BiH that we obtained in 2011 are almost identical to results obtained in 2008. The impression is that the rights that were most respected in 2008 are respected even more, while least respected human rights are equally (dis)respected as in 2008.

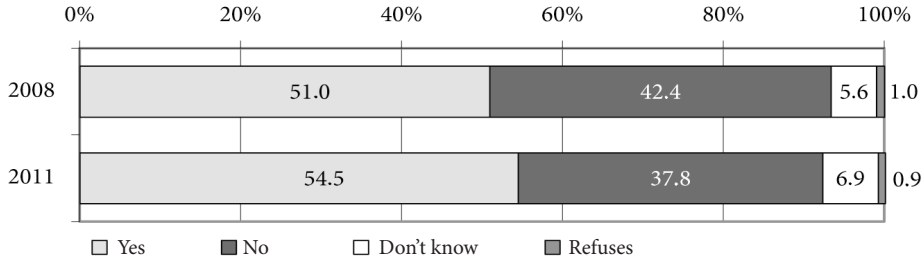


Graph5

According to the opinion of citizens of BiH in 2011, discrimination of homosexuals exists, but the percentage of respondents thinking in this way has decreased

by 7% in comparison to a survey in 2008. On the other hand, total percentage of those that consider that rights of homosexuals are not violated and those who don't know is 43.5% in 2008 and 49.2% in 2011. Thus, noted is an increase of 5. 7% although in the period from 2008 to 2011 recorded were cases of serious violations of the rights of homosexuals; these cases were very exposed in the media.

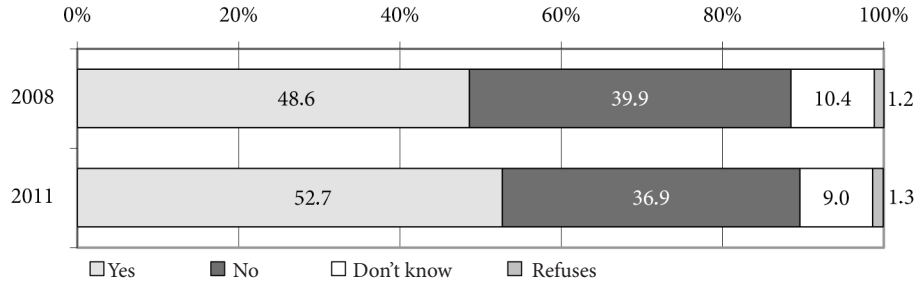
Are women in BiH in disadvanteged position comparing to men in regard to employment and career advancement?



Graph 6

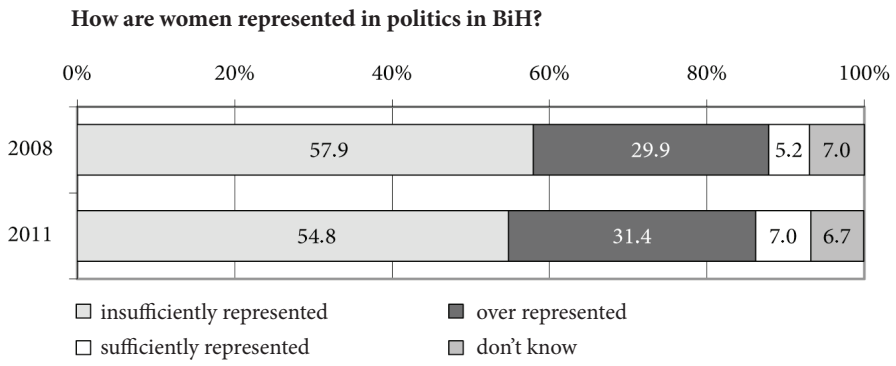
In 2011, there was a slight increase (3.5%) in perception that women are in disadvantaged position comparing to men in regard to employment and career advancement.

Are ethnic minorities in B&H in disadvantaged position comparing to majority population?



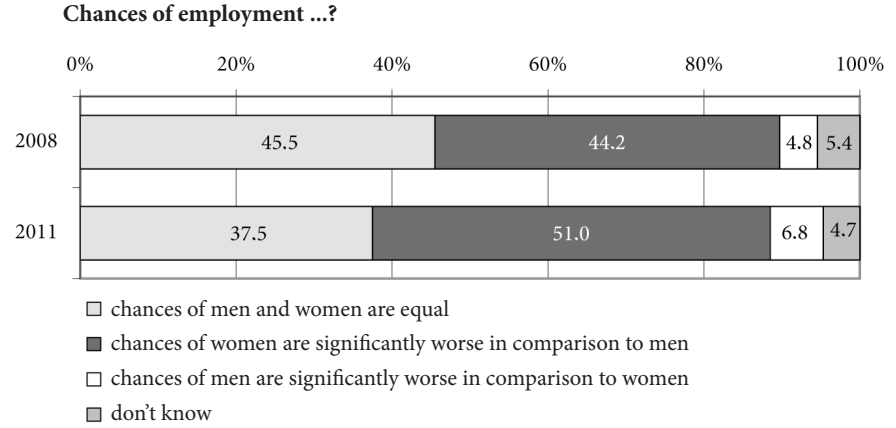
Graph 7

In 2011, there was an increase in the percentage of respondents (around 5%) who believe that national minorities in BiH are in disadvantaged position comparing to the constituent people. However, this figure remains unsatisfactory, because in 2008 (50.3%) and in 2011 (45.9%) of population believe, or don't know, that the position of national minorities is not any worse comparing to majority population. Insensitivity to the problem of the status and social position of national minorities is still present.



Graph 8

Around 55% respondents agree with the statement that women are insufficiently presented in politics in BiH therefore no significant changes occurred in comparison to 2008.



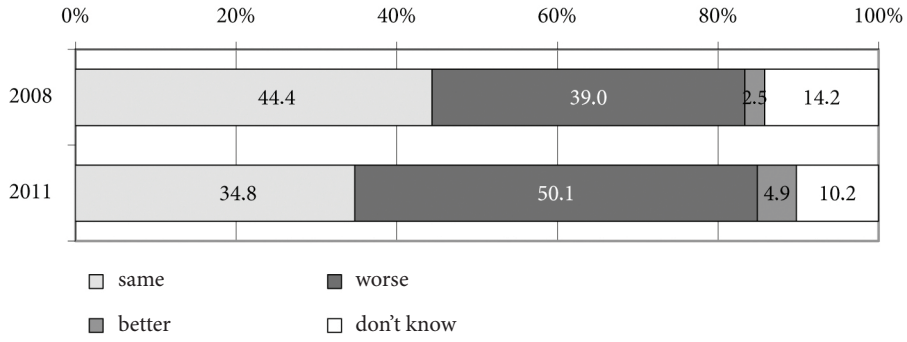
Graph 9

In comparison to 2008, noticeable is an increase of percentage of respondents (around 7%) who believe that chances for women, during the employment process, are significantly worse in comparison to men.

In 2011, there was an increase in number of citizens of BiH (around 11%) who consider that chances for career advancement for national minorities are smaller in comparison to constituent peoples. It is noticeable but insufficient progress. These findings are consistent with findings in graph 7, which clearly indicates that there is large number of citizens who are not aware of the true position of national minorities in BiH society. Despite little progress in the perception of the problem that these

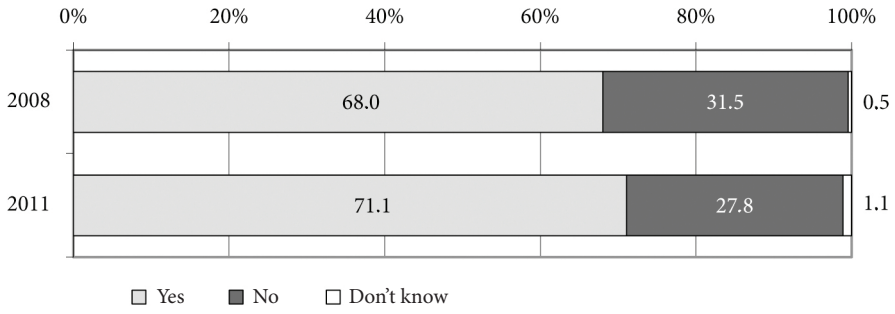
groups face in 2011 still 49.9% of population believe, or does not know, that national minorities have the same or better chances for career advancement.

What chances for employment and career advancement do ethnic minorities have in comparison to Serbs, Croats and Bosniaks?



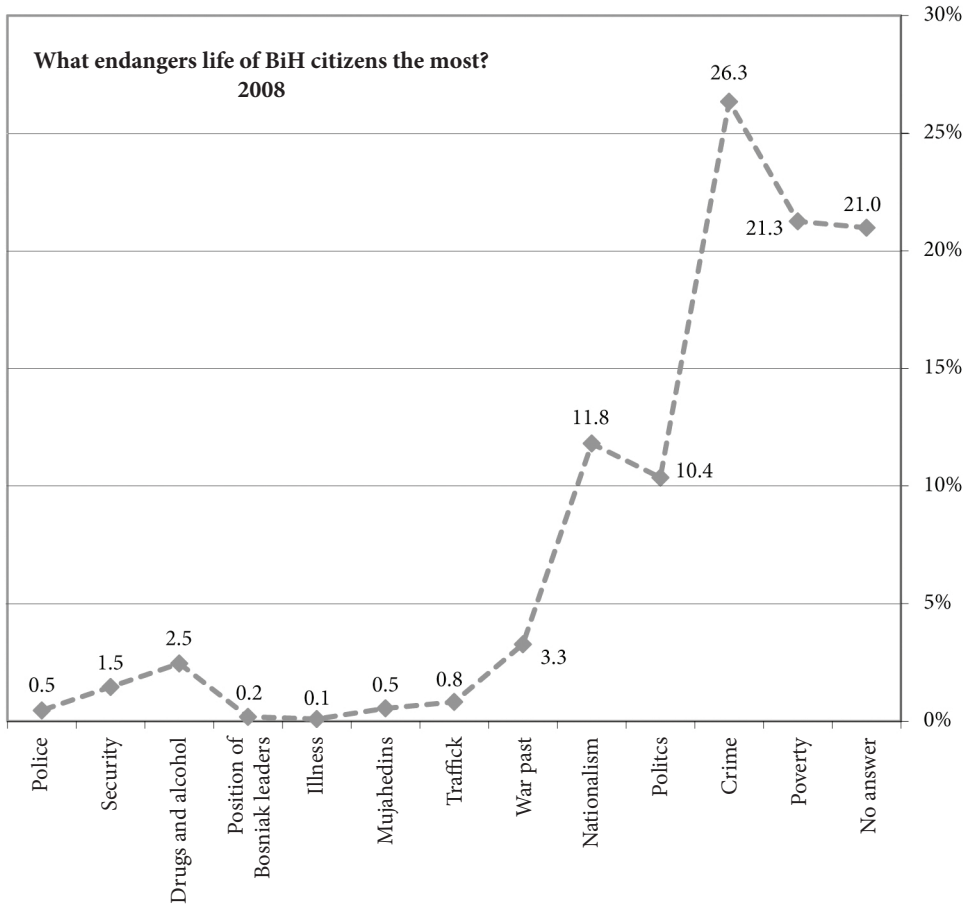
Graph 10

Is the life of citizens of BiH endangered?



Graph 11

Around 70% of citizens of BiH consider that their lives are endangered. These results do not differ from the ones obtained in 2008.



Graph 12

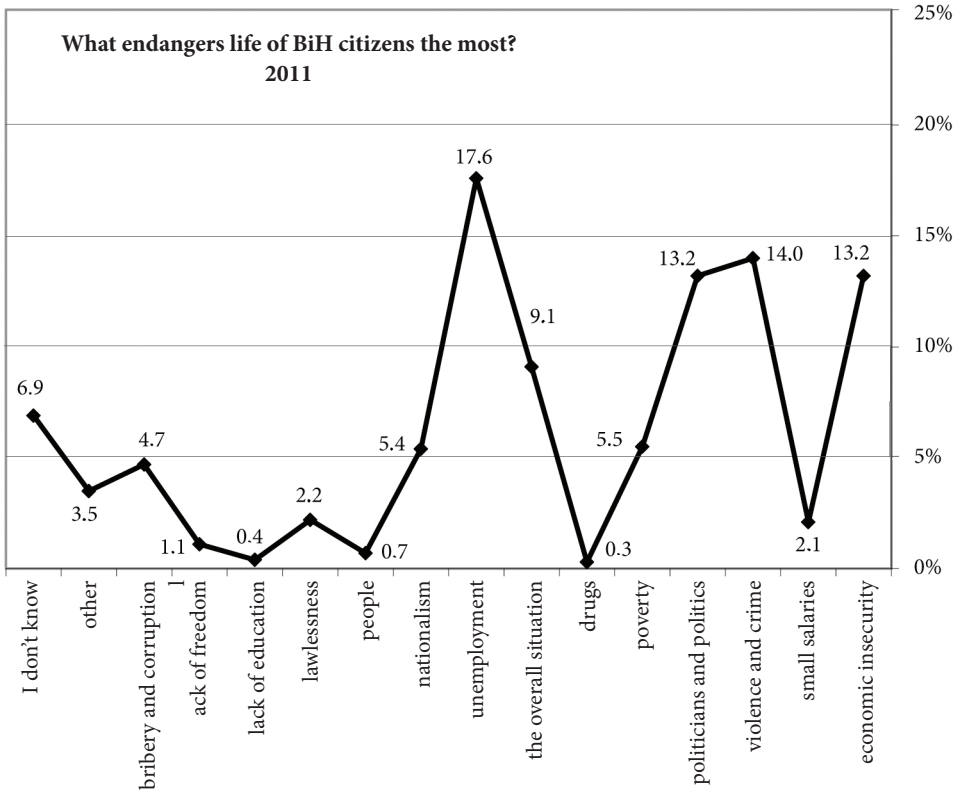
According to the opinion of citizens of BiH in 2008, lives were threatened mostly by:

1. Poverty,
2. Crime,
3. Politics and
4. Nationalism.

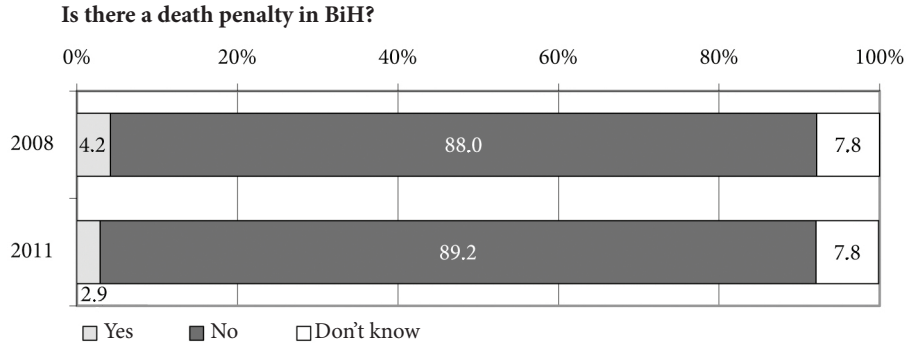
In 2011 citizens of BiH estimate that their lives are mostly threatened by:

1. Unemployment,
2. Violence and crime,
3. Economic insecurity and
4. Politicians and politics.

As we can see, citizens of BiH consider that almost identical threats endanger their lives in 2008 and 2011.

