

Bosnia and Herzegovina

Human Rights Ombudsmen of Bosnia and Herzegovina

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The NHRI was reaccredited with A status in November 2017. At that occasion, the SCA called for broader consultation and participation in the selection and appointment process of the decision-making body of the NHRI. At the same time, the SCA acknowledged the NHRI's efforts in involving civil society in practice. Also, the SCA recommended clearer grounds for the leadership's dismissals, a more independent funding, further recognition by the legislature and closer relationships with national and international actors.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The Ombudsman Institution seeks, through its work, to ensure functional and financial independence in accordance with the Paris Principles. In this sense, in recent years, certain activities have been undertaken and legislative solutions proposed to raise this independence to the required level, but such solutions have not received the necessary support in the Parliament of Bosnia and Herzegovina (BiH). The process of European integration of BiH should be used in order to regulate the mandate and functioning of an independent human rights institution completely independently of other authorities.

In 2019 the Ombudspersons identified a number of strategic priorities, including the promotion and protection of the right to freedom of peaceful assembly, free access to information, issues related to migration, situation and status of social welfare centers. In these areas the following special reports were prepared:

- Special Report on the Right to Freedom of Peaceful Assembly - available at: https://www.ombudsmen.gov.ba/documents/ombudsmen_doc2020022808504462eng.pdf
- Special Report on the Right to Freedom of Peaceful Assembly - available at: https://www.ombudsmen.gov.ba/documents/ombudsmen_doc2020020515415139eng.pdf

- Special Report „Prohibition of Physical Punishment of Children in Bosnia and Herzegovina“ - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019120514261316eng.pdf
- Special Report on the Situation and Challenges Facing the Social Welfare Centers in Bosnia and Herzegovina - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019112015101009eng.pdf
- Special Report on the Situation in the Detention Premises in Some Police Administrations in Bosnia and Herzegovina - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019041708251344eng.pdf
- Special Report on the Situation on the Field of Migrations in Bosnia and Herzegovina - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

No significant changes took place in the environment in which the Institution of Human Rights Ombudsman of BiH operates when it comes to the legislative framework.

The adoption of the amendments to the Law on Human Rights Ombudsman of BiH has been in parliamentary procedure for almost four years. At the session of the House of Representatives of the BiH Parliamentary Assembly held on 26 February 2020, this proposal was not accepted. In the meanwhile, the work of the BiH Parliamentary Assembly and the BiH Council of Ministers has halted due to the pandemic, and it is unclear what will happen next.

Human rights defenders and civil society space

Analysis of the registered complaints shows that the level of enjoyment of the right of access to information in BiH is not at the level required by international standards. Indeed, the right to free access information is considered to be a basic prerequisite for building a democratic society, and an effective system of exercising and protecting the right to access to information reflects the accountability and transparency of the authorities. In the area of access to information, since 2015, the Institution has recorded an increase in the number of

complaints, which may be the result of several factors, namely: more frequent violations of the right of access to information by the public authorities in Bosnia and Herzegovina, increased awareness of citizens on the mechanisms of protection of the right to free access to information, but also the result of the activities of the Ombudsman, as a body supervising the implementation of legislation governing the free access to information in Bosnia and Herzegovina.

The role of the media in the promotion of the mentioned legislation cannot be neglected, especially considering the fact that, due to the lack of specific media laws, the media themselves very often use freedom of information legislation as a tool for obtaining important information for public reporting purposes. The most common reasons for addressing the Ombudsman are the failure to reach a decision on received request for information within the statutory time limit, failure to provide information on legal remedy available, the inability to use the remedy, and the refusal to access information that citizens consider to be available.

Another issue that should be particularly highlighted is the freedom of assembly, which is a right guaranteed by the Constitution of Bosnia and Herzegovina, the Constitution of the Republika Srpska, the Constitution of the Federation of Bosnia and Herzegovina, the Statute of the Brčko District of Bosnia and Herzegovina, and laws on public assembly at the cantonal level (10 in total, including the Zenica - Doboje Canton, where the process of adoption of the law is ongoing), at the level of the Brčko District of Bosnia and Herzegovina and at the level of Republika Srpska. The exercise of this right imposes on the competent authorities a positive obligation to take measures to ensure the peaceful enjoyment of the right, which includes, above all, protection and assistance. Restrictions are possible and permissible, if they are prescribed by law and necessary in a democratic society to protect public safety, to prevent disorder or crime, to protect health or morals, or to protect the rights and freedoms of others.

