

Bosnia and Herzegovina

Human Rights Ombudsmen of Bosnia and Herzegovina

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.

Independence and effectiveness of the national human rights institution

Changes in the regulatory framework applicable to the IHROBiH

Since the 2020 reporting there have been no changes to the legislative framework for the functioning of the IHROBiH, nor other changes that would have a considerable impact on the IHROBiH's independence. The COVID-19 pandemic definitely affected the effectiveness of the IHROBiH's work and made it impossible for the IHROBiH to function in its full capacity, especially when it comes to field work and cooperation with local communities.

Enabling space

The COVID-19 pandemic affected the intensity and scope of cooperation of the IHROBiH with public bodies and institutions in Bosnia and Herzegovina (BiH). Due to limited opportunities to travel and hold meetings, cooperation was mainly limited to cooperation with legislative and executive authorities at all levels of government through regular attendance at sessions where issues within the IHROBiH's competence were discussed, as well as through consultations and exchange of experiences, e.g. attendance at Parliamentary Assembly sessions (House of Peoples, House of Representatives, Joint Commission for Human Rights, Constitutional and Legal Commission), Council of Ministers sessions, entity parliament sessions, cooperation with competent ministries at all levels of government, cooperation with local self-governance units, etc. In addition, the ombudspersons held a series of bilateral meetings in 2020 with public officials and officers at all levels of government in order to further improve this cooperation.

Human rights defenders and civil society space

Freedom of assembly

Protecting the freedom of peaceful assembly is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices and policies can live together. Freedom of assembly is guaranteed by the Constitution of BiH, entity constitutions and bylaws, namely the laws on public assembly at the level of the cantons, at the level of the Brčko District of BiH and at the level of the Republika Srpska. The FBiH Ministry of Interior is also working on the draft Law on Public Assembly of the Federation of BiH, which has been analysed and commented by the OSCE ODIHR. Their analysis identifies areas of concern, focusing on the provisions that require improvement rather than on the positive aspects of the draft Law. The recommendations invoke international standards and good practices regarding public gatherings.

The Assembly of the Brčko District of BiH adopted a new Law on Peaceful Assembly in July 2020. The Law refers to gatherings that are not organized for business purposes and replaces the former Law on Public Assembly of the Brčko District of BiH, prescribing norms for holding public events.

In 2020, the ombudspersons of BiH prepared a Special Report on Freedom of Peaceful Assembly in BiH, verifying *inter alia* the degree of harmonisation of domestic legislation with international standards. It also dealt with respect of rules by the organisers of public gatherings on the one hand and the police and security agencies on the other hand when organising and holding public gatherings. The Report was based on the analysis of relevant domestic and international regulations, as well as on information gathered through questionnaires sent to civil society organisations and ministries of interior.

Based on the analysis of existing laws, the report found a disparity in the legal solutions in force within different jurisdictions in Bosnia and Herzegovina, for instance regarding the chosen definition for public gatherings, registration of public gatherings, deadlines for obtaining prior authorizations, recognition of spontaneous gatherings, envisaged bans on gatherings, use of legal remedies and non-compliance with international standards in the field of freedom of assembly. Although this is a basic human right guaranteed by the Constitution of BiH and the constitutions of the entities and cantons, the exercise of this right depends on legal solutions and practices that differ in individual entities and cantons where a restrictive approach is evident. When defining public gatherings, most laws in Bosnia and Herzegovina refer to a suitable and accessible place, and to citizens as participants and organisers of public gatherings. In the introductory provisions, all laws contain terminology governing the right to freedom of peaceful assembly, yet according to international standards this area needs to be regulated as little as possible. The IHROBiH

consequently provided a set of recommendations to improve the regulatory framework on freedom of assembly in the country:

1) to the National Assembly of the Republika Srpska, the Parliament of the Federation of Bosnia and Herzegovina, the Assembly of the Brčko District of Bosnia and Herzegovina, and the cantonal assemblies in the Federation of Bosnia and Herzegovina:

- The definition of assembly should be harmonised with the definition prescribed by international standards, according to which a public gathering is defined as the intentional and temporary presence of two or more individuals in a public place for a common expressive purpose.
- The existing application and de facto approval systems do not represent an adequate application of the principle of presumption in favour of holding assemblies.
- Everything which is not explicitly forbidden should be considered allowed and persons wishing to exercise this freedom should not be asked for special permits.
- The presumption in favour of exercising this freedom should be clearly stipulated by law and recognised as such in practice.
- The content of the application and application deadlines are excessively bureaucratic in all laws, and in a certain part encroach on the domain of personal data protection, and may have a deterrent effect since the organisers are required to submit documentation such as security plan, decisions on appointment of managers, lists of security guards with all personal data, to undertake sanitary, fire and other protection measures, and failure to provide all necessary data may result in a ban on the requested gatherings.
- It is necessary to simplify the application procedures by introducing good practices and recommendations of international bodies, which include prescribing the application form and introducing e-mail communication and appointing a police officer who will be in charge of coordination and further communication with organizers and third parties.
- In accordance with international standards, deadlines should be as short as possible, but granting police officers enough time to take measures to secure the rally.
- The space for holding a peaceful gathering is especially important, given that the purpose of the gathering is often related to a specific location, i.e. the gathering is held and the message is sent within sight of the target audience. The principle of "sight and sound" is not adequately reflected in the laws in Bosnia and Herzegovina because no importance is attached to the location that the organisers had in mind when organising the public gathering, the space appropriate for public gatherings is prescribed by decisions of the city/municipality or its mayor.

- There is a noticeable practice (which should be avoided) in some parts of Bosnia and Herzegovina that it is necessary to obtain the consent of local communities, or public institutions or private companies to hold a meeting at a particular location. Every public space, as well as every private space, to which the public has access, is adequate for holding public gatherings, and the practice of determining the space that is suitable and accessible for public gatherings by decisions of the city / mayor's office, i.e. the mayor should have been reconsidered.
- The envisaged sanctions against participants, organisers, leaders and security guards are strict and disproportionate to the nature of the mistake. Such legal provisions could discourage people from participating in rallies and thus curtail their right.
- The sanctions policy needs to be aligned with the goal and purpose of the right to freedom of public assembly, while taking into account the principle of individual responsibility in case of violation of the law or endangering the property or safety of others.

2) to the Ministry of Interior of the Republika Srpska, Ministry of Interior of the Federation of Bosnia and Herzegovina, Police of the Brčko District of Bosnia and Herzegovina, cantonal ministries of interior:

- Ensure the application of the standards of peaceful assembly presented in this Report.
- Take measures with the view to providing systemic and permanent training of police officers on the right to freedom of assembly and the role of the police in exercising this right and prohibiting all forms of torture.
- Ensure that the use of instruments of coercion is in line with standards.
- While assessing each and every individual situation based on the specific circumstances, all types of restrictions that concerns the duration of public gathering or the time of the day when the gathering is held need to be abolished. At the same time, persons who are prohibited from making public appearances cannot automatically be denied the right to organise or participate in public gatherings.

3) to prosecutor's offices:

- To take into account the views expressed in this Report in cases relating to freedom of assembly.

4) to organisers of public gatherings, individuals and non-governmental organisations:

- When organising gatherings, take into account the prescribed procedures and the need to protect the rights and interests of third parties.

Cooperation with civil society

During 2020, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina continuously, in the manner and to the extent permitted by epidemiological circumstances, improved its cooperation with international organizations and institutions operating in the country, the region and beyond. The IHROBiH adjusted its ongoing activities to the pandemic context in order to achieve the set goals, and held meetings or worked on joint projects with different civil society stakeholders (Save the Children, MFS EMMAUS), with institutions, (OSCE Mission to BiH, Council of Europe), and with regional networks (GANHRI, ENNHRI).

Following the adopted programmes of activities from the 2016-2021 IHROBiH Strategy, there was a continuous process of improving cooperation with representatives of NGOs and the civil sector in Bosnia and Herzegovina in 2020.

Checks and balances

Right to information

Most complaints addressed to the IHROBiH regard issues with access to information. As in previous years, the number of such complaints increased, amounting to almost a third of total complaints in 2020. This reflects more frequent violations of the right to access information by public authorities in BiH, and better information of citizens on mechanisms to protect their right to access information. The IHROBiH is the body monitoring the implementation of the Freedom of Information Act in Bosnia and Herzegovina. During 2020, 231 complaints were received concerning this area, and recommendations were issued in 82 cases. The largest number of complaints referred to the area of others - 185, while 22 complaints referred to the failure to make the decision within the statutory deadline, 20 to the denial of access to information and four to the right to review in two levels.