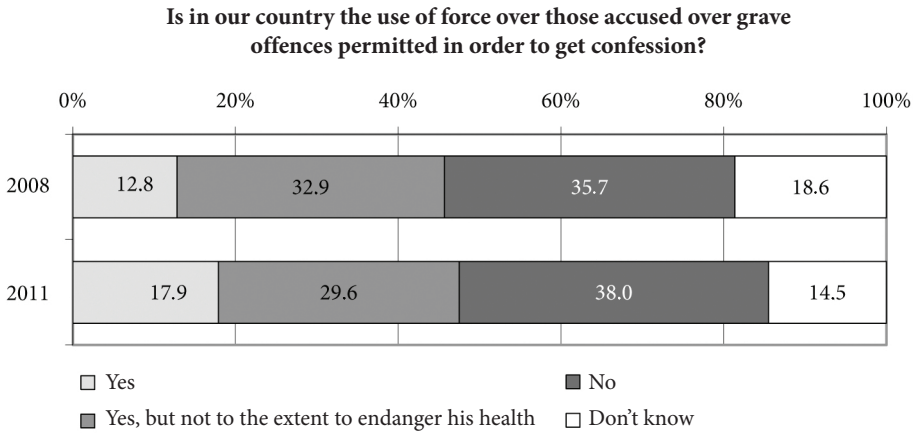


Graph 12 a



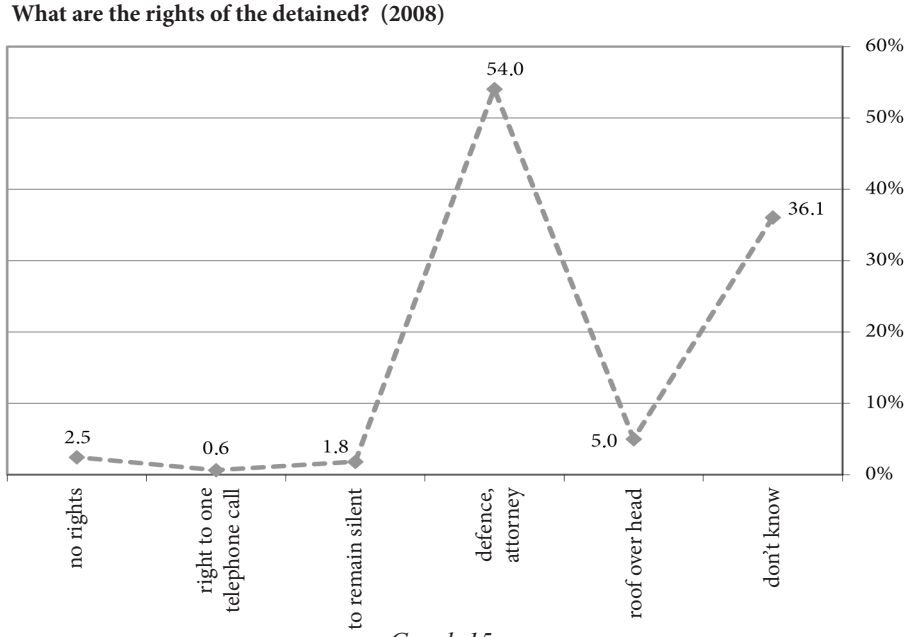
Graph 13

Less than 5% of citizens of BiH, both in 2008 and 2011, thinks that there is a death penalty in BiH. Although this is a small percentage, it is interesting to note that there are still people who are not familiar with the basis of the legal system of the country they live in.

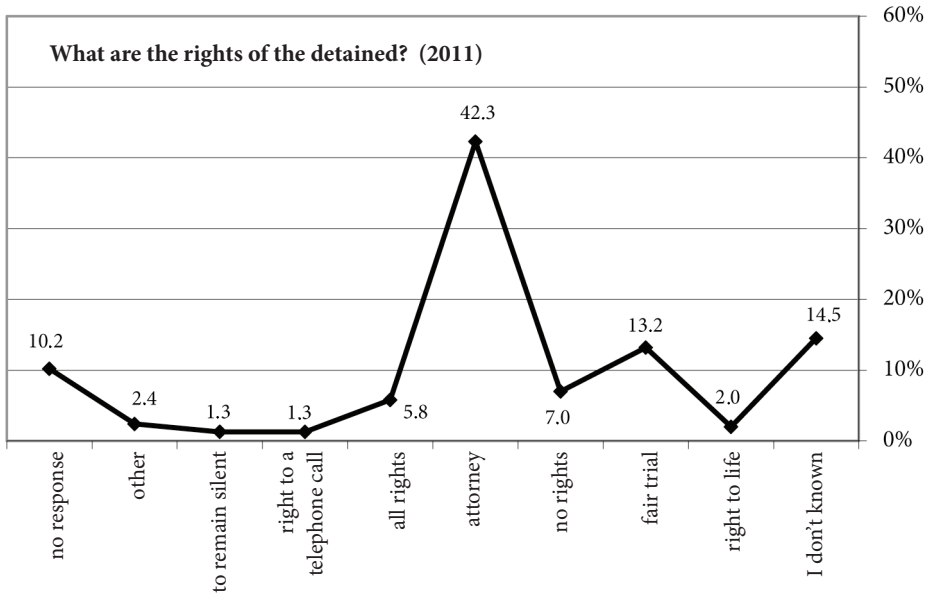


Graph 14

In comparison to 2008 the percentage of respondents that believe that the use of force over those accused of grave offences is permitted is growing, about 5%, but the percentage of those that believe that is permitted only to the extent that is not endangering the health of the suspect is decreased (by 4%).We notice that 45.7% in 2008 and 47.5 in 2011 believes that is allowed to physically torture the suspect, which indicated that the BiH society maintains the status of violent society. The threshold of perceiving behaviour as violent is set much higher than in the West European countries.

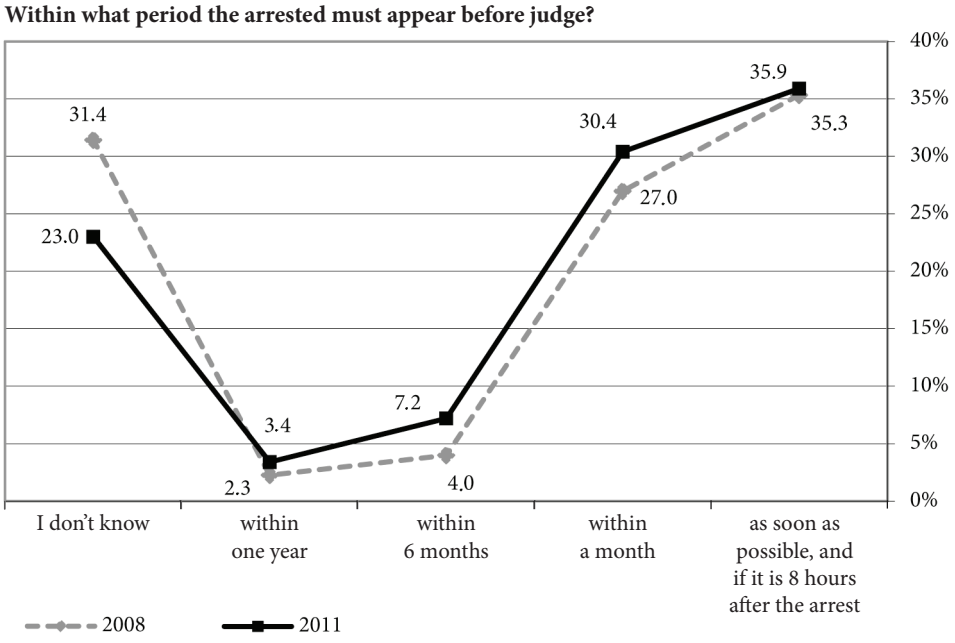


Graph 15



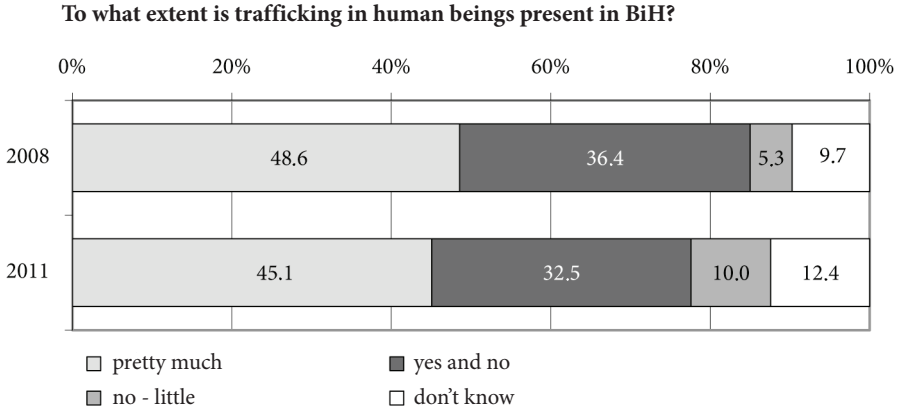
Graph 15a

Right to defence is the right respondents cited as the first answer in both 2008 and 2011. Also, in 2011 emphasized was the right to fair trial.



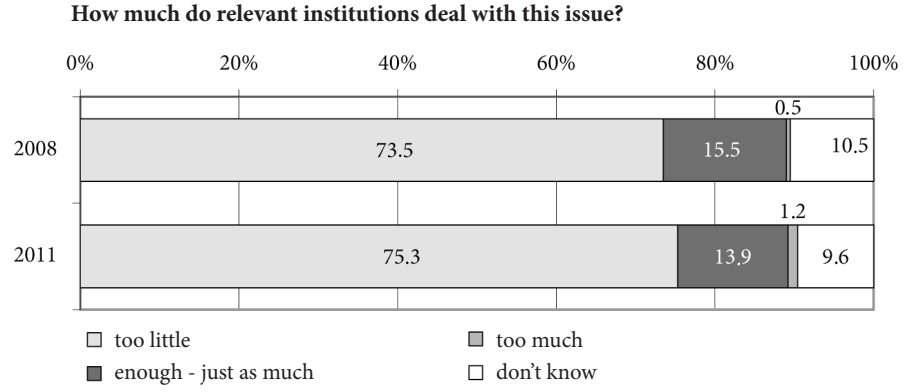
Graph 16

Most citizens of BiH (around 35%) consider that the arrested person should appear before the judge as soon as possible and results obtained in 2011 are almost identical to ones in 2008.



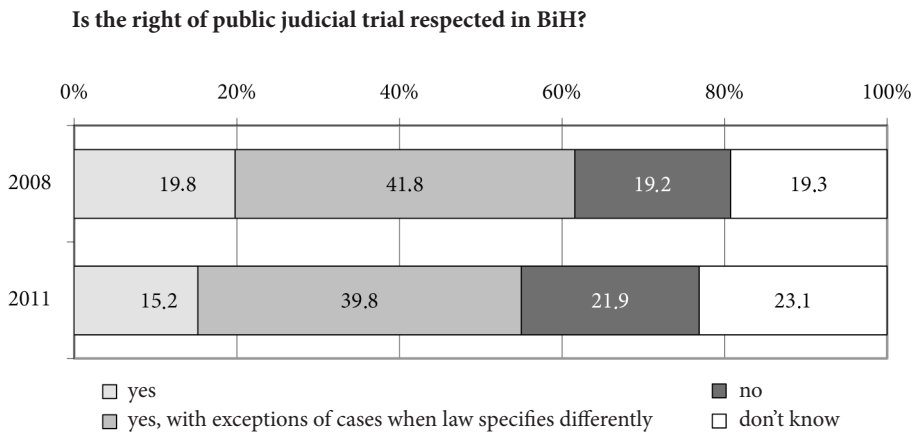
Graph 17

In 2011, the percentage of citizens that believe that human trafficking is present in BiH decreased for about 8% in comparison to the results obtained in 2008.



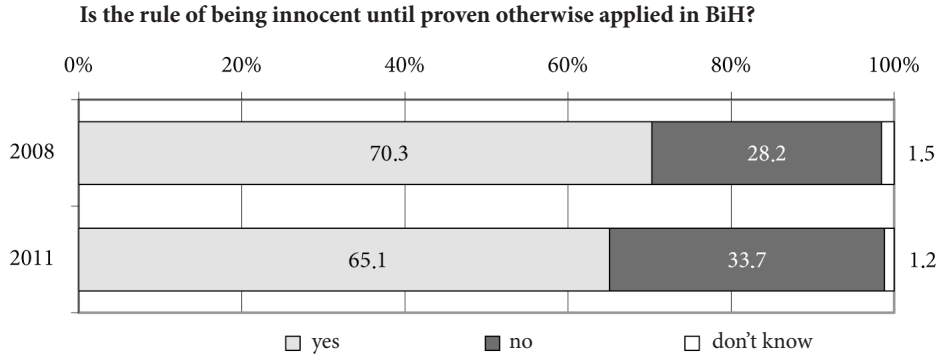
Graph 18

According to the opinion of the BiH citizens the institutions are not dealing with the issue of human trafficking too much and this percentage (around 75%) remains unchanged in comparison to 2008.



Graph 19

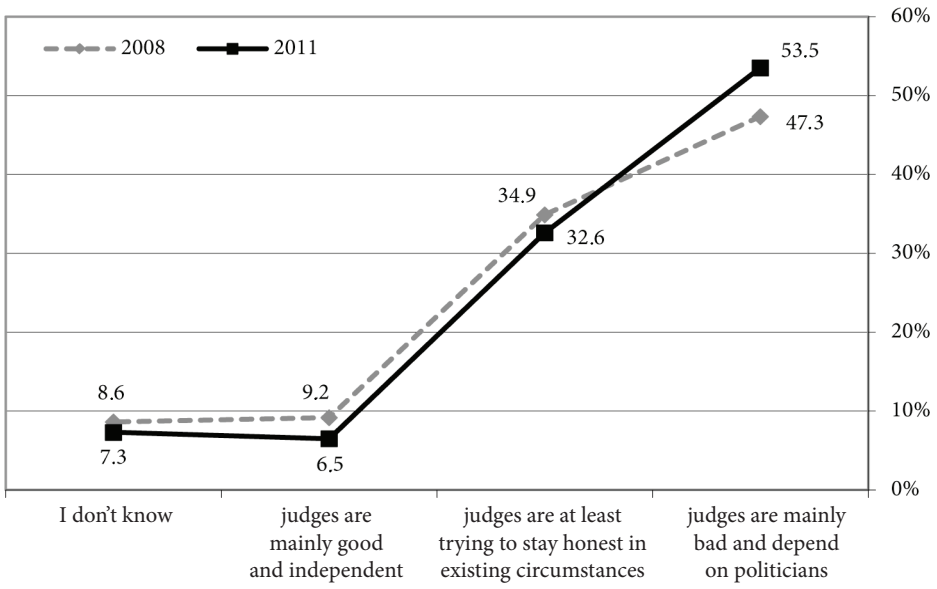
In comparison to 2008 in 2011 there was a decrease in percentage (around 5%) of those that believe that the right of public trial is respected.



