

## 2018 ALTERNATIVE ANALYTICAL REPORT ON THE APPLICATION OF BOSNIA AND HERZEGOVINA FOR EU MEMBERSHIP: POLITICAL CRITERIA

THE INITIATIVE FOR  
MONITORING THE EUROPEAN INTEGRATION  
OF BOSNIA AND HERZEGOVINA

www.eu-monitoring.ba

Sarajevo, February 2018

ISSN: 2303-6079

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## LIST OF ABBREVIATIONS

AP	Action Plan
BASMP	Institute for Standardization, Metrology and Intellectual Property of Bosnia and Herzegovina
BD	Brčko District
BiH	Bosnia and Herzegovina
BHRT	BiH Radio Television
BHT	Television of Bosnia and Herzegovina
BPC	Bosnian Podrinje Canton
CEDAW	Committee on the Elimination of Discrimination against Women (UN)
CEC	Central Election Commission of Bosnia and Herzegovina
ECHR	European Court of Human Rights
EU	European Union
EUROSTAT	EU Statistical Office
EP	European Parliament
FBiH	Federation of Bosnia and Herzegovina
GAP	Gender Action Plan
GRECO	Group of States against Corruption
HDZ BiH	Croatian Democratic Union of Bosnia and Herzegovina (political party)
HNC	Herzegovina-Neretva Canton
ICMP	International Commission on Missing Persons
LGBTI	Lesbian, gay, bisexual, transgender, and intersex people
ICTY	International Criminal Tribunal for the former Yugoslavia
MIA	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organization
RSNA	Republika Srpska National Assembly
CSO	Civil society organizations
OSABIH	Intelligence-Security Agency of Bosnia and Herzegovina
AFBiH	Armed Forces of Bosnia and Herzegovina
OSCE	Organization for Security and Co-operation in Europe
OPD	Organizations of persons with disabilities
HR PABiH	House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina
PFBiH	Parliament of the Federation of Bosnia and Herzegovina
PABiH	Parliamentary Assembly of Bosnia and Herzegovina
CRABiH	Communications Regulatory Agency of Bosnia and Herzegovina
RS	Republika Srpska
RTRS	Radio Television of Republika Srpska
RTV	Radio Television
RTVFBiH	Radio Television of the Federation of Bosnia and Herzegovina
PIO/MIO	Pension and Disability Insurance
USA	United States of America
SBB	Union for a Better Future (political party)
CBC	Central Bosnia Canton

SDA	Party for Democratic Action (political party)
SDP BiH	Social Democratic Party of Bosnia and Herzegovina (political party)
SDS	Serb Democratic Party (political party)
SIPA	State Investigation and Protection Agency
SNSD	Party of Independent Social Democrats (political party)
SRNA	Republika Srpska News Agency
SAA	Stabilisation and Association Agreement
TI BiH	Transparency International BiH
TC	Tuzla Canton
ODP	Office of Disciplinary Prosecutor
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNICEF	United Nations Children's Fund
CCBiH	Constitutional Court of Bosnia and Herzegovina
USC	Una-Sana Canton
CoE	Council of Europe
CoM	Council of Ministers
HJPC BiH	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
WHC	West Herzegovina Canton
ZKOS BiH	Joint Committee for Defence and Security of Bosnia and Herzegovina
ZOSPI	Law on Freedom of Access to Information

## SUMMARY

The year before last, the European Commission adopted a new approach to reporting on countries in the accession process, with an adapted reporting methodology. Therefore, instead of a 2017 Progress Report, an Analytical report and opinion on the application of BiH is to be published in spring of 2018. Accordingly, we have designed this year's Alternative report to cover as many issues as possible that were central in the European Union's policy towards BiH. The key issue was certainly the process of preparing answers to the European Commission Questionnaire, which was presented to BiH in December 2016. The answers were delivered only on 28 February 2018.

*The Alternative Analytical Report on the Application of Bosnia and Herzegovina for EU Membership* is a result of the joint work of organisations and individuals who make up the Initiative for Monitoring the European Integration of BiH. This document relies on the previous reports prepared by the Initiative, including also the *Alternative Answers of Civil Society Organizations to the European Commission Questionnaire* prepared by the Initiative in 2017.