In practice, any restriction on freedom of assembly must correspond with the objective for which the restriction is established and the competent authority should always strive to use a more lenient restriction, if such lesser measure can enable the achievement of the set objective. The competent authority, in accordance with the principles of good administration, must justify the decision to restrict the freedom of assembly and provide access to a remedy that not only should be available but also effective.

In this regard, in pursuance of one of their strategic goals in the protection and promotion of fundamental human rights, the Ombudsman decided to prepare a Special Report on the

Right to Freedom of Peaceful Assembly in 2019 (1). This Special Report was published in February 2020. The aim of the report is to determine the situation in the field of freedom of assembly in Bosnia and Herzegovina, including checking the degree of compliance of domestic legislation with international standards, as well as to point out the challenges facing public assembly organizers on one side and police and security agencies on other side meet during the organization and holding of public gatherings, and to formulate the recommendations of the Ombudsman which will be sent to the competent authorities with the aim of improving the situation in this area.

The reports illustrates a number of identified challenges, including:

- restrictions regarding the place, time and manner of holding public gatherings,
- general prohibitions regarding the use of public space,
- restrictions on how to hold peaceful assemblies,
- prioritizing public transport over freedom of peaceful assembly,
- requiring permission to hold a public gathering,
- shifting responsibilities to organizers for maintaining order and security,
- excessive use of force in interrupting a public gathering,
- non-recognition of spontaneous gatherings.

On that basis, the report includes recommendations by the Ombudsman to the competent authorities in order to improve the situation in this field. Recommendations include the need for the legislative powers to amend and strengthen the legal framework regulating the definition and exercise of the freedom of assembly, establishing clear, simplified and rapid authorization procedures reflecting a presumption in favor of the exercise of this freedom; the need for a revision of the sanctions regime, in particular to ensure proportionality; the importance of ensuring fair policing of assemblies and educate law enforcement authorities to that effect. The Ombudspersons remind of the first ever Pride event in Sarajevo which was held on 8 September 2019 under the slogan: "Coming out". The public gathering which consisted in a parade on the move went well with no single incident reported, for which both the organizers and the security bodies policing the event should be praised.

References

- (1) https://ombudsmen.gov.ba/documents/obmudsmen_doc2020022808504462bos.pdf

Checks and balances

Since many years the Ombudspersons in their annual reports (1) continuously point to the issue of non-enforcement of final and binding court decisions, especially in cases where decisions involve the payment of damages or other forms of compensation from the public budget. The Ombudspersons have particularly expressed their concerns over the fact that even after the completion of the court proceedings, the citizens need to wait for years to get the awarded compensation. Complaints related to the lack of enforcement of court decisions mainly relate to:

- Situations where the respondent party is a municipality, canton or entity. The enforcement of court decisions entailing payment of damages or other payments is possibly only from budget lines earmarked for such purposes. In situations of continuous budgetary restrictions, funds for the above purposes are subject to permanent budgetary cuts;
- complaints of citizens entitled to indemnification in cases against the Republika Srpska and the Federation of BiH, where the payment of the amounts due is governed by provisions of the Law on Establishment and Method of Payment of Internal Obligations of FBiH and the Law on Establishment and Method of Payment of Internal Debt of RS. In their complaints citizens express their dissatisfaction with payment in bonds, delays and other issues;
- complaints about the impossibility to get compensation for insolvency of companies in which the person used to work.

Non-enforcement of court decisions, in addition to violation of the right to efficient legal remedy, also constitutes the grave violation of the right to property guaranteed under Protocol 1 to European Convention.

As already mentioned the Ombudspersons regularly inform the Presidency of Bosnia and Herzegovina, the House of Representatives and the House of Peoples of the Parliament of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska on this issue in their annual reports. In addition to that, acting on citizens' complaints, depending on the circumstances of the complaint, the Ombudspersons, if they find a violation of rights, issue their recommendations to the competent authorities, in order to eliminate these violations.

References

- (1) <https://www.ombudsmen.gov.ba/Dokumenti.aspx?id=27&tip=1&lang=BS>

Functioning of justice systems

The Ombudsman's Department for the Monitoring of Justice and Administration in 2019 received 851 complaints. It issued 26 recommendations, five of which were fully implemented, in respect of other five some cooperation with the respondent party was established, three were not implemented, and in 13 cases the designated responsible authority did not provide feedback on the recommendation.