Graph 20

Majority of citizens of BiH believe that the rule of being innocent until proven otherwise is applied in BiH, but this percentage in 2011 was less by 5% in comparison to 2008.

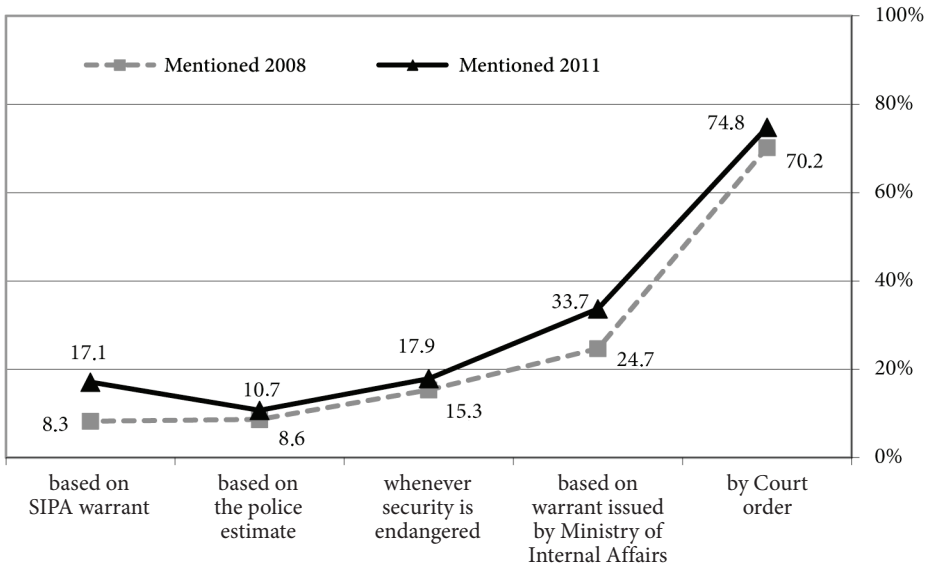
What do you think of judges presently administering justice in BiH?



Graph 21

The citizen's opinion on judges today has not changed much in comparison to 2008. Majority of citizens believe that judges are mostly doing their job badly and they're dependent on politicians, while every third respondent believes that judges are

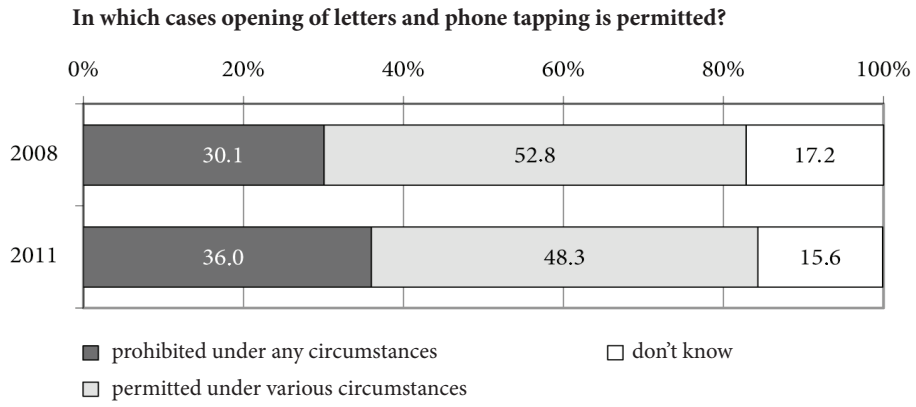
In which cases can the police search private homes?



Graph 22

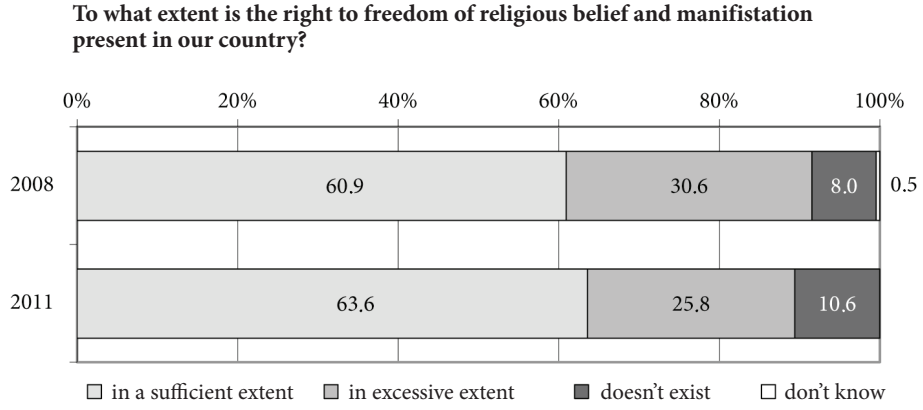
trying to do their job well in existing circumstances. Displayed distrust in judiciary, but also in state institutions in general bring into question the foundations of democratic society. In order for an individual to actively contribute and invest into society he/she must have trust state structures. Perception that he/she is not equal before the law, and that his/her rights are not protected, does not contribute to his/her democratic behaviour.

The response to a question "In which cases can the police search private homes?", does not differ much in comparison to 2008.



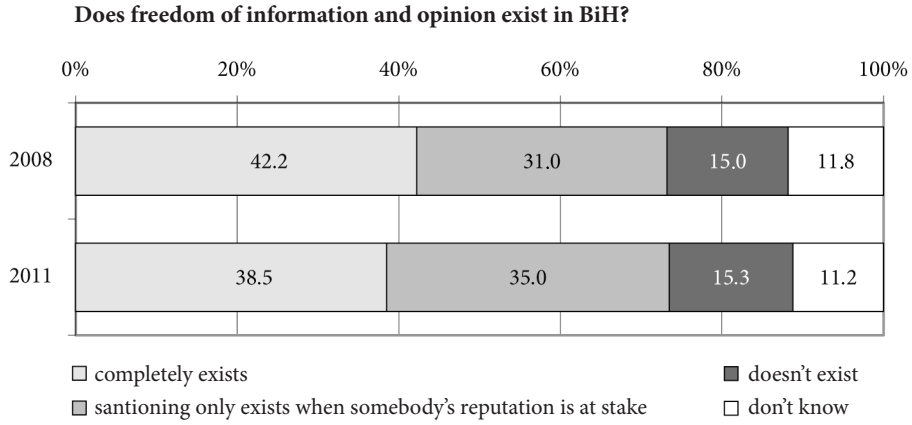
Graph 23

In comparison to 2011 the number of respondents (around 6%) that believe that opening letters and phone tapping is not permitted in any circumstances is growing.



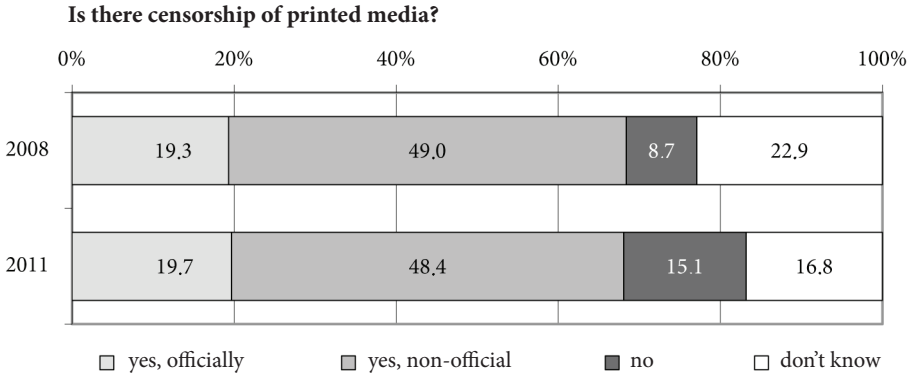
Graph 24

According to the opinion of the 60.9% of respondents in 2008, freedom of religious belief exists in sufficient extent, while results obtained in 2011 do not differ much in comparison to the result from the previous survey.



Graph 25

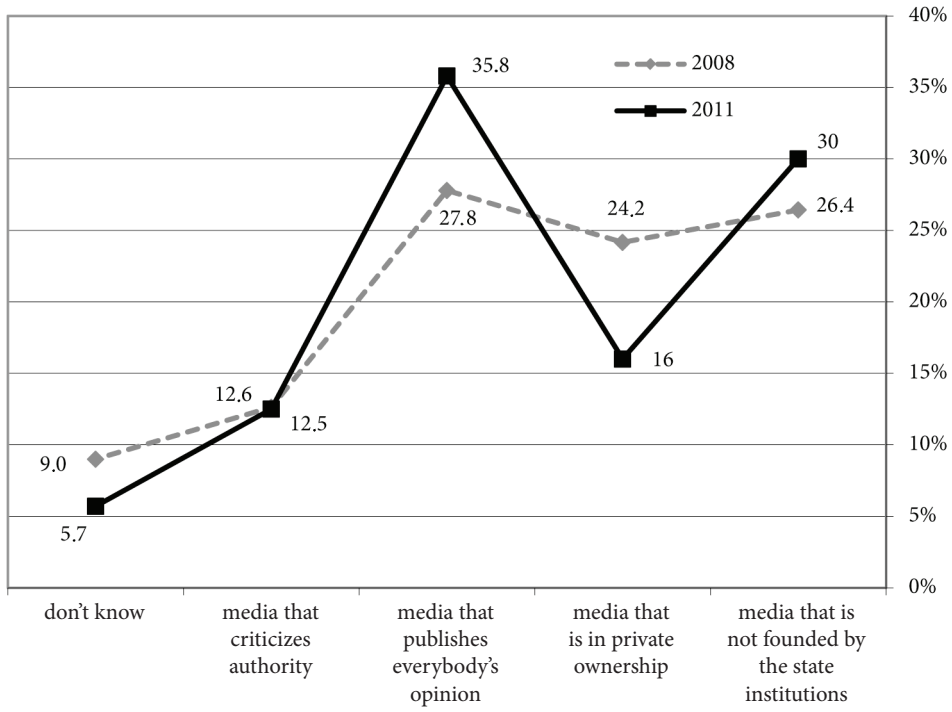
The opinion of citizens of BiH on freedom of information and opinion in 2011 has not changed much in comparison to 2008. General belief is that the freedom of opinion and information exists in sufficient extent.



Graph 26

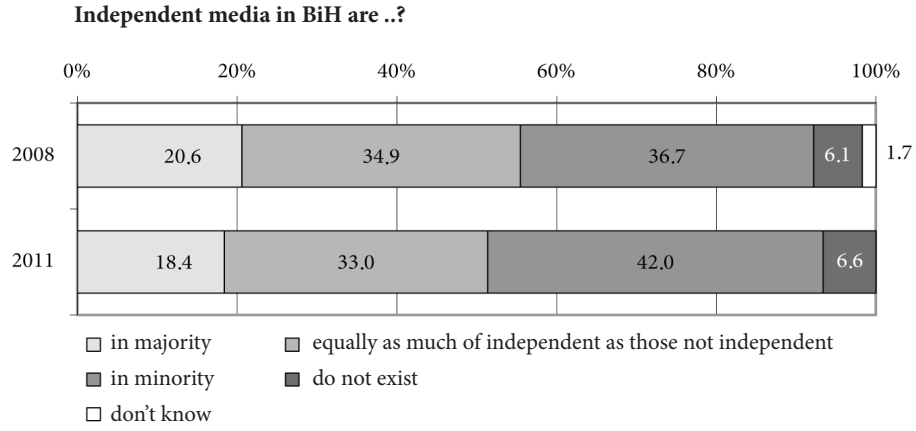
The opinion of BiH citizens on press censorship is almost unchanged in comparison to 2008. However, we need to emphasize that the percentage of citizens that believe that there is no print censorship increased in 2011 in comparison to 2008 for about 7%. From the *graph 25* we can see that citizens believe that they are free to express their opinion. However, when talking about printed media, citizens in 2008 expressed their suspicion about information they are given, and this suspicion is still present in 2011.

What is meant by independent media?



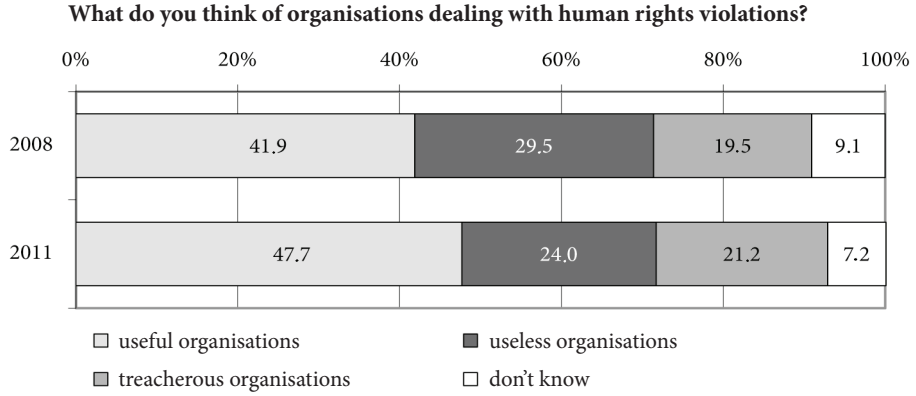
Graph 27

The citizen's opinion on independent media has significantly changed in comparison to 2008. In 2011, noted was an increase of respondents by 8%, that believe that independent media that publishes everybody's opinion, while the percentage of respondents that believe that independent media is in private ownership is less by 8%. In the period from 2008 to 2011 in the media world printed media was privatized and there was expansion of web portals and those in their favour. Web portals enable publishing of all kind of news, as well as opinions of individuals, in which case not much attention is paid to the relevance of the published news and opinions, i.e. commentaries. In 2011, 35.8% of the respondents believe that independent media are those that publish everybody's opinion.



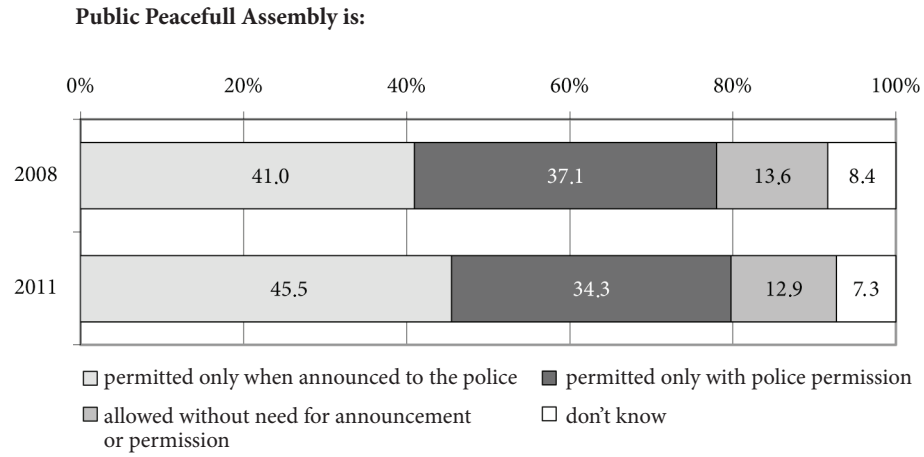
Graph 28

In comparison to 2008, the percentage of citizens (around 6%) that think that the independent media are in minority is in increase in 2011.