The report, like previous ones, relates to the issues of political criteria for EU membership, with a focus on the degree of democracy and the functioning of the state, the rule of law and corruption, human rights, especially minority and vulnerable groups and transitional justice. In addition, in accordance with changes in the reporting method, this document also emphasises some of the topics related to specific chapters of the *acquis*, such as economic and social issues, administrative capacities for conformity assessment with the EU *acquis*, intellectual property, and regional obligations.

The analytical report provides an overview of the situation in the areas covered by political criteria, with a more detailed overview of the period after the publication of the *BiH Alternative Report 2016*.

The findings in this report show that there has been no progress in the key areas in the past two years in BiH. Political tensions before the 2018 General Elections, as well as the lack of a firm coalition majority at the level of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, have resulted in the failure to adopt amendments to the Election Law, which has seriously jeopardised the electoral process. In the Republika Srpska, another type of parliamentary crisis has been observed, set off by alarming actions of the executive authorities regarding the work of the Supreme Office for Public Sector Auditing of Republika Srpska. The functioning of the state judiciary has also



been seriously jeopardised by failing to execute the decisions of the Constitutional Court of BiH related to the Criminal Procedure Code.

Constitutional reforms remain an issue that the authorities of BiH do not tackle upon. There is no serious approach in terms of amending the Constitution in line with the judgments of the European Court of Human Rights in 'Sejdić-Finci', 'Zornić' and 'Pilav' cases.

Public administration reform, although one of the proclaimed priorities in the EU accession process, has not made any progress in the past period. There were again attempts to weaken the legislative framework in various areas, instead of improving it. Civil society organisations have managed to stop the procedure of amending the Law on Freedom of Access to Information of BiH, which would significantly restrict freedom of access to information. Neither the proposal to introduce the possibility of amnesty for convicted war criminals has made it to parliamentary procedure. These cases indicate worrying tendencies in the work of executive authorities.

Freedom of assembly is still not guaranteed to everyone under equal conditions, as evidenced by different cases in the Republika Srpska and the Federation of BiH. Media freedom and working conditions of journalists have deteriorated compared to the previous period, and there are great chances that the situation will further decline in the coming period, considering the upcoming election campaign.

Minority and vulnerable groups continue to live in harsh conditions. Discrimination and violence are pervasive, whereas amendments to the Law on Prohibition of Discrimination have not yet produced the desired results in terms of better protection. Comprehensive anti-discrimination policies still do not exist.

Processing of war crimes and dealing with the past, as prerequisites for creating a healthy environment and building a common state, are an additional problem. Political support to war criminals provided by political party leaders further divides an already highly fragmented society.

*Editors,  
February 2018*

## 1. DEMOCRACY AND THE RULE OF LAW

### 1.1. Constitutions

#### *Background*

The Constitution of Bosnia and Herzegovina is part of the General Framework Agreement for Peace in Bosnia and Herzegovina, which was initialled on 21 October 1995 in Dayton and signed on 14 December 1995 in Paris. The Constitution of BiH is Annex 4 to this Agreement and it entered into force at the time of its signing on 14 December 1995.

The Constitution, with the Preamble, has 12 articles that define the basic principles of constitutional and political order of Bosnia and Herzegovina. The Constitution established the administrative and territorial order of BiH, which consists of the Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. So far, only one amendment to the Constitution has been adopted, by which the Brčko area was declared a district, following international arbitration. The Constitution of FBiH stipulates that it consists of federal units (Cantons). The number, names and organisation of cantons are determined by the Law on Federal Units (Cantons).<sup>1</sup>

#### *Constitutional reform*

The Constitution may be amended by a decision of the Parliamentary Assembly, namely by a two-thirds majority in the House of Representatives. The issue of its amending has been brought into focus following the judgment of the European Court of Human Rights in the ‘Sejdić and Finci vs. Bosnia and Herzegovina’ case in December 2009. The judgment established the discriminatory nature of the Constitution, whereas BiH was ordered to amend it in order to ensure equal political rights for all citizens. The judgment refers to the possibility of running for the Presidency of BiH and of being elected into the House of Peoples of the Parliamentary Assembly of BiH, which is currently possible only for the constituent peoples in BiH: Serbs, Croats and Bosniaks. Dervo Sejdić and Jakob Finci have initiated a lawsuit because, as members of national minorities, they have not been granted the same rights in the political system of BiH. In the meantime, two more judgments have been rendered in cases with similar legal basis, which also confirmed discrimination of members of the constituent peoples depending on the place of residence (Pilav v BiH – lawsuit initiated by Ilijaz Pilav



<sup>1</sup> For a detailed overview of the internal organisation see: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, the Initiative for Monitoring the European Integration of BiH, 2017, pg. 5, (<https://goo.gl/dUvk9z>).

for not being able to run for the Presidency of BiH as a Bosniak from the Republika Srpska) and discrimination of all persons who do not identify themselves ethnically (Zornić v BiH – lawsuit initiated by Azra Zornić). Both judgments became binding on BiH in September 2016.