The analysis of 504 complaints related to the judiciary submitted to the Ombudsman shows that the citizens address the Ombudsman for the following reasons:

- inappropriate length of court proceedings - 101 complaints,
- inefficiency in the enforcement of court decisions - 56 complaints,
- 20 complaints related to the work of judges and 12 complaints related to other rights linked to the court proceedings (violation of the principle of impartiality, non-adoption of rulings within the legal deadlines and in legally prescribed manner, inconsistency of court practice).

As mentioned above, the Ombudspersons also continuously receive complaints related to the issue of non-enforcement or aggravated enforcement of final court decisions.

Problems arise in particular in cases where the respondent party is a municipality, canton or entity in which cases payment of damages of other payments is possible only from budget lines earmarked for such purposes in the amounts determined by a public authority in question's budget for the particular budget year.

In 2019 the Ombudsman registered 5 complaints related to free legal aid, but issued no recommendations in this regard.

Media pluralism

Freedom of information is a right recognized by the Constitution of Bosnia and Herzegovina, the Constitution of the Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina. Through their work, journalists inform and make the

public familiar about the actions of all actors of public life within a society. In this way, they contribute to the opening of discussions and create the opportunity for all actors to express their views on current events and phenomena in society. Full realization of the journalists' role in society is possible only if their status is regulated, and if they have their rights guaranteed, primarily the right to safety and dignity.

In 2019 the Ombudsman registered 8 complaints concerning the media and freedom of information. The analysis of the registered complaints shows that they relate to the changes of management in public media outlets. The complainants also point to efforts by certain political factors to interfere with the established editorial policies. Ombudspersons are concerned that the right to safety is not being fully exercised, since one case of threats to journalists and one case of attack on journalists have been registered.

In this regard Ombudspersons remind that in 2017 they issued their Special Report on the Status and Cases of Threats against Journalists in Bosnia and Herzegovina (1). As one of the most important recommendations of this report, issued to the Ministry of Justice of RS, Ministry of Justice of FBiH and the Judicial Commission of Brčko District to consider the possibility to define an attack against a journalist as a criminal offence in criminal codes or as a serious criminal offence of attacks against an official person on duty and to consider the possibility to define an attack against a journalist as a separate public safety offence in public safety laws. So far these recommendations were not incorporated into the appropriate amendments to the mentioned legislation.

References

- (1) https://ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 31 March 2020 the Ombudspersons issued their *Recommendations regarding the protection of human rights of vulnerable categories* (1) in which they pointed to the need for increased human rights monitoring and taking more effective measures in relation to the vulnerable groups of citizens at risk (the elderly, people with disabilities, children, single

parents), and persons who, due to chronic diseases, autoimmune diseases and/or other health problems belong to the group of citizens exposed to risk.

Responsible bodies were recommended to do the following:

- To maintain an increased amount of responsibility toward the vulnerable categories of citizens,
- To take appropriate measures such as the organization of working process in manner enabling the protection of persons with disabilities.
- To enable maintaining the contacts between the children and their parents with whom they do not live in divorced marriages irrespective of the applicable ban on movement for those below 18 and like,
- To ensure an increased monitoring of those older than 65 to provide them with necessary food and medicines and other relevant items,
- To make the most important recommendations and information available in sign language.

On 3 April the Ombudspersons published a press release titled ENOC and the rights of the child in light of COVID-19 pandemic (2) whereby they informed the public that the European Network of Ombudsmen for Children paid special attention to the rights of the child in the new situation caused by the outbreak of the COVID-19 pandemic, namely the rights to education, health, information and the right to protection against violence and abuse. It has also been made fully accessible to the public, and Ombudspersons emphasized that they will continue to insist on sensitivity and special consideration of the competent national institutions when it comes to children.

On 7 April 2020 the Ombudspersons issued their recommendation to the Federation of BiH Civil Protection Headquarters, Republika Srpska Emergency Management Headquarters, Brčko District Crisis Headquarters, and Civil Protection headquarters at cantonal level: Una-Sana Canton, Tuzla Canton, Bosnia - Podrinje Canton, Central Bosnia Canton, Herzegovina - Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Canton 10 for action by those in charge because of the increased risk of domestic violence due to isolation measures to combat the COVID-19 pandemic (3). Measures of social distancing and the recommendation to stay home increase the risk of domestic violence. Stress of potential financial losses, home confinement, additional obligations imposed on family members and reduced access to all types of services have a particularly negative impact on women, children and the elderly.