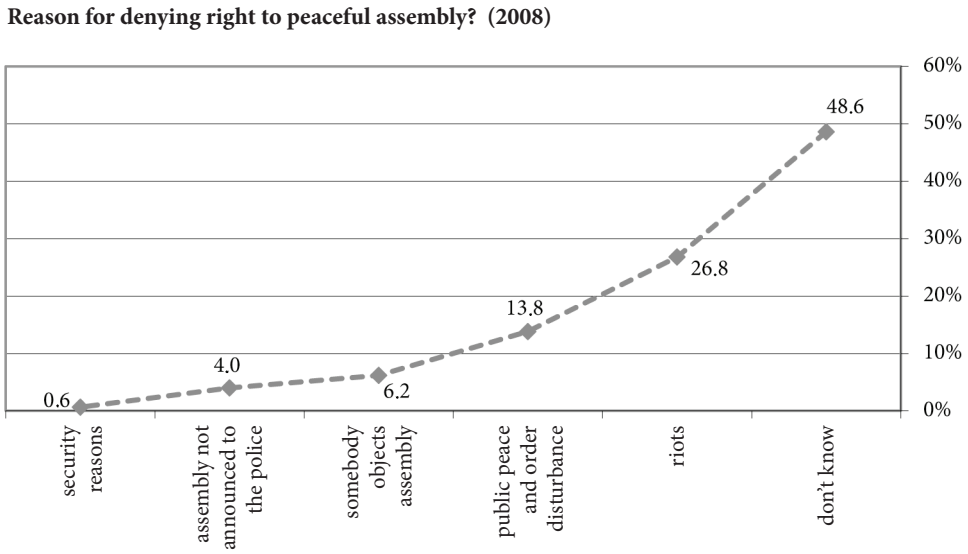
Graph 29

Compared to 2008, in 2011 the percentage (around 6%) of citizens that think that organisations dealing with human rights are useful is in increase, while the percentage of those who think that their work is useless has decreased by 5%. Based on this results it can be concluded that citizens have no confidence in the state institutions, or institutions dealing with protection of the fundamental human rights, and this in particular related to institutions that are of crucial importance for establishing democratic society. Number of respondents that think that organisations dealing with human rights are useless in 2011 is 24%, which compared to 2008 is less by 5.5%. Total of 21.2% of respondents answered that these organisations are treacherous. Based on this analysis, where majority of answers were negative, it can be concluded that there is no confidence in institutions.

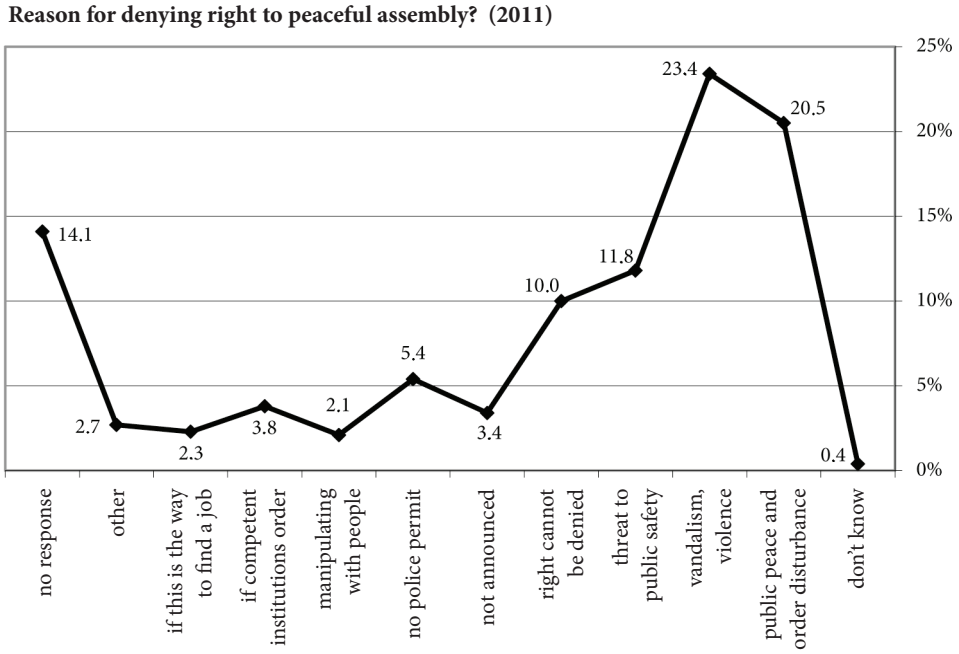


Graph 30

The results that we received in 2011, related to a question "Public peaceful assembly is…" are very similar to results received in 2008. Having previous experience of gathering in a public place respondents answered accordingly. In 2011, 45.5 % of the respondents consider that in order to have public assembly announcement to the police is needed, which is an increase of 4.5% compared to previous poll. 34.3 % of the respondents consider that assembly is allowed with police permit, which is 2.8% less in comparison to 2008.

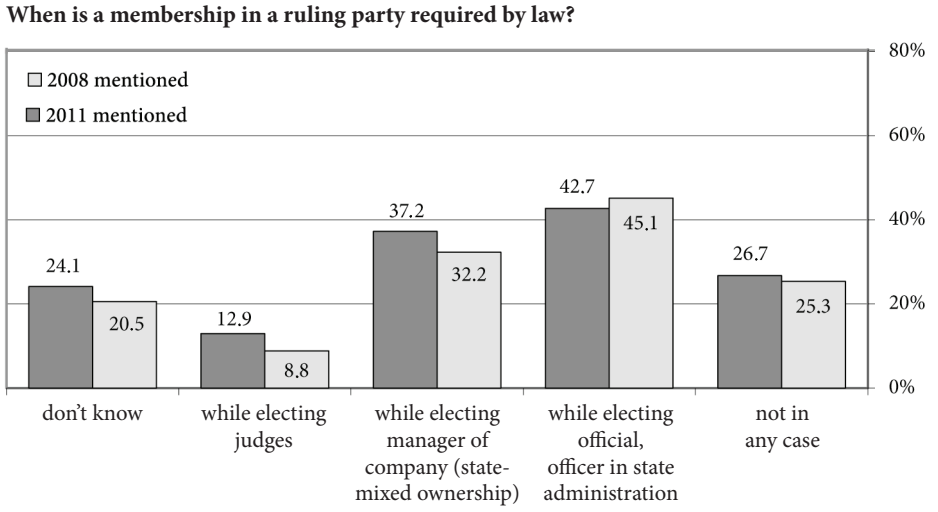


Graph 31



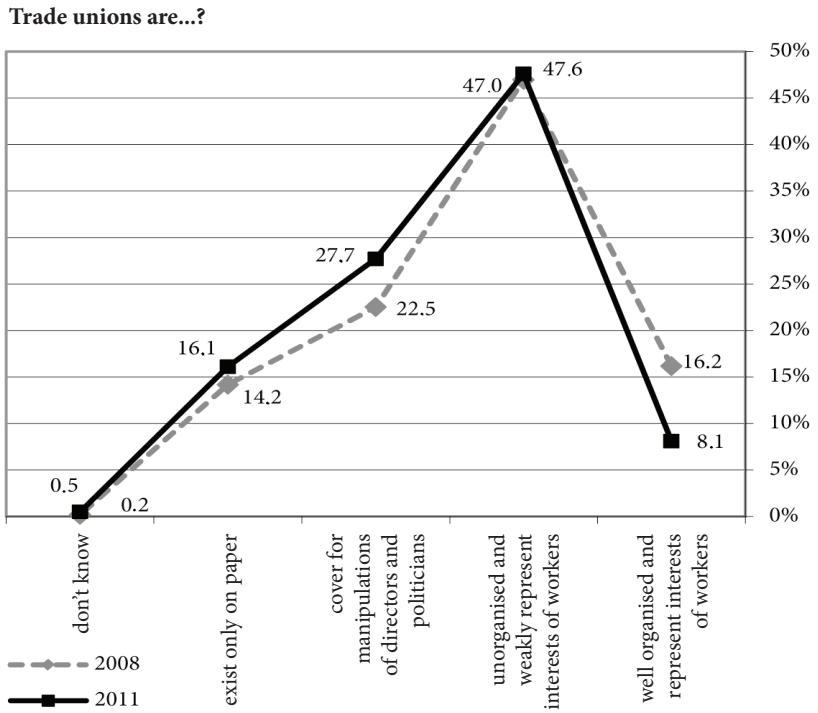
Graph 31a

Based on the analysis of the *graph 31* and *31a,* where results from 2008 and 2011 are very similar and having in mind the previous experience from gathering in a public place, the respondents emphasized that public peace and order disturbance (20.5%), vandalism and violence (23.4%) and threat to public safety (11.8%) are main reasons for denying the right to peaceful assembly.



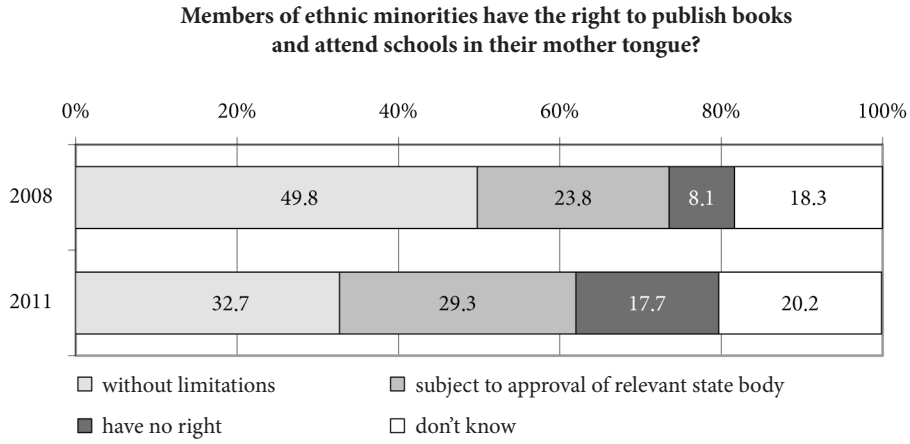
Graph 32

On the question "When is a membership in a ruling party required by law?", we received answers that do not differ much regardless if they were obtained in 2008 or 2001. These results are the product of distrust of the BiH society towards judiciary and objectivity of competent authorities. As indicated in the graph, the respondents (12.9%) stated that the law, when electing judges, requires membership in some of the ruling parties. Lack of trust of citizens towards judiciary is impossibility of democratic functioning of the state.



Graph 33

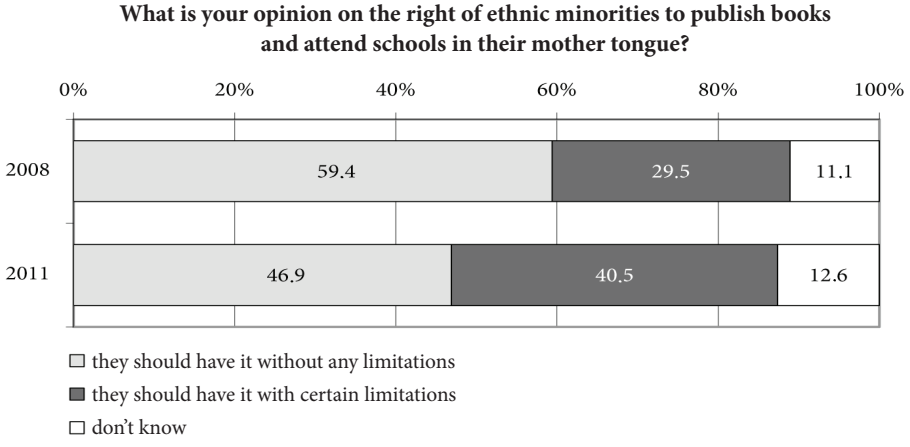
The perception of the trade unions in 2011 has not changed much in comparison to 2008. Based on this results one can conclude that basic rights of the workers are not respected, i.e. workers have no confidence in trade unions and as such are not in service of workers. A number of respondents answered that unions are unorganised and weakly represent interests of workers (47.6 %), which is almost identical to a 2008 result. This graph depicts real situation of workers' rights and dissatisfaction in BiH, as well as the unemployment percentage.



Graph 34

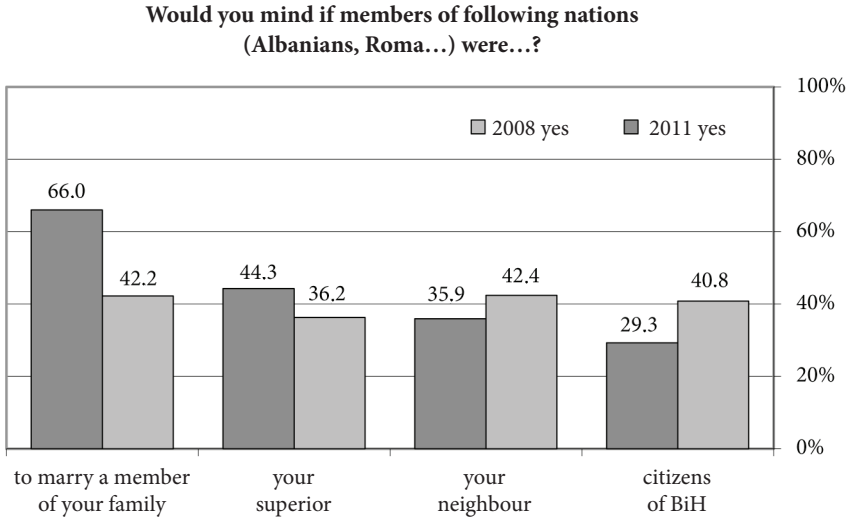
According to the opinion of the respondents in 2011, the rights of ethnic minorities to publish books and attend schools in their mother tongue are reduced. Percentage of the respondents that unequivocally think that minorities do not have this right has increased by 9%.

In comparison to 2008, in 2011 twice as many respondents answered that ethnic minorities have no right to publish books and attend schools in their mother tongue, which is a devastating result. Based on the analysis of responses of respondents who believe that publishing books and attending schools in mother tongue is subject to approval of relevant state body (29.3%) and those who think that there is no right to publish books and attend schools in their mother tongue, it is possible to observe discriminatory situation of ethnic minorities and radicalisation of the problem of their status.