In terms of the implementation of these judgments in BiH, nothing has been done to date.<sup>2</sup> No proposals for amending the Constitution were submitted in parliamentary procedure in 2017, nor were any activities taken after the adoption of the Action Plan by the Council of Ministers in 2015.<sup>3</sup> In 2017, the Ministry of Justice requested the Council of Ministers four times that the revised action plan for the implementation of these judgments be considered at their sessions, but this did not happen.<sup>4</sup> In this kind of political context and vacuum regarding constitutional changes, the **Initiative Women Citizens for Constitutional Reform** is the only civil society organisation that still actively advocates the change of the Constitution of BiH, particularly focusing on the gender perspective and offering concrete amendments that would, among other things, incorporate the gender perspective in the Constitution.

## 1.2. Constitutional courts

### Legal framework

The jurisdiction of the Constitutional Court of BiH is exclusively prescribed in Articles VI/3 and IV/3 of the Constitution of BiH. All decisions of the Court are final and binding. The Constitutional Court of BiH is composed of nine judges, where each of the constituent peoples is represented by two judges. The pattern of election of domestic judges to the Constitutional Court of BiH indicates that a constitutional practice has been set up according to which each of the three dominant ethnic groups, the so-called ‘constituent peoples’, have to be represented by two judges, where Serb judges must be elected from the RS territory, while Bosniak and Croat judges must be elected from the FBiH territory. There is no direct discrimination of the Others, but in practice, there had never been judges who were not members of one of the three constituent peoples.

Entity constitutional courts still have serious difficulties in the performance of their work. The Constitutional Court of RS continues to

2 In December 2014, the European Union, instead of constitutional reforms, launched a socio-economic reform in BiH, based on the UK-German initiative. Adoption and implementation of the Reform Agenda 2015-2018 has thus become a new requirement for BiH to join the EU. After the adoption of the Reform Agenda, constitutional changes have been completely swept aside.

3 See: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring EU Integration of Bosnia and Herzegovina, 2017, pg. 11, (<https://goo.gl/dUvk9z>).

4 Ministry of Justice’s response to the letter of the Initiative Women Citizens for Constitutional Reform from 2 November 2017, number: UP-06-07-24-2018/17.

apply the Rules of Procedure that are unconstitutional in the procedure of protection of vital national interest in the Republika Srpska. The appeal of members of the Bosniak people for amending these Rules of Procedure is still being ignored. In the Constitutional Court of FBiH, there is still a problem in the appointment of judges due to the vagueness of constitutional and legal norms and the lack of time limitation of the process. It has been more than a year since the required appointment of a judge from the Bosniak people, which diminishes the capacity and derogates dignity of the Council for the Protection of Vital Interest of the Constitutional Court of FBiH, which cannot be completed without the appointment of a missing judge from the constituent peoples.

### *Current situation*

Due to the normative vagueness of the Constitution of BiH in the part relating to the regulation of the work of the Constitutional Court, a large number of issues is regulated through the Rules of Procedure of the Constitutional Court. Adoption of the Law on the Constitutional Court is imperative, but the politicisation of this matter causes major problems. Article 4 of the Constitution of BiH stipulates the appointment of foreign judges, who are appointed by the President of the European Court of Human Rights after consultation with the Presidency of BiH. The inclusion of foreign judges was aimed at fulfilling the role of a neutral power which is often criticised by ethnic groups, while legislative changes in electing judges this way would require previous amendment to the Constitution or they would be in contravention of its provisions.