Given the importance of these issues in the country, the IHROBiH put together a Special Report on Experiences in the Implementation of the Freedom of Information Act in Bosnia and Herzegovina in December 2019, providing a number of recommendations. However, the Ministry of Justice of Bosnia and Herzegovina has not yet taken concrete actions to adopt a new Freedom of Information Act, addressing the concerns raised, and the current Freedom of Information Act of the Republika Srpska has not been amended.

The Special Report also provided comments on the first draft of the Freedom of Information Act in Bosnia and Herzegovina. The Report refers to the Taiex-IPA Expert Report on "Improving the right to access information in Bosnia and Herzegovina" and to the comments of the SIGMA (Support for Improvement in Governance and Management, a joint EU/OECD initiative). The IHROBiH recommendations to the Ministry of Justice included:

- need to adopt a new Freedom of Information Act in BiH which would be fully harmonised with international standards
- development of guidelines for the application of the law
- establishment of cooperation with representatives of civil society and the media to properly inform the public about the right to freedom of access to information.
- unconditional application of international standards in the area in question, e.g. introducing the principles of proactive disclosure of information of public importance and transparency in work, professional and continuous training of information officers, etc.

Police

Protection of the constitutionally guaranteed rights of every citizen, personal security, maintenance of public peace and order, prevention and fight against crime is one of the most important tasks of a democratic state, and the police are the most important instrument available to the state for this purpose. In 2020, 145 complaints to the IHROBiH concerned the work of the police, and nine recommendations were issued. The complaints received referred to the unprofessional treatment of citizens by police officers, i.e. to exceeding police powers during official interventions, and unavailability of internal controls on complaints filed by citizens against police officers, impossibility to appeal decisions, etc. The ombudspersons note that the ministries of interior at all levels of government pointed to the necessity of improving the work of the police and ensuring the real impartiality of internal controls via e.g. ensuring two-instance review in procedures conducted on citizens' complaints against actions of police officers.

Inspection

Inspection is a special administrative mechanism through which authorities supervise the implementation of regulations, eliminate possible violations and sanction the responsible persons. Without inspection, it is impossible to talk about good governance, the rule of law and the protection of individual rights. Therefore, it is extremely important that the actions of inspection bodies be efficient, timely and in accordance with applicable legislation. In the reporting period, the Ombudsmen received 84 complaints related to failure of inspection bodies to act on citizens' reports, untimely inspection, failure to take legal actions prescribed by inspection bodies, failure

to submit a citizen's complaint to the competent authority in case of incompetence and failure to implement measures. The IHROBiH also received complaints about a lack of information on the inspection's outcome, their inability to receive inspection reports and impossibility to use legal remedies when citizens were dissatisfied with the inspection body's actions.

In the past few years, the IHROBiH has registered an increasing number of complaints targeting inspection bodies. The ombudspersons therefore drafted a Special Report on the Role of Inspection Bodies in the Protection of Human Rights in BiH, taking into account the structural complexity of inspection bodies, and especially the subject-material and territorial division of jurisdiction between inspection bodies. The report was based on the current domestic legislation and public documents and on a questionnaire which was sent to inspection bodies operating throughout the territory of BiH.

References

- Special Report on Experiences in the Implementation of the Law on Freedom of Access to Information:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2021031911221204eng.pdf

Functioning of the justice system

Based on the cases received by the IHROBiH and direct contacts with parties, the general distrust of citizens for judicial institutions is still noticeable. The parties generally expressed their dissatisfaction with the inefficiency of the judicial system, inefficient work of the prosecutor's offices, distrust in the work of the High Judicial and Prosecutorial Council (HJPC), inadequate treatment of the HJPC when it comes to disciplinary responsibility of judges, length of appointment of judges, etc.

The largest number of complaints referred to the length of proceedings (most often before cantonal courts), appeals against the work of acting judges for failure to make decisions on the submissions of parties, difficulties in obtaining information on the status of cases and appeals against court decisions. There was also an increase in the number of requests for monitoring by the IHROBiH, i.e. monitoring of court proceedings, because the complainants believed that the presence of a representative of the IHROBiH would ensure a timely and impartial procedure.

When it comes to the work of the prosecution, the complaints mostly concerned the length of investigative proceedings, failure to make prosecutorial decisions, failure to file an indictment after the proceedings, as well as failure to inform the parties about the course of the proceedings.