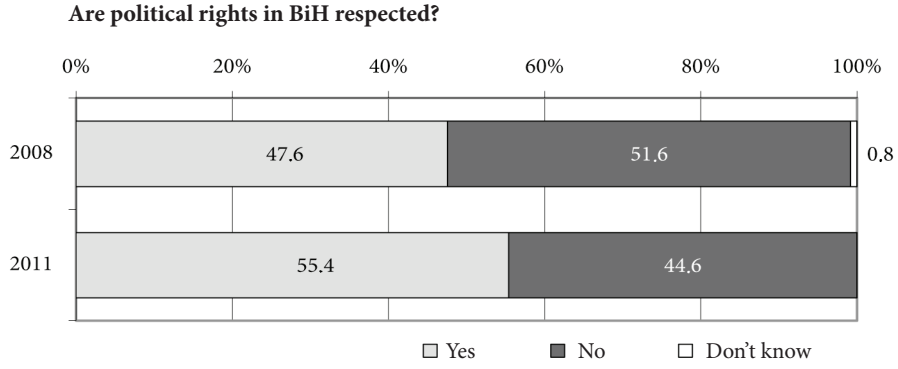
Graph 35

In comparison to 2008, in 2011 evident is an increase of the percentage of the respondents (about 11%) who believe that ethnic minorities should be allowed to publish books and attend schools in their mother tongue, while the percentage of those who believe that these limitations for national minorities should be abolished is decreasing.



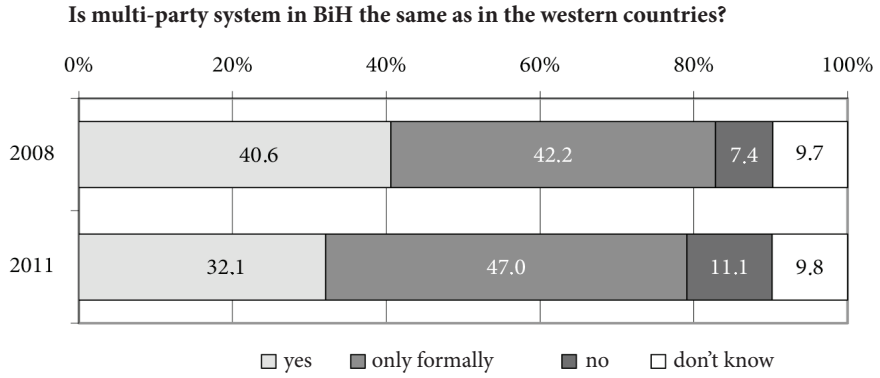
Graph 36

In comparison to 2008, in 2011 there is an increase of ethnic distance, especially with the increase of closeness of offered social relationships.



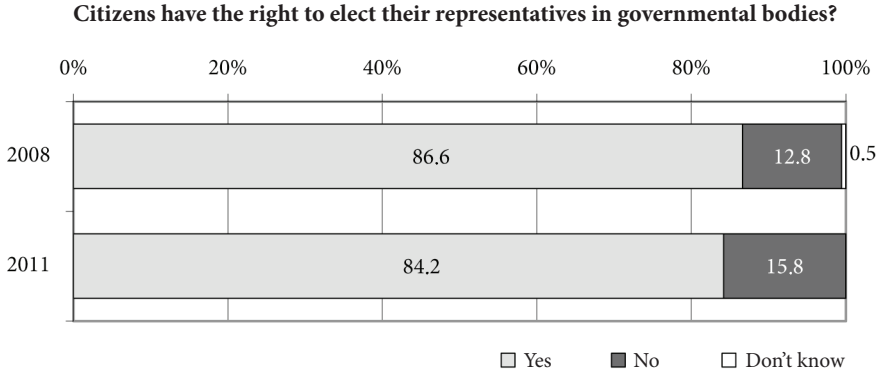
Graph 37

In comparison to 2008, the respondents in 2011 by large (around 8%) believe that political rights in BiH are respected.



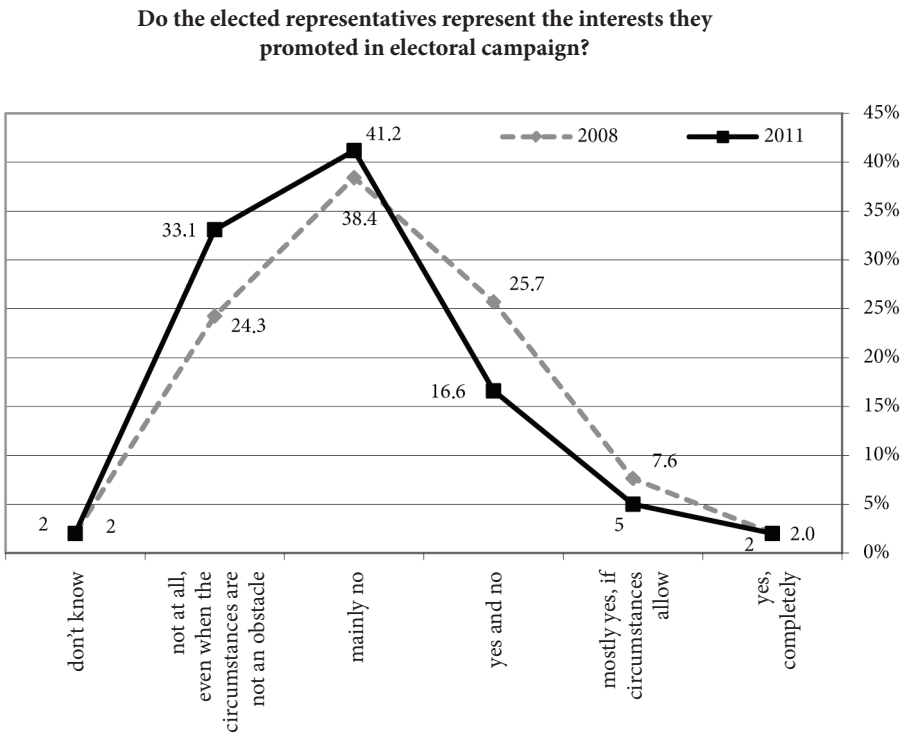
Graph 38

In comparison to 2008, the percentage of respondents (5%) who believe that multi-party system as in the West only formally exists in BiH is increasing, while percentage of those that believe that such form of the multi-party system exists has increased by 8%.



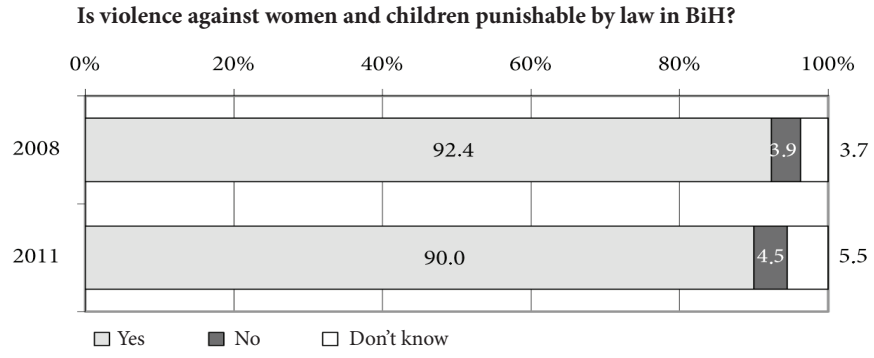
Graph 39

Citizens have the right to elect their representative in governmental bodies (around 85%) and this percentage in 2011 is similar to one from 2008.



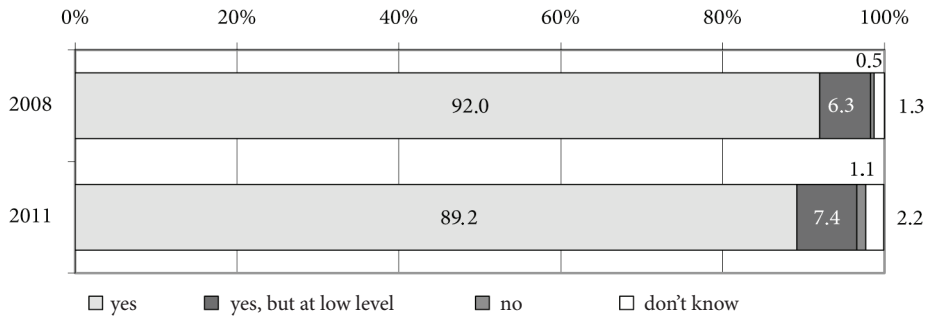
Graph 40

The respondents believe that the elected representatives mainly do not represent the interests they promoted in electoral campaign (41.2%), or even when the circumstances are not an obstacle (33.1%). Based on the obtained responses noted is an increase of distrust of citizens towards institutions and competent bodies, as well as dissatisfaction with the work of the elected officials.



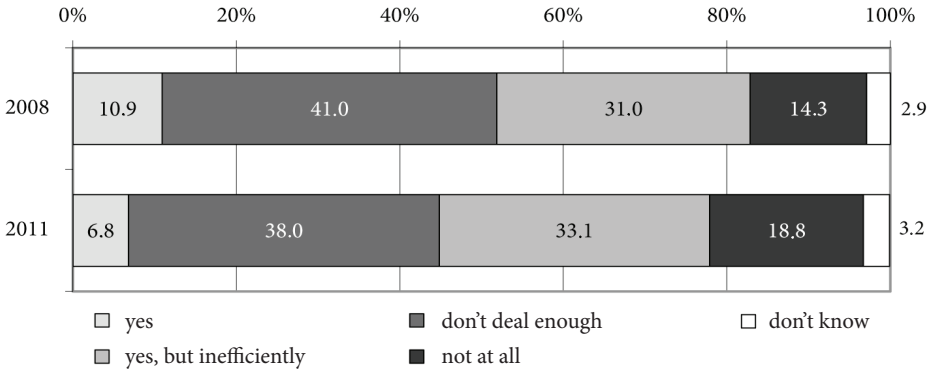
Graph 41

Is violence against women and children present in BiH?



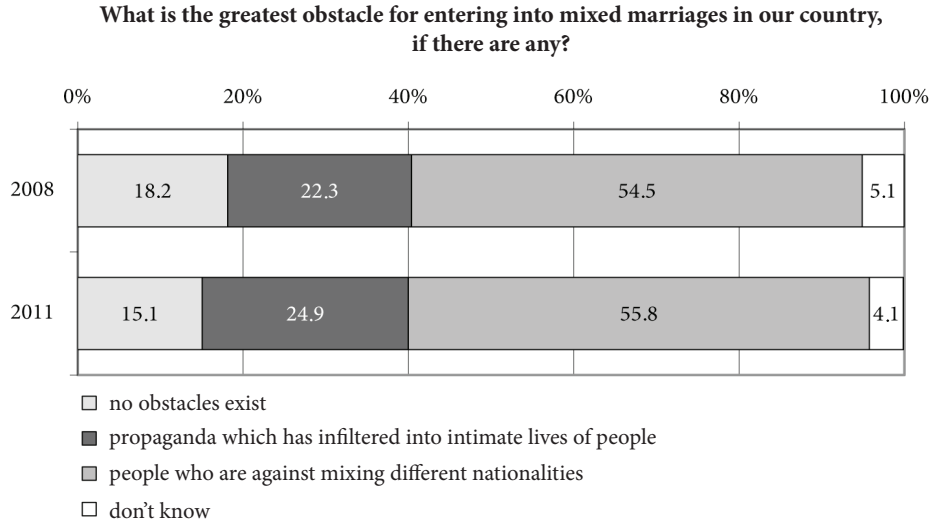
Graph 42

To which extent does the state and its institutions are dealing with this problem?



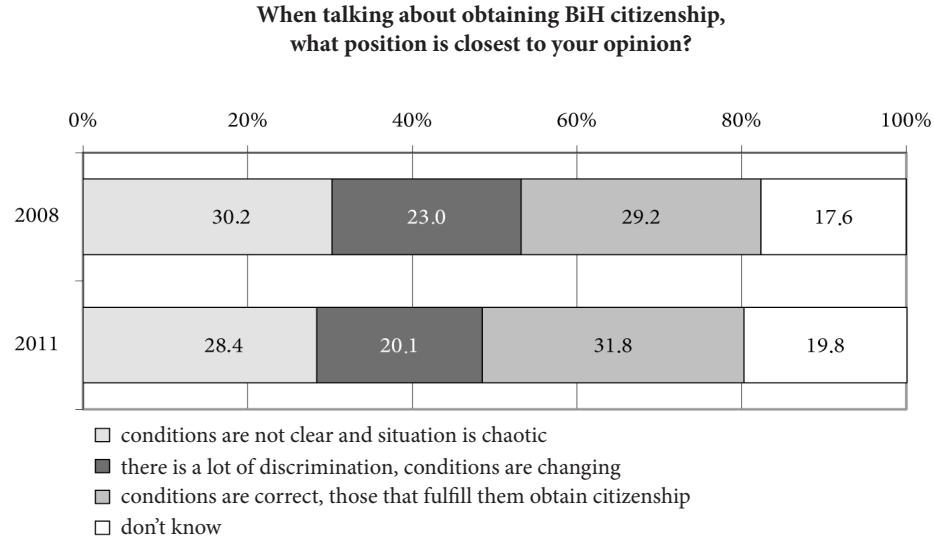
Graph 43

Results from 2008 do not differ much from the results in 2011, while a general conclusion is that the state and its institutions are not dealing enough with the problem of violence against women and children.



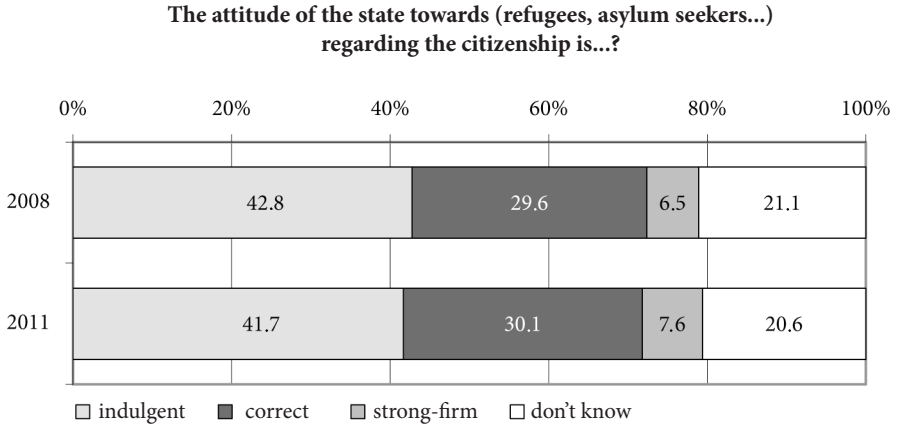
Graph 44

Results from 2008 do not differ much from the results in 2011, while a general conclusion is that the problem lies within people who disapprove multi-ethnic marriages.