The Constitutional Court of BiH is currently facing a series of obstacles, perhaps the greatest in its existence so far. The Court's work is constantly exposed to political pressures, which is further corroborated by a Declaration adopted by the RS National Assembly in 2015, stating that it is unacceptable to have foreign nationals as judges of the Constitutional Court of a sovereign state, and calling for the adoption of the Statute on the Constitutional Court to rectify this situation. Also, the RS parliamentarians, on several occasions in 2015 and 2016, launched legislative initiatives aimed at removing international judges from the Constitutional Court of BiH.<sup>5</sup>

The continuing debate on this issue actually brings into question the active role of the Constitutional Court as a potential creator of 'positive judicial activism' in terms of the interpretation of constitutional provisions and breaking out of the formalist framework. Dissenting opinions of judges



<sup>5</sup> One of the decisions of the Constitutional Court of BiH that caused outcry in the Republika Srpska concerned the issue of registration of military property in Han Pijesak from the Entity to the State of BiH. The judgment ordered the RS Administration for Geodetic and Property Affairs to carry out the registration procedure, after which the Administration noted that there were no conditions for the implementation of the judgement.

are often related to the affiliation with a political/ethnic group.<sup>6</sup> Judicial activism has a negative connotation given that it usually concerns dissenting opinions of judges directed at representing political or other goals.

### 1.3. Elections

#### *Conduct of elections*

In BiH, local and general elections are held alternately, with a two-year break in between elections, for a term of four years. The last local elections were held in 2016, whereas the next general elections are scheduled for October 2018.

Although the general assessment shows that the 2016 local elections in BiH were properly implemented and there were no serious violations of the election law (with the exception of Stolac where the electoral process was violently interrupted), reports by independent observers indicate numerous problems. The Coalition *Pod lupom* directly monitored the electoral process in BiH and identified as many as 300 incidents in the local elections.<sup>7</sup> These incidents include: unlawful ‘trading’ of slots on polling committees and their improper occupancy, vote trading, identity theft, various types of pressure on voters (distribution of ‘aid packages’, blackmail by employers), not updated voters’ registers (one list had over 250 dead persons), abuse of office, violation of the Law on Political Party Financing, the presence of ‘professional assistants’ and ‘family voting’, and various ballot manipulations (recount, incorrect packaging of ballots, adding votes to the ballot papers, turning valid ballots into invalid ballots). Similar irregularities had been determined by the Congress of Local and Regional Authorities of the Council of Europe, which observed the voting process at more than 250 polling stations, concluding that ethnic tensions still undermine the electoral process (violent incidents in Srebrenica and Stolac on election day).<sup>8</sup> Elections have not been held in the City of Mostar since 2008, which constitutes a serious violation of the right to self-government.

#### *Election Law*

In December 2016, the Constitutional Court of BiH partially adopted an appeal to review the constitutionality of certain provisions of the Election Law of BiH<sup>9</sup>, filed by Božo Ljubić at the time when he was the

6 Dissenting opinion of Miodrag Simović in the case U-10/14, 4 July 2014, paragraph 3.  
7 2016 Local Elections in Bosnia and Herzegovina: Final report on civil, non-partisan observation of local elections, Sarajevo, 2016, (<https://goo.gl/bdWhgV>).  
8 Conference proceedings, “2016 Local Elections – Lessons Learned”, Central Election Commission of BiH, 2017, (<https://goo.gl/ck5S8S>).  
9 Constitutional Court’s decision 23/14 from 1 December 2016.

Speaker of the House of Representatives of the Parliamentary Assembly. The Constitutional Court determined by the Decision that the provision of Subchapter B, Article 10.12 (2), in the part which reads: “Each constituent people shall be allocated one seat in every canton”; and the provisions of Chapter 20 – Transitional and Final Provisions of Article 20.16A (2) (a-j) of the Election Law of Bosnia and Herzegovina, are not in line with Article I/2 of the Constitution of Bosnia and Herzegovina.<sup>10</sup> The Parliamentary Assembly of BiH was ordered to harmonise these provisions with the Constitutional Court’s decision within six months, which has not been done so far, and the contested provisions of the Election Law have ceased to be valid. General elections are scheduled for October 2018 and it remains an open question as how the election results will be conducted, since there is currently no legal basis for the constitution of the House of Peoples of the Parliament of FBiH and the House of Peoples of the Parliamentary Assembly of BiH. In addition to failing to hold local elections in Mostar, this is the second and most serious case of undermining the electoral process and exercising the electoral will of citizens due to failure to harmonise the Election Law with the Constitutional Court’s decision.