After analysing 368 complaints received by the IHROBiH related to the field of judiciary, it can be concluded that citizens turn to the IHROBiH for violation of the following rights:

- inappropriate length of court proceedings (57)
- inefficient enforcement of court decisions (39)
- complaints about judges violation of the provisions of procedural law (8)
- complaints relating to other violations of rights related to the conduct of courts (violation of the principle of impartiality, failure to make judicial decisions in the manner prescribed by law and within the statutory deadline, inconsistency of case law) (256)

Media pluralism and freedom of expression

The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina pays special attention to information and cooperation with the media, while nurturing a partnership with representatives of the media, all in the best interests of the citizens of Bosnia and Herzegovina.

Among the focuses on the long-standing cooperation between the Ombudsman Institution and the OSCE Mission to BiH is a special emphasis on monitoring media freedom and ensuring the enjoyment of freedom of expression during the pandemic.

Corruption

Given that at the level of Bosnia and Herzegovina acting on corruption cases primarily falls within the competence of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, the IHROBiH did not deal with these issues to a significant extent, nor did it receive complaints concerning this topic.

Other relevant developments or issues having an impact on the national rule of law environment

Prevention of torture

Bosnia and Herzegovina has not yet fulfilled its obligation to establish an independent body with a mandate to visit all places of detention. Amendments to the Law on the Human Rights Ombudsman of BiH, which would establish a mechanism defined by the provisions of the

Optional Protocol (OPCAT) within the IHROBiH, have been tabled for almost four years. However, the proposal was rejected by Parliamentary Assembly of BiH in February 2020. Bosnia and Herzegovina is the only country that is not a member of the Network of National Preventive Mechanisms of Southeast European Countries, although its representatives are regularly invited to attend meetings. The IHROBiH has prepared to take over this mandate after the envisaged amendments to the Law on the Ombudsman are adopted.

In the meantime, the IHROBiH monitors the state of human rights related to the prevention of torture through the actions of three departments: the Department for Monitoring the Exercise of the Rights of Persons Deprived of Liberty, the Department for Monitoring the Exercise of the Rights of Persons with Disabilities in the case of institutions for the accommodation of persons with intellectual and mental disabilities, and the Department for Monitoring the Exercise of Children's Rights, in the case of children placed in institutions. In previous annual reports, the ombudspersons indicated a significant improvement in the conditions of accommodation of convicted / detained persons.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most important impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The COVID-19 pandemic in Bosnia and Herzegovina brought a number of challenges, both for citizens and for the authorities, who were obliged to respond in a timely and efficient manner. Citizens showed strong interest in developments regarding infection rates, self-isolation measures and issues related to crossing the border. The ombudspersons reacted as quickly as possible to support and protect them on these questions.

Right to information

As early as the beginning of April 2020, the ombudspersons recommended to all levels of government to take the necessary measures in accordance with their powers to publish all decisions of crisis staffs in all media and on the institutions' websites, in a simple and understandable manner. The recommendation was made on the basis of the Freedom of Information Act, regarding the monitoring of the implementation of obligations under Article 10 of the European Convention on Human Rights.

Right to privacy

The Agency for Personal Data Protection issued a decision in March 2020 prohibiting the competent governmental authorities, including the entity and cantonal civil protection headquarters, as well as other bodies operating in an emergency situation related to the pandemic, from publishing personal data on persons tested positive for COVID-19, as well as persons who have been prescribed isolation and self-isolation measures.

Economic and social rights

During the pandemic, the ombudspersons pointed out to the competent public authorities the need for increased supervision and effective measures for vulnerable groups of citizens. Older and exhausted people, people with disabilities, are often unable to function independently and are forced to use various forms of support such as food, medicine, various forms of assistance, making it necessary to ensure additional efforts to enable all the above categories to continue providing services. Protective equipment should be provided to those providing assistance and support.

The pandemic also had a huge impact on the economic sphere, labour market and capital and has greatly affected the quality of life of Bosnia and Herzegovina. Reduced economic activity caused unemployment to increase by 23,364 people (i.e. by 5.8%) since the beginning of the pandemic. In addition, the situation in the field of social protection was extremely difficult in 2020, as a significant number of workers in the private sector were laid off, smaller companies ceased to operate, and service facilities were restricted.

The provision of health services and healthcare in BiH during the pandemic posed a particular challenge. In addition to the fact that the competent authorities issue measures and recommendations aimed at preventing the spread of the virus, the quality of healthcare as well as the availability of services are contingent on the measures implemented by the competent health institutions. The already problematic situation was aggravated as, irrespective of the COVID-19 pandemic, the IHROBiH considered complaints regarding access to healthcare in 2020.