Graph 45

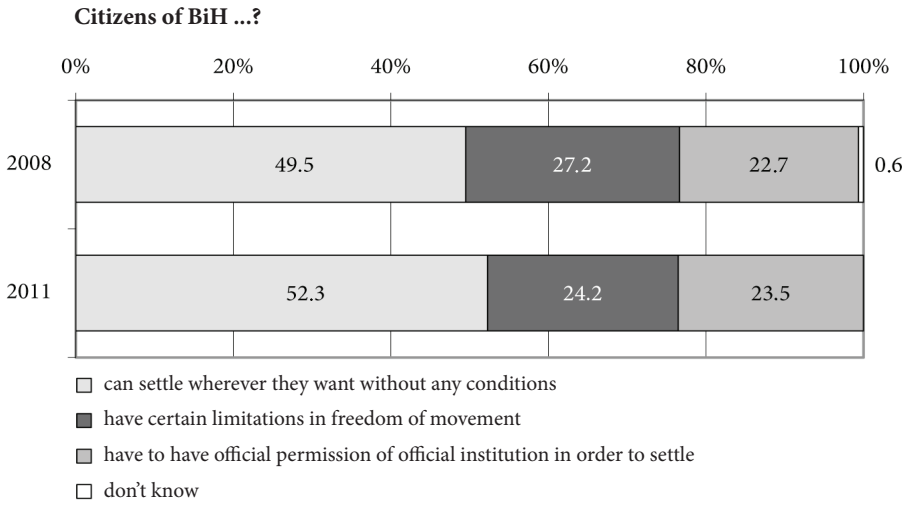
The opinion of citizens on conditions for obtaining BiH citizenship does not much differ from the opinion in 2008.



Graph 46

The perception of the attitude of the state towards refugees and asylum seekers in relation to obtaining the citizenship in comparison to 2008 has not changed in 2011. Majority of respondents (around 41%) considers that the attitude is indulgent.

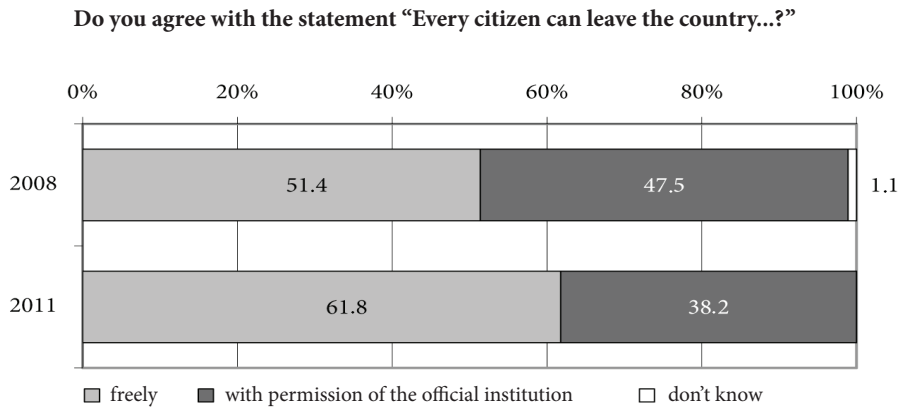
According to the results of the surveys in 2008 and 2011, majority of citizens in BiH believe that they can settle, without limitations, anywhere they want on the territory of BiH. Results obtained from both surveys are similar.



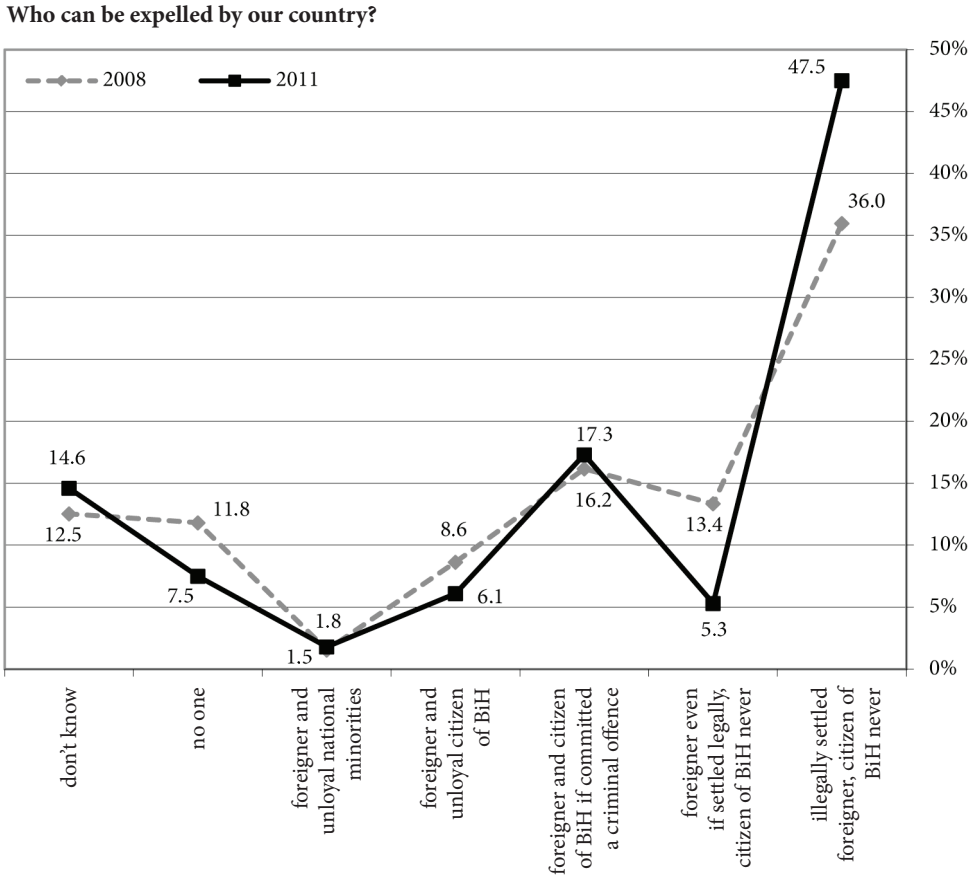
Graph 47

In comparison to 2008 in 2011 there was an increase of the percentage of respondents, by 10%, who believe that "Every citizen can leave country freely". Based on the results of the answered question one can notice that citizens are not informed

of freedom of movement, where even 38.2% of respondents answered that they can leave the country only with permission of the official institution.



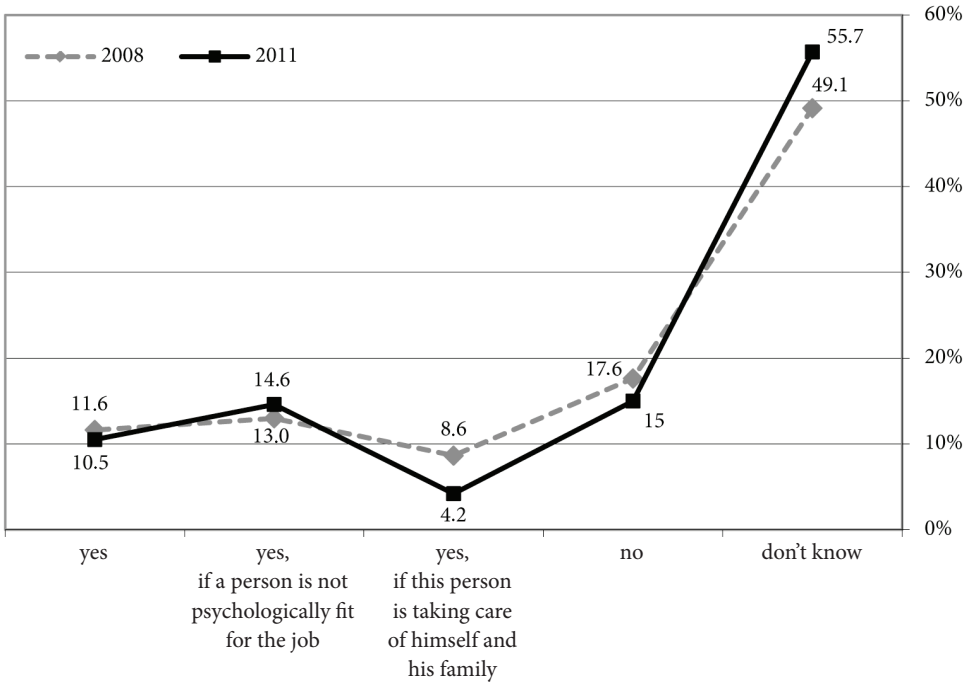
Graph 48



Graph 49

In comparison to 2008, in 2011 there was an increase in percentage of respondents, by 11%, who believe that the state has right to expel illegally settled foreigners, but on the other hand there was a decrease (around 8%) in case of legally settled foreigners and citizens of BiH. In 2011, there was an increase in percentage, in comparison to 2008, of respondents who answered that the state can even expel a citizen of BiH if he/she committed criminal offence (17.3%), as well as citizens who are disloyal to BiH (6.1%). The percentage of respondents who think that citizen can be expelled is overwhelming, because it proves that citizens are not informed that the state cannot expel its own citizen, regardless if he/she had committed criminal offence.

Employing persons under 16 years of age is punishable?

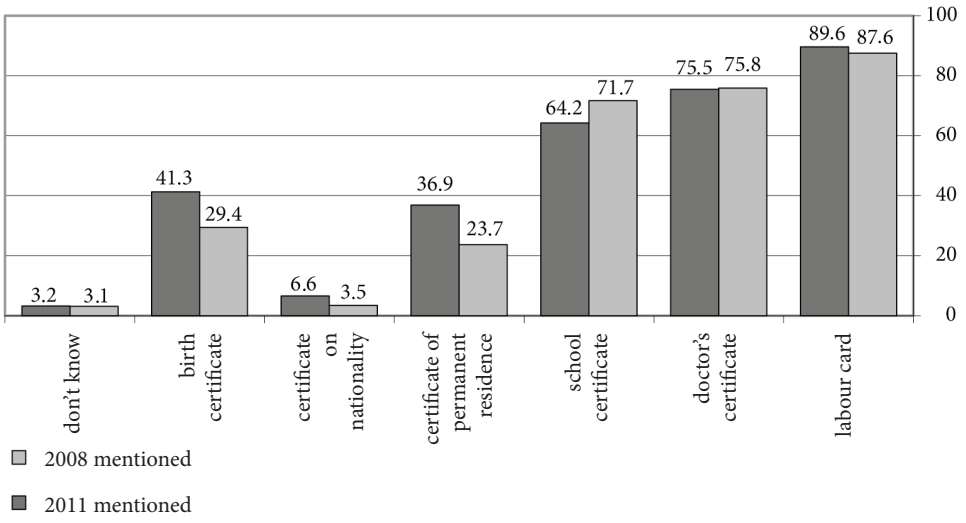


Graph 50

For majority of respondents in BiH employing persons under 16 years of age is criminal offence (around 50%), and similar results were obtained in 2008.

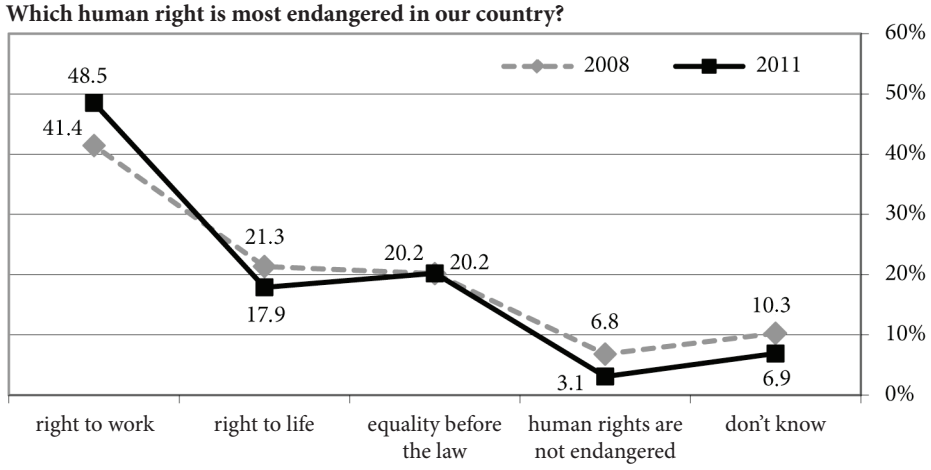
Results that were obtained in 2011, and regarding documents that are required for employment, do not differ much from the results obtained in 2008. We have to emphasize that in comparison to respondents in 2008 the respondents in 2011 accentuated the need of producing birth and permanent residence certificate.

In order to be employed it is required to have?



Graph 51

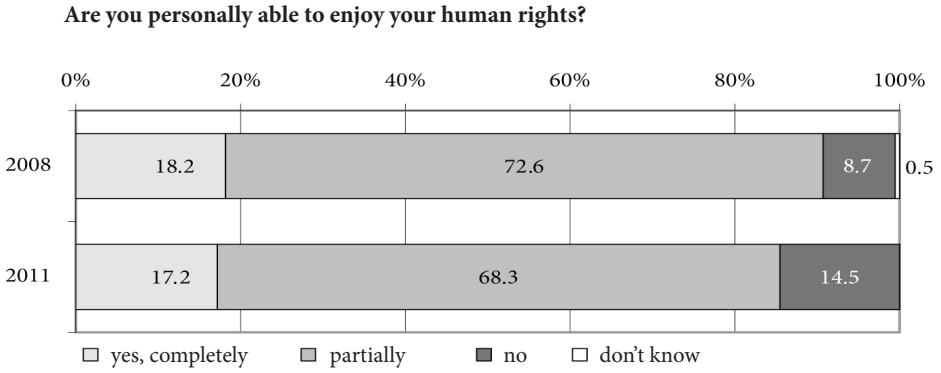
Which human right is most endangered in our country?



Graph 52

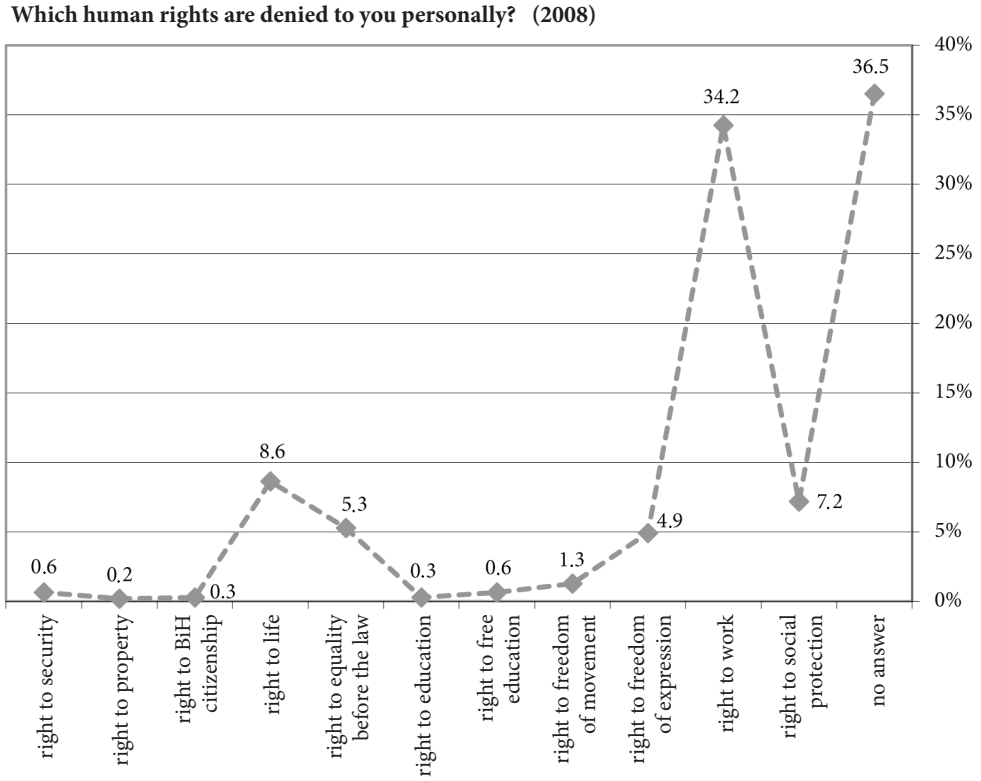
The list of the most endangered rights in BiH, obtained in 2011 does not differ from the list from 2008.