In the past year, the process of amending the Election Law has been marked by opposing views of the HDZ and the SDA, minimising the parliament’s role and failing to reach an agreement on how to implement the Constitutional Court’s decision. Both parties have referred their proposed amendments into parliamentary procedure. The SDA’s proposal implies that each constituent people gets at least one seat in the FBiH House of Peoples from each canton, if the cantonal assembly has at least one representative from that constituent people. The HDZ’s proposal implies deletion of the article of the law stipulating that each constituent people gets at least one delegate seat in the FBiH House of Peoples from each canton. In addition, it is proposed to elect members of the Presidency of BiH from three ‘*ad hoc* electoral areas’ that would function as ethnically defined constituencies: a Bosniak member would have to win the majority of votes in municipalities with at least 2/3 of the Bosniak population, thus making up one constituency, a Croat member in municipalities with 2/3 of the Croat population, while the third constituency would be ‘mixed municipalities’. A direct result of this division would strengthen the principle of ethnic representation that would favour the constituent

10 The Constitutional Court of BiH concluded that the provision of Subchapter B of Article 10.12 (2) in the part which reads: “Each constitutional people shall be allocated one seat in every canton”, and the provisions of Chapter 20 – Transitional and Final Provisions of Article 20.16A (2) (a-j) of the Election Law of Bosnia and Herzegovina, are not in line with Article I/2 of the Constitution of Bosnia and Herzegovina, because they clearly imply that the right to democratic decision-making exclusively by legitimate political representation will not be based on the democratic election of delegates to the FBiH House of Peoples of that constituent people whose interests they represent, which is contrary to the principle of constitutionality, i.e. the equality of any of the constituent peoples.” (ibid).

peoples in the areas where they are majority.<sup>11</sup>

The Constitutional Court's decision on the Election Law only further complicated the issue of the application of ECHR judgments dealing with political discrimination in BiH, since it provided an additional space for strengthening the ethnic (principle of constitutionality) to the detriment of the civic principle of political representation. The application of such principles will only further complicate the implementation of the ECHR's decisions, which emphasise the equal passive voting rights of all citizens in BiH, regardless of their ethnicity. In addition, the judgment has brought into question not only the future structure of the FBiH House of Peoples, but also its role in the legislative process, because the strengthening of the principle of ethnic representation is in contravention to its current role of the 'upper house' that confirms all laws, regardless whether they relate to the collective (ethnic) rights, i.e. issues that directly concern the constituent peoples. Finally, the question is whether the implementation of this decision can only be focused on amendments to the Election Law, because the composition and functioning of the FBiH House of Peoples is also stipulated by the Constitution of FBiH.

#### 1.4. Parliaments

The highest legislative body in BiH is the Parliamentary Assembly of BiH, composed of the House of Representatives and the House of Peoples. Both Entities and all ten Cantons also have their parliaments/assemblies. State and entity parliaments are still marginalised in key political processes, which, in practice, exclusively take place at the level of agreements between the heads of most influential parties. The activity of parliaments has not been significantly improved in the previous period, while all parliaments have continued with the practice of adopting a significant number of laws in urgent or summary procedure.

The Parliamentary Assembly of BiH was most inactive in the period from May 2016 to January 2018 compared to entity parliaments. The House of Representatives held 31 sessions, of which three were urgent, while the House of Peoples held only 21 sessions (three were also urgent). The Parliamentary Assembly of BiH adopted a total of 21 laws, of which eight (38% of the total number) in summary or urgent procedure. Unlike previous years, budgets for 2017 and 2018 were adopted in a regular legislative procedure, while the 2018 Budget was adopted with a delay.<sup>12</sup> There is virtually no parliamentary majority at



11 Therefore, the Sarajevo Canton (where 18,000 Croats live according to the 2013 Census) would not have Croat representatives in the FBiH House of Peoples.

12 Data obtained from the statistics of the *Javna rasprava* platform (Public Discussion), (<https://go.gl/5apmZ5>).

the state level, which directly affects poor efficiency of parliament.

In the process of adopting amendments to the Law on Excise Duties, problems within the ruling coalition have emerged, as well as non-transparent work of parliamentary bodies and non-compliance with procedures, which we have pointed out several times before. Specifically, this set of laws, which was neither supported by the expert nor the general public<sup>13</sup>, was adopted in December 2017 without a prior public discussion, in an urgent procedure for which legal requirements were not fulfilled<sup>14</sup>, and accompanied by procedural mistakes that prompted a group of deputies to initiate an appeal to review its constitutionality.<sup>15</sup> There was no consensus within parliamentary majority on support of the law. The support was provided almost exclusively by the parties participating at the entity-level authorities, considering that the increase in excise duties is a requirement for the approval of IMF loan, whose direct beneficiaries will be entity budgets.