The Ombudspersons recommended authorities to:

- work to raise awareness of the impact of social distancing and confinement on women, children and the elderly at risk of domestic and domestic violence,
- establish special services for persons at risk of domestic violence, and persons exposed to domestic violence by creating additional telephone lines and creating opportunities for online reporting of domestic violence and continuously inform the public about the same,
- ensure that, regardless of the situation caused by the COVID-19 pandemic, all those responsible for receiving a report on domestic violence act promptly and without delay.

On the same day, Ombudspersons issued a press release regarding the Council of Europe Subcommittee on the Prevention of Torture against Member States and the national prevention mechanisms related to the COVID-19 pandemic, which noted that the Subcommittee on the Prevention of Torture (SPT) had advised the Member States and national preventive mechanisms which primarily address the measures to be taken by the authorities in relation to all places of detention, including detention facilities, immigration detention, closed refugee camps, psychiatric hospitals and other medical services, as well as those in official quarantine sites, to take measures that normally fall within the mandate of an NPM, and also published the text of the SPT guidance on COVID-19 (4).

On 14 April 2020 the Ombudspersons issued a press release regarding the spread of COVID-19 virus (Corona) (5) inviting the citizens to ensuring stricter adherence to the guidance of the relevant authorities and institutions and to reduce movements to what strictly necessary.

An appeal was also made to those responsible for taking care of the private sector, to ensure that employees, who cannot be held responsible for the current constraints, receive full pay and ensure that their employers do not reduce employees' pay or withhold their salaries and other benefits.

On 15 April 2020 a recommendation (6) was made to the Federal Civil Protection Headquarters of the Federation of BiH, Republic Emergency Headquarters of Republika Srpska, Crisis Headquarters of Brčko District of BiH and civil protection headquarters at cantonal level: Una-Sana Canton, Tuzla Canton, Bosnia - Podrinje Canton, Central Bosnia Canton, Herzegovina - Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Canton 10 . The recommendation urged these authorities to ensure that all decision made

are published in public newspapers and their web sites in a fully understandable and simple way, comprehensible to all citizens in order to prevent different interpretations.

On 30 April, the Ombudsperson issued a recommendation (7) calling to enable the greatest involvement possible of journalists and media workers at press conferences, following a complaint by a journalists' organisation. On 3 June, the Ombudsmen also issued an opinion (8) highlighting COVID-19 effects on employment rights for journalists and media workers.

On 5 May, the Ombudsman issued recommendations (9) urging authorities at all levels of government to take additional measures to protect child's rights to education and to protection from violence and neglect.

References

- (1) <https://ombudsmen.gov.ba/Novost.aspx?newsid=1513&lang=HR>
- (2) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1514&lang=HR>
- (3) <https://ombudsmen.gov.ba/Novost.aspx?newsid=1516&lang=HR>
- (4) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1515&lang=HR>
- (5) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1509&lang=HR>
- (6) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1518&lang=BS>
- (7) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1523&lang=BS>
- (8) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1540&lang=BS>,
- (9) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1524&lang=BS>

Most important challenges due to COVID-19 for the NHRI's functioning

In order to prevent and protect the health of the citizens and the staff of the Ombudsman, in accordance with the recommendations of the competent authorities regarding the measures for the prevention of Coronavirus, the Ombudspersons urged the citizens to strictly adhere to the instructions issued by the competent authorities and institutions and to reduce the movement to the minimum necessary (1).

Work in all the offices of the Ombudsman was organized on a daily basis, and employees continued their work from home in a limited capacity. During the state of emergency, citizens are invited to contact the Institution by mail, e-mail, or telephone during the on-call duty every working day from 9 a.m. to 1p.m.

It resulted in the following:

- reduced capacity to monitor potential human rights violations,
- reduction in scope of services provided to citizens,
- reduced scope of work on processing the complaints of citizens.

References

- (1) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1509&lang=EN>, Saopćenje za javnost Ombudsmana BiH od 14.04.2020. godine