Results show that the most endangered is right to work and disrespect of workers' rights, as mentioned in *graph 54*. This result, as much as 48.5% of respondents, shows real situation in Bosnia and Herzegovina and high unemployment. Out of all mentioned human rights, as possible answers, respondents mentioned right to work as the most endangered because their existence depends on the possibility of being employed.



Graph 53

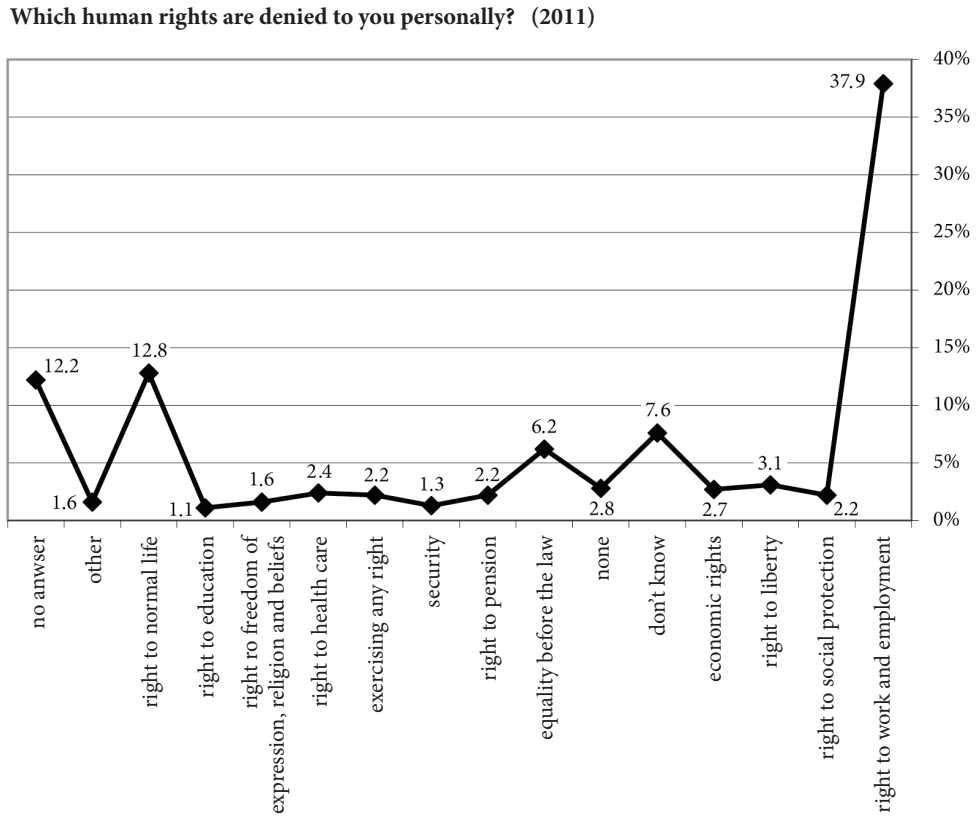
In 2011, there was 6%, increase, of respondents who claim that they failed to protect human rights belonging to them.



Graph 54

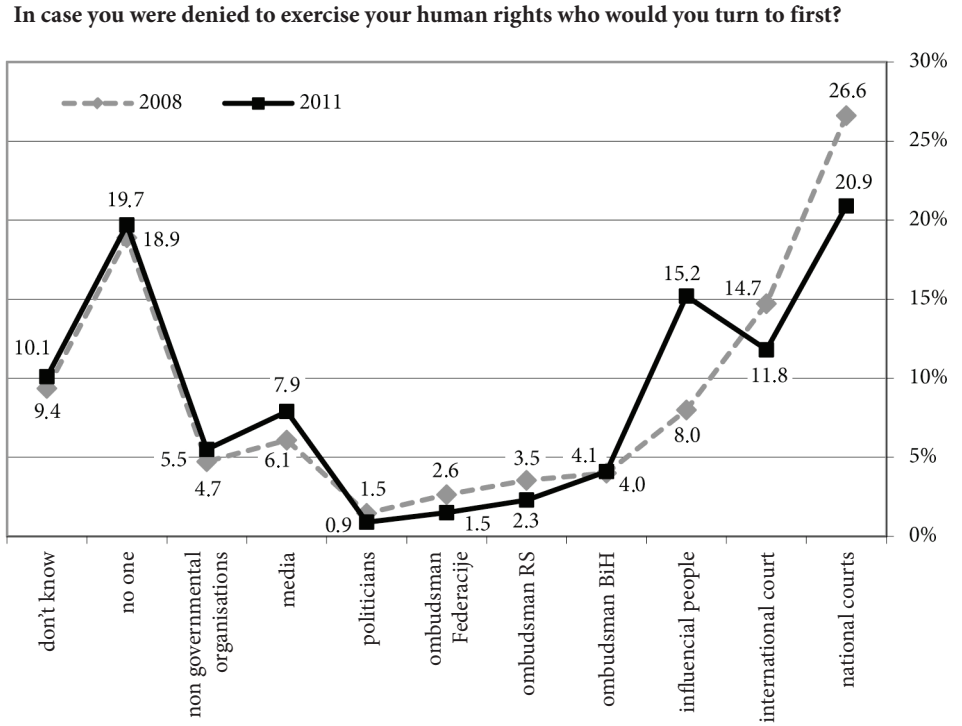
Based on the analysis of the *graph 54*, where respondents mentioned that right to work was most endangered right in BiH, in this analysis of the answers from 2008 it

is visible that respondents believe that out of all mentioned rights, as possible answers, right to work (34.2%) was most denied because their existence depends on it.



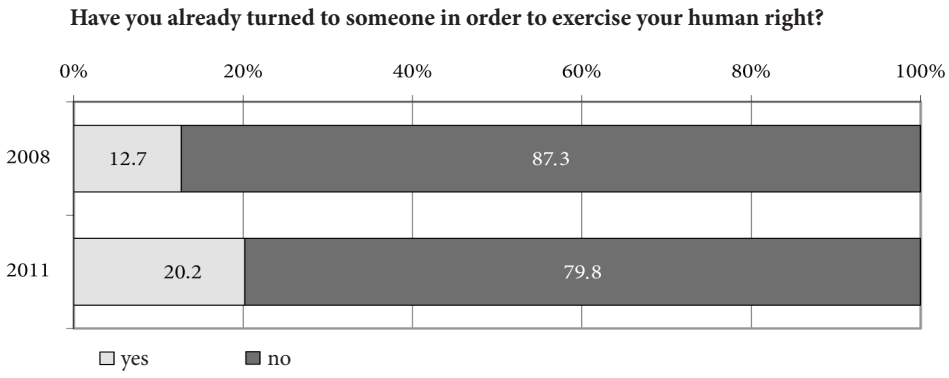
Graph 54a

The results on this question are similar to those in 2008. In *graph 54a* the respondents mentioned that the most endangered human right is right to work. Based on the results from 2011 we noticed that respondents believe that most denied right is right to work (37.9%) and we note slight increase compared to the results from 2008. Based on the analysis of the most endangered human right and right denied to respondents, reflected is real situation of BiH society, dissatisfaction and high unemployment.



Graph 55

In comparison to 2008, in 2011 there was an increase in the percentage (around 7%) of respondents that would turn to influential people for protection of their rights, while at the same time percentage of those that would turn to courts has decreased (by 6%). High percentages of respondents who would not turn to anyone in case their human rights were denied are present in both surveys (2008 – 18.9%, 2011 – 19.7%).



Graph 56

In 2011 there was an increase in percentage (about 8%) of respondents that would turn to an institution in order to enjoy some of the universal human rights. Although based on the previous graph analysis we can observe violation, denial and disrespect of basic human rights, as well as citizens' dissatisfaction, a high percentage (79.8%) of respondents answered that in order to enjoy human rights they don't seek assistance from the institutions and competent bodies. Based on these results we conclude that the apathy, as well as lack of trust in institutions dealing with protection of human rights, is present in the BiH society.

VI
List of Signed and Ratified International Agreements that relate to Human Rights

INTERNATIONAL DOCUMENTS AND CONVENTIONS SIGNED BY BOSNIA AND HERZEGOVINA

UNITED NATIONS DOCUMENTS

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o sprječavanju i kažnjavanju zločina genocida	**Convention on the Prevention and Punishment of the Crime of Genocide**	Paris, 09.12.1948 Entry into force 12.09.1951	29.12.1992	25/1993
Međunarodna konvencija o ukidanju svih oblika rasne diskriminacije	**International Convention on the Elimination of All Forms of Racial Discrimination**	New York, 07.03.1966 Entry into force 04.01.1969	16.07.1993	25/1993
Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima	**International Covenant on Economic, Social and Cultural Rights**	New York, 16.12.1966 Entry into force 3.01.1976	01.09.1993	25/1993
Međunarodni pakt o građanskim i političkim pravima	**International Covenant on Civil and Political Rights**	New York, 16.12.1966 Entry into force 23.03.1976	01.09.1993	5/1992 25/1993
Fakultativni protokol uz Međunarodni pakt o građanskim i političkim pravima	**Optional Protocol to the International Covenant on Civil and Political Rights**	New York, 16.12.1966 Entry into force 23.03.1976	01.03.1995	23/1993 25/1993
Konvencija o nezastarijevanju zločina protiv čovječnosti i ratnih zločina	**Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity**	New York, 26.11.1968 Entry into force 11.11.1970	01.09.1993	25/1993; 8/2008 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Međunarodna konvencija o suzbijanju i kažnjavanju zločina aparthejda	**International Convention on the Suppression and Punishment of the Crime of Apartheid**	New York, 30.11.1973 Entry into force 18.07.1976	01.09.1993	25/1993
Konvencija o ukidanju svih oblika diskriminacije žena	**Convention on the Elimination of All Forms of Discrimination against Women**	New York, 18.12.1979 Entry into force 03.09.1981	01.09.1993	25/1993
Fakultativni protokol uz Konvenciju o ukidanju svih oblika diskriminacije žena	**Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women**	New York, 06.10.1999 Entry into force 22.12.2000	07.09.2000 04.09.2002	5/2002 International agreements
Konvencija protiv mučenja i drugog svirepog, neljudskog ili ponižavajućeg postupanja ili kažnjavanja	**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**	New York, 10.12.1984 Entry into force 26.06.1987	01.09.1993	25/1993
Fakultativni protokol uz Konvenciju protiv mučenja i drugog svirepog, neljudskog ili ponižavajućeg postupanja ili kažnjavanja	**Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**	New York, 18.12.2002 Entry into force 22.06.2006	07.12.2007 24.10.2008	8/2008 International agreements
Međunarodna konvencija protiv aparthejda u sportu	**International Convention against Apartheid in Sports**	New York, 10.12.1985 Entry into force 03.04.1988	01.09.1993	25/1993
Konvencija o pravima djeteta	**Convention on the Rights of the Child**	New York, 20.11.1989 Entry into force 02.09.1990	01.09.1993	25/1993

Name	Original name	Signed	BiH	Official Gazette number
Fakultativni protokol uz Konvenciju o pravima djeteta o učešću djece u oružanim sukobima	**Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict**	New York, 25.05.2000 Entry into force 12.02.2002	07.09.2000 10.10.2003	5/2002 International agreements
Fakultativni protokol uz Konvenciju o pravima djeteta o prodaji djece, dječijoj prostituciji i dječijoj pornografiji	**Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**	New York, 25.05.2000 Entry into force 18.01.2002	07.09.2000 04.09.2002	5/2002 International agreements
Drugi fakultativni protokol uz Međunarodni pakt o građanskim i političkim pravima, čiji je cilj ukidanje smrtne kazne	**Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**	New York, 15.12.1989 Entry into force 11.07.1991	07.09.2000 16.03.2001	31/2000
Međunarodna konvencija o zaštiti prava svih radnika migranata i članova njihovih porodica	**International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**	New York, 18.12.1990 Entry into force 01.07.2003	13.12.1996	2/1996 International agreements
Konvencija o pravima osoba s invaliditetom	**Convention on the Rights of Persons with Disabilities**	New York, 13.12.2006 Entry into force 03.05.2008	29.07.2009 12.03.2010	11/2009 International agreements
Fakultativni protokol uz Konvenciju o pravima osoba s invaliditetom	**Optional Protocol to the Convention on the Rights of Persons with Disabilities**	New York, 13.12.2006 Entry into force 03.05.2008	29.07.2009 12.03.2010	11/2009 International agreements
Međunarodna konvencija o zaštiti svih osoba od prisilnih nestanaka	**International Convention for the Protection of All Persons from Enforced Disappearance**	New York, 20.12.2006 Entry into force 23.12.2010.	06.02.2007	Not ratified

INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o prinudnom ili obaveznom radu br. 29	**Convention concerning Forced or Compulsory Labour**	Geneva, 28.06.1930 Entry into force 01.05.1932	02.06.1993	25/1993
Konvencija koja se odnosi na diskriminaciju u pogledu zapošljavanja i zanimanja br. 111	**Convention concerning Discrimination in Respect of Employment and Occupation**	Geneva, 25.06.1958.	02.06.1993	25/1993
Konvencija o jednakom postupanju prema stranim i domaćim radnicima u pogledu obeštećenja kod nesrećnih slučajeva u radu br. 19	**Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents**	Geneva, 05.06.1925	02.06.1993	25/1993
Konvencija o jednakim mogućnostima i tretmanu za radnike i radnice (radnici s porodičnim obavezama) br. 156	**Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities**	Geneva, 23.06.1981	02.06.1993	25/1993
Konvencija o nagrađivanju muške i ženske radne snage za rad jednake vrijednosti br. 100	**Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value**	Geneva, 21.05.1951	02.06.1993	25/1993
Konvencija o zaštiti materinstva br. 103 (revidirana)	**Convention concerning Maternity Protection (Revised)**	Geneva, 28.06.1952	02.06.1993	25/1993