In the same period, the House of Peoples in the FBiH Parliament held 21 sessions, of which 10 were extraordinary, while the House of Representatives held 36 sessions (14 extraordinary). The FBiH Parliament has been in a crisis for a long time caused by the conflict between the two largest parties that participated in the formation of a parliamentary majority, namely the SDA and the HDZ, which culminated with the issue of amending the Election Law. This is further corroborated by a large number of extraordinary session, their frequent interruption, months-long interruptions between the continuation of sessions and their multi-month duration.<sup>16</sup> Frequent blockades of the Parliament resulted in fewer adopted laws. In the observed period, 45 laws were adopted, of which 16 (35.5% of the total number) in urgent or summary procedure. The FBiH budgets for this and previous year were adopted in a regular legislative procedure (2018 Budget adopted with a delay).

In the observed period, the RS National Assembly held 21 sessions, of which nine were extraordinary. In this period, the RS National Assembly adopted 84 laws, of which 37 (44%) were adopted in urgent procedure. In addition to most frequently resorting to an urgent legislative procedure, the RS National Assembly also adopted budgets for 2017 and 2018 in urgent procedure. Problems in the work of the RS National Assembly, unlike the other entity parliament, do not arise from the instability of the parliamentary majority, but from the direct pressure of the executive



- 13 Citizens' views on the increase of excise duties on fuel are uniformly negative, as evidenced by the voting results on the Javna rasprava platform, (<https://goo.gl/zDUAXP>).
- 14 Deputies Seek Answers: Who Proposed Law on Excise Duties, N1, 2017, (<https://goo.gl/sB6yyA>).
- 15 58th session of the Constitutional-Legal Committee of the House of Representatives, 5 February 2018, (<https://goo.gl/iJUwxs>).
- 16 Therefore, the 10th regular session of the FBiH House of Representatives began in April and was continued in December 2016.

authorities. Therefore, the RS Budget revision report was withdrawn from the agenda of the 21<sup>st</sup> regular session (12 September 2017), for which the director of the Supreme Office for Public Sector Auditing of Republika Srpska had previously resigned after the pressure of the RS president. The opposition parties therefore blocked the work of the Assembly, with the parliamentary majority parties resuming the session in a small hall, without representatives of the opposition who were prevented from entering by the police. Paradoxically, the first Code of Conduct for Deputies in the Republika Srpska was adopted at this session. On 12 December, opposition MPs left the National Assembly session after having their request declined that the RS Budget for 2018 and the Economic Reform Programme by 2020 be considered in a regular procedure rather than in an urgent procedure. Opposition MPs contest all laws and decisions adopted at sessions without their presence and demand that they be annulled.

### *Parliamentary codes of ethics*

The code of ethics have the Parliamentary Assembly of BiH (adopted in 2015) and the RS National Assembly (adopted in 2017). The codes of ethics of parliaments do not prescribe clear sanctions for violations of the codes. Neither of the existing codes of ethics obliges parliaments to disclose the results of investigations initiated based on violations of the codes of ethics.

### *1.5. Executive authorities*

The Presidency of Bosnia and Herzegovina is the executive branch at the state level. It functions as a collective head of state and consists of three members: Bosniak and Croat members who are elected from the Federation of BiH, and Serb member who is elected from the Republika Srpska. The Council of Ministers of BiH performs the function of government at the state level.

In 2017, the work of the executive authorities at the state level was largely marked by the lack of parliamentary majority in the Parliament of BiH, i.e. by the divergence of views within the ruling coalition. Parliamentary parties that participate in the work of the ruling coalition disagree on most key issues, and there are also frequent announcements of withdrawal of certain parties from the parliamentary majority.<sup>17</sup> In the period from January to September 2017, the Council of Ministers of BiH had the lowest work intensity in the current term regarding the number of sessions held. On the other hand, few determined laws have been generally blocked in parliament due to the absence of a



17 SBB Ministers Fail to Resign, *Istinomjer*, 2017, (<https://goo.gl/RgPXQr>).

parliamentary majority.<sup>18</sup>

The work of the Presidency of BiH was also marked by a lack of consensus and agreement on key issues and policies. The events surrounding the appeal to review the judgment on the lawsuit of BiH against Serbia for genocide before the International Court of Justice in The Hague have manifested all the problems in the functioning of the executive authorities in the context of foreign policy.<sup>19</sup> Apart from the complete disagreement between members of the Presidency of BiH, the public has witnessed the open conflicts between members of the Presidency of BiH and the Council of Ministers of BiH, i.e. between the Ministry of Foreign Affairs of BiH and the Presidency of BiH.