Vulnerable groups

Taking into account the orders issued so far by the crisis staffs, following the instructions and recommendations of public health experts, it was pointed out that there is a need for increased supervision and more effective measures in relation to risky and vulnerable groups of citizens (elderly, disabled, children, single parents). The ombudspersons underlined the need to take, along restrictive measures to suppress the spread of COVID-19, protective measures for these

groups, e.g. organizing work processes with the view to protecting people with disabilities, enabling children to maintain contact with the non-custodial parent, increased supervision of people over the age of 65, in terms of their needs for food and medicine and the like. The ombudspersons recommended that employers enable work from home in all situations where this was possible for persons with disabilities, parents of children and adults with disabilities, or persons caring for them, single parents, and if this was not possible, to organise work from home in some cases. It was recommended to provide the most appropriate conditions that would ensure health protection and prevention. Finally, it was recommended that people with disabilities, especially deaf people, be given unhindered access to information in sign language

Persons deprived of liberty

The pandemic had specific impacts on persons deprived of their liberty, e.g. in connection to police detention facilities, penitentiaries, immigration detention centres, psychiatric hospitals and social care homes, as well as in the newly established premises for quarantine. Within its mandate, the IHROBiH, with the aim of protecting human rights, monitored the implementation of measures adopted by the competent authorities at all levels of government in Bosnia and Herzegovina, including institutions for the implementation of criminal sanctions, in connection with the treatment of persons deprived of liberty during the coronavirus pandemic (COVID-19).

In order to prevent human rights violations, the ombudspersons issued several recommendations to crisis staff and other competent bodies and issued statements underlining the need to ensure the rights of particularly vulnerable categories such as children, people with disabilities, the elderly and others. Particular attention was paid to the issue of treatment of persons deprived of their liberty placed in institutions. A special statement was made regarding the persons who are placed in the institutions for the implementation of criminal sanctions and an act of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was forwarded to all ministries of justice in order to take measures within their competences and inform the management of all penitentiary institutions in Bosnia and Herzegovina.

The IHROBiH sent an act to all penitentiary institutions in Bosnia and Herzegovina whereby it requested information on the measures they had taken to protect persons deprived of their liberty from coronavirus infection.

Media

The ombudspersons acted on a complaint of the Association 'BH Journalists' Sarajevo to consider decisions of the Crisis Staff regarding the presence of journalists and media at press conferences.

It was pointed out that it was an indisputable fact that it was necessary to take measures to protect the health of both the population and media workers, but organising conferences without journalists, as well as excluding the possibility of their direct dialogue with public officials during the conference, could lead to censorship and incomplete information. Furthermore, it was underlined that practices varied in between different crisis staffs, from the presence of several journalists, sending questions by e-mail, to complete bans. The ombudspersons of Bosnia and Herzegovina considered this case in the context of promoting good governance and the rule of law, freedom of expression, as well as proactive transparency, and a recommendation was sent to these bodies inviting them to review their practice regarding the presence of journalists and media workers at press conferences, and ensure as much media involvement as possible.

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

Monitoring persons deprived of liberty

The IHROBiH Department for Monitoring the Exercise of the Rights of Persons Deprived of Liberty has adapted its work to the pandemic. Visits to penitentiary institutions were limited, i.e. reduced to a minimum in order to prevent the spread of the epidemic. The cooperation of the IHROBiH with the institutions for the implementation of criminal sanctions when handling complaints in 2020, despite the extraordinary circumstances caused by the COVID-19 pandemic, was good.

Children's rights

During the coronavirus pandemic, the ombudspersons faced a number of challenges in their daily work and in fulfilling their task to protect the rights of the child: work from home, limited work with clients, inability to have direct contact with children (visits to educational institutions and/or NGOs), inability to supervise (monitor) in institutions where minors in conflict with the law or institutions where children with disabilities were placed), etc. If we add that the ombudspersons did not visit local communities where the IHROBiH offices are not located and did not hold meetings with representatives of competent bodies in order to advocate compliance and compliance with previously made recommendations, this year proved to be extremely difficult to achieve all goals and plans of the IHROBiH. It is especially challenging to protect the rights of the child in emergency situations and in situations where restrictive measures are taken that greatly affect children (just a few examples: organising distance learning, postponing all excursions, excursions, cessation of extracurricular activities, etc.). Vulnerable groups of children, such as poor children, children in rural areas, in institutions or with developmental difficulties, have become more at risk of becoming even more vulnerable and more disadvantaged.