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o noćnom radu žena zaposlenih u industriji (revidirana) br. 89	**Convention concerning Night Work of Women Employed in industry**	San Francisco, 09.07.1948	02.06.1993	25/1993
Konvencija o zapošljavanju žena prije i poslije porođaja br. 3	**Convention concerning the Employment of Women before and after Childbirth**	Washington, 28.11.1919	02.06.1993	25/1993
Konvencija o zaposlenju žena na podzemnim radovima u rudnicima svih kategorija br. 45	**Convention concerning the Employment of Women on Underground Work in Mines of all Kind**	Geneva, 21.06.1935.	02.06.1993	25/1993
Konvencija o noćnom radu djece u industriji (revidirana) br. 90	**Convention concerning the Night Work of Young Persons**	San Francisco, 10.07.1948	02.06.1993	25/1993
Konvencija o minimalnim godinama starosti za zasnivanje radnog odnosa br. 138	**Convention concerning Minimum age for Admission to Employment**	Geneva, 26.06.1973	02.06.1993	25/1993
Konvencija o minimalnoj normi socijalnog obezbjeđenja br. 102	**Convention concerning Minimum Standards of Social Security**	Geneva, 28.06.1952	02.06.1993	25/1993
Konvencija o davanjima u slučaj nesreće na poslu i profesionalnih bolesti br. 121	**Convention concerning Benefits in the Case of Employment Injury**	Geneva, 08.07.1964	02.06.1993	25/1993
Konvencija o obeštećenju usljed profesionalnih oboljenja br. 24	**Convention concerning Workmen's Compensation for Occupational Diseases**	Geneva, 10.06.1925	02.06.1993	25/1993

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o obeštećenju nesrećnih slučajeva pri radu br. 17	**Convention concerning Workmen's Compensation for Accidents**	Geneva, 10.06.1925	02.06.1993	25/1993
Konvencija koja se odnosi na ustanovljenje međunarodnog uređenja očuvanja prava u osiguranju za slučaj iznemoglosti, starosti i smrti br. 48	**Convention concerning the Establishment of and international Scheme for the Maintenance of Rights under Invalidity, Old-Age and Widows and Orphans Insurance**	Geneva, 22.06.1935	02.06.1993	25/1993
Konvencija o utvrđivanju minimalnih plata, s posebnim osvrtom na zemlje u razvoju	**Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries**	Geneva, 22.06.1970	02.06.1993	25/1993
Konvencija o plaćenom godišnjem odmoru (revidirana 1970.) br. 135	**Convention concerning Annual Holidays with Pay (Revised)**	Geneva, 24.06.1970	02.06.1993	25/1993
Konvencija o plaćenom odsustvu za svrhe obrazovanja br. 140	**Convention concerning Paid Educational Leave**	Geneva, 24.06.1974	02.06.1993	25/1993
Konvencija o profesionalnoj rehabilitaciji i zapošljavanju invalida br. 159	**Convention concerning Vocational Rehabilitation and Employment**	Geneva, 20.06.1983	02.06.1993	25/1993
Konvencija o profesionalnoj orijentaciji i stručnom osposobljavanju u razvoju ljudskih resursa	**Convention concerning Vocational Guidance and Vocational Training in the development of Human Resources**	Geneva, 23.06.1975	02.06.1993	25/1993

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o prestanku radnog odnosa na inicijativu poslodavca	**Convention concerning Termination of Employment at the Initiative of the Employer**	Geneva, 22.06.1982	02.06.1993	25/1993
Konvencija o politici zapošljavanja br. 122	**Convention concerning Employment Policy**	Geneva, 09.07.1964	02.06.1993	25/1993
Konvencija o nezaposlenosti br. 2	**Convention concerning Unemployment**	Washington, 28.11.1919	02.06.1993	25/1993
Konvencija o sindikalnim slobodama i zaštiti sindikalnih prava	**Convention concerning Freedom of Association and the Protection of the Right to Organise**	San Francisco, 09.07.1948	02.06.1993	25/1993
Konvencija koja se odnosi na primjenu principa prava organizovanja i kolektivnih pregovora	**Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively**	Geneva, 01.07.1949	02.06.1993	25/1993
Konvencija o zaštiti i olakšicama koje se pružaju predstavnicima radnika u preduzeću	**Convention concerning Protection and Facilities to be afforded to Worker's Representatives in the Undertaking**	Geneva, 23.06.1971	02.06.1993	25/1993

COUNCIL OF EUROPE DOCUMENTS

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o zaštiti ljudskih prava i temeljnih sloboda	**Convention for the Protection of Human Rights and Fundamental Freedoms**	Rome, 04.11.1950 Entry into force 03.09.1953	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements 6/1999
Protokol uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda	**Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**	Paris, 20.03.1952 Entry into force 18.05.1954	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements 6/1999
Protokol br. 2 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda kojim se Europskom sudu za ljudska prava daju ovlasti da može davati savjetodavna mišljenja	**Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions**	Strasbourg, 06.05.1963 Entry into force 21.09.1970	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements
Protokol br. 3 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda o izmjenama i dopunama članova 29, 30 i 34 Konvencije	**Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention**	Strasbourg, 06.05.1963 Entry into force 21.09.1970	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Protokol br. 4 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda kojim se osiguravaju određena prava i slobode koje nisu uključene u konvenciju i prvi protokol uz nju	**Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto**	Strasbourg, 16.09.1963 Entry into force 02.05.1968	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements 6/1999
Protokol br. 5 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda o izmjenama i dopunama članova 22 i 40 Konvencije	**Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention**	Strasbourg, 20.01.1966 Entry into force 20.12.1971	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07.2002	5/1999 International agreements
Protokol br. 6 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda koji se odnose na ukidanje smrtne kazne	**Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty**	Strasbourg, 28.04.1983 Entry into force 01.03.1985	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 01.08.2002	5/1999 International agreements 6/1999
Protokol br. 7 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda	**Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms**	Strasbourg, 22.11.1984 Entry into force 01.11.1988	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 01.10.2002	5/1999 International agreements 6/1999
Protokol br. 8 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda	**Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms**	Vienna, 19.03.1985 Entry into force 01.01.1990	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07. 2002	5/1999 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Protokol br. 11 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda kojim se mijenja struktura kontrolnoga mehanizma što je uspostavljen Konvencijom	**Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby**	Strasbourg, 11.05.1994 Entry into force 01.11.1998	Signed 24.04.2002 Ratified 12.07.2002 Entry into force 12.07. 2002	5/1999 International agreements
Protokol br. 12 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda	**Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**	Roma, 04.11.2000 Entry into force 01.04.2005	Signed 24.04.2002 Ratified 29.07.2003 Entry into force 01.04. 2005	8/2003 International agreements
Protokol br. 13 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda o ukidanju smrtne kazne u svim okolnostima	**Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances**	Vilnius, 03.05.2002 Entry into force 01.07.2003	Signed 03.05.2002 Ratified 29.07.2003 Entry into force 01.11. 2003	8/2003 International agreements
Protokol br. 14 uz Konvenciju o zaštiti ljudskih prava i temeljnih sloboda koji se odnosi na dopunu sistema za kontrolu Konvencije	**Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention**	Strasbourg, 13.05.2004 Entry into force 01.06.2010	Signed 10.11.2004 Ratified 19.05.2006 Entry into force 01.06. 2010	6/2006 International agreements
Evropska konvencija o ekstradiciji	**European Convention on Extradition**	Paris, 13.12.1957 Entry into force 18.04.1960	Signed 30.04.2004 Ratified 25.04.2005 Entry into force 24.07. 2005	4/2005 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Dodatni protokol uz Evropsku konvenciju o ekstradiciji	**Additional Protocol to the European Convention on Extradition**	Strasbourg, 15.10.1975 Entry into force 20.08.1979	Signed 30.04.2004 Ratified 25.04.2005 Entry into force 24.07. 2005	4/2005 International agreements
Drugi dodatni protokol uz Evropsku konvenciju o ekstradiciji	**Second Additional Protocol to the European Convention on Extradition**	Strasbourg, 17. 3. 1978 Entry into force 05.06.1983	Signed 30.04.2004 Ratified 25.04.2005 Entry into force 24.07. 2005	4/2005 International agreements
Evropska konvencija za sprečavanje torture i neljudskih ili ponižavajućih postupanja ili kazni	**European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**	Strasbourg, 26.11.1987 Entry into force 01.02.1989	Signed 12.07.2002 Ratified 12.07.2002 Entry into force 01.11. 2002	4/1996 International agreements
Protokol br. 1 uz Evropsku konvenciju za sprečavanje torture i neljudskih ili ponižavajućih postupanja ili kazni	**Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**	Strasbourg, 04.11.1993 Entry into force 01.03.2002	Signed 12.07.2002 Ratified 12.07.2002 Entry into force 01.11. 2002	
Protokol br. 2 uz Evropsku konvenciju za sprečavanje torture i neljudskih ili ponižavajućih postupanja ili kazni	**Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**	Strasbourg, 04.11.1993 Entry into force 01.03.2002	Signed 12.07.2002 Ratified 12.07.2002 Entry into force 01.11. 2002	
Okvirna konvencija za zaštitu nacionalnih manjina	**Framework Convention for the Protection of National Minorities**	Strasbourg, 01.02.1995 Entry into force 01.02.1998	Ratified 24.02.2000 Entry into force 01.06. 2000	4/1996 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Evropska povelja o regionalnim i manjinskim jezicima	**European Charter for Regional or Minority Languages**	Strasbourg, 05.11.1992 Entry into force 01.03.1998	Signed 07.09.2005 Ratified 21.09.2010 Entry into force 01.01. 2011	9/2010 International agreements
Konvencija za zaštitu lica s obzirom na automatsku obradu ličnih podataka	**Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**	Strasbourg, 28.01.1981 Entry into force 01.10.1985	Signed 02.03.2004 Ratified 31.03.2006 Entry into force 01.07. 2006	7/2004 International agreements
Dodatni protokol uz Konvenciju za zaštitu lica s obzirom na automatsku obradu ličnih podataka, u vezi sa nadzornim organima i prekograničnim protokom podataka	**Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows**	Strasbourg, 08.11.2001	Signed 02.03.2004 Ratified 31.03.2006 Entry into force 01.07. 2006	7/2004 International agreements
Evropska socijalna povelja (revidirana)	**European Social Charter (revised)**	Strasbourg, 03.05.1996	Signed 11.05.2004 Ratified 07.10.2008 Entry into force 01.12.2008	8/2008 International agreements
Konvencija o zaštiti ljudskih prava i dostojanstva ljudskog bića po pitanju primjene biologije i medicine: Konvencija o ljudskim pravima i biomedicini	**Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine**	Oviedo, 04.04.1997	Signed 16.12.2005 Ratified 11.05.2007 Entry into force 01.09. 2007	11/2007 International agreements

Name	Original name	Signed	BiH	Official Gazette number
Dodatni protokol uz Konvenciju o ljudskim pravima i biomedicini koji se odnosi na biomedicinska istraživanja	**Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research**			11/2007 International agreements
Konvencija Vijeća Evrope o borbi protiv trgovine ljudima	**Council of Europe Convention on Action against Trafficking in Human Beings**	Warsaw, 16.05.2005	Signed 19.01.2006 Ratified 11.01.2008 Entry into force 01.05. 2008	14/2007 International agreements
Dodatni protokol Konvencije o kibernetičkom kriminalu, a u vezi sa kažnjavanjem djela rasističke i ksenofobične prirode učinjenih putem kompjuterskih sistema	**Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems**	Strasbourg, 28.01.2003	Signed 09.02.2005 Ratified 19.05.2006 Entry into force 01.09. 2006	6/2006 International agreements

GENEVA CONVENTIONS

Name	Original name	Signed	BiH	Official Gazette number
Ženevska konvencija za poboljšanje položaja ranjenika i bolesnika u oružanim snagama u ratu	**Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field**	Geneva, 12.08.1949	Ratified 31.12.1992	25/1993
Ženevska konvencija za poboljšanje položaja ranjenika, bolesnika i brodolomnika oružanih snaga na moru	**Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea**	Geneva, 12.08.1949	Ratified 31.12.1992	25/1993
Ženevska konvencija o postupanju sa ratnim zarobljenicima	**Convention (III) relative to the Treatment of Prisoners of War**	Geneva, 12.08.1949	Ratified 31.12.1992	25/1993
Ženevska konvencija o zaštiti građanskih lica za vrijeme rata	**Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva**	Geneva, 12.08.1949	Ratified 31.12.1992	25/1993
Dopunski protokol uz ženevske konvencije od 12. augusta 1949. o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I)	**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)**	08.06.1977	31.12.1992	25/1993
Dopunski protokol uz ženevske konvencije od 12. augusta 1949. o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II)	**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)**	08.06.1977	31.12.1992	25/1993

OTHER DOCUMENTS SIGNED BY BOSNIA AND HERZEGOVINA

Name	Original name	Signed	BiH	Official Gazette number
Univerzalna deklaracija o pravima čovjeka	**Universal Declaration of Human Rights**	New York, 10.12.1948		5/1992 25/1993
Konvencija o ropstvu	**Slavery Convention**	Geneva, 25.09.1926		25/1993
Protokol o izmjenama i dopunama Konvencije o ropstvu	**Protocol amending the Slavery Convention**	New York, 07.12.1953	01.09.1993	25/1993
Dopunska konvencija o ukidanju ropstva, trgovine robljem i ustanova i praksi sličnih ropstvu	**Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery**	Geneva, 07.09.1956	01.09.1993	25/1993
Konvencija za suzbijanje i ukidanje trgovine licima i eksploatacije prostituisanja drugih	**Convention for the Suppresion of the Traffic in Persons and of the Exploitation of the Prostitution of Others**	Lake Success, 21. 03.1950	01.09.1993	25/1993
Konvencija o političkim pravima žena	**Convention on the Political Rights of Women**	New York, 31.03.1953	01.09.1993	25/1993
Konvencija o migraciji u cilju zapošljavanja (revidirana)	**Convention concerning Migration for Employment**	Geneva, 01.07.1949	02.06.1993	25/1993
Konvencija o pravnom položaju lica bez državljanstva	**Convention relating to the Status of Stateless Persons**	New York, 28. 9. 1954	01.09.1993	25/1993
Konvencija o državljanstvu udate žene	**Convention on the Nationality of Married Women**	New York, 20. 2. 1957	01.09.1993	5/1992 25/1993

Name	Original name	Signed	BiH	Official Gazette number
Konvencija o statusu izbjeglica	**Convention relating to the Status of Refugees**	Geneva, 28.07.1951	01.09.1993	5/1992 25/1993
Konvencija o pristanku na brak, o minimalnoj starosti za sklapanje braka i o registrovanju brakova	**Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages**	10.12.1962		5/1992 25/1993
Protokol o statusu izbjeglica	**Protocol relating to the Status of Refugees**	New York, 31.01.1967	01.09.1993	5/1992 25/1993