The activities of all three members of the Presidency of BiH in the past period have had elements of abuse of office, disregard for competencies, and derogation of the institution's reputation. In this regard, the following activities are emphasised: the activities of Presidency member Bakir Izetbegović on the review of the ICJ's judgment, for which he neither had the consent of other members of the Presidency nor a valid legal basis in terms of representation of the State before this Court;<sup>20</sup> the activities of Presidency member Mladen Ivanić related to the line-up of a unit of the Armed Forces of BiH on the occasion of marking the unconstitutional RS Day;<sup>21</sup> and the continuous public statements made by Presidency member Dragan Čović in which he exclusively deals with the processes at the entity level government, including the work of the Parliament of FBiH and the adoption of entity laws.<sup>22</sup> Abuse of power was also noted in the case of putting the official car of the Presidency of BiH at disposal to the wife of Presidency member Bakir Izetbegović. This only further pointed to a number of deficiencies and irregularities in the adoption and application of a rulebook regulating the use and procurement of official vehicles in the Presidency of BiH.<sup>23</sup>

In terms of the actions of executive authorities at the entity level, the events took place in the Republika Srpska in the past year are particularly alarming. The Supreme Office for Public Sector Auditing of Republika Srpska, after publishing the entity budget audit report for the previous year, was publicly accused of bias and tendentiousness, first by the entity finance minister and then by the entity president. Milorad Dodik has

- 18 Report on monitoring the work of the Council of Ministers of BiH for the period 1 January – 30 September 2017, Centres for Civic Initiatives, 2017, (<https://goo.gl/SNRstA>).
- 19 Diplomacy without Legal Frameworks and Internal Rules, *Istinomjer*, 2017, (<https://goo.gl/fssPFi>).
- 20 Sakib Softić not Authorised to Represent BiH before ICJ in The Hague, *Istinomjer*, 2017, (<https://goo.gl/We52xH>); Decision Seen by Nobody, *Istinomjer*, 2017, (<https://goo.gl/j8E4TN>).
- 21 Ivanić Fulfills Dodik's Promise and Breaks Laws, *Istinomjer*, 2017, (<https://goo.gl/GfHbKc>).
- 22 Čović Appears to See Herceg-Bosna in Washington Agreement, *Istinomjer*, 2017, (<https://goo.gl/hljgQ4>).
- 23 Official Vehicles of Presidency of BiH: Public Property, Secret Rules, *Istinomjer*, 2017, (<https://goo.gl/BdLG88>).

publicly stated that the director of the Office will be dismissed if he does not resign, which happened two days later.<sup>24</sup> Duško Šnjegota's resignation was accepted at the same session of the entity assembly at which the audit report was removed from the agenda without representatives of the opposition parties (see section 'Parliaments'). This has exerted an unprecedented direct pressure on the institution whose independence has already been compromised by unlawful actions of the Ministry of Finance in budget planning<sup>25</sup>, and at the same time, it has derogated the RS National Assembly as a legislative authority. In early 2017, there was also a case of abuse of office by the RS prime minister, who went to an unofficial visit to the USA at the budget's expense on the occasion of Donald Trump's inauguration.<sup>26</sup>

## 1.6. Public administration<sup>27</sup>

The Public Administration Reform Strategy and the Action Plan 2006-2010 were adopted in 2006 and were never implemented. After the deadline for its implementation, a new Revised Action Plan 2011-2014 was adopted, which also failed to be implemented. The continuation of the implementation of public administration reform at the operational level is still under negotiation, whereas a new Strategy has not been adopted yet. The latest SIGMA report underlines that there was no progress in public administration reform. On the contrary, there were attempts to impede reforms, such as the adoption of the Law on Amendments to the Law on Civil Service in the Federation of BiH in 2015, which rendered civil service under direct political control.<sup>28</sup> The Constitutional Court of FBiH, in its decision from 7 December 2016, concluded that the said Law is not in accordance with the FBiH Constitution,<sup>29</sup> which temporarily stopped the negative trend of politicisation of civil service. In terms of human resource management, the 2016 analysis results show that there are some positive developments, but that they are insufficient

24 Dodik on Šnjegota's Resignation: What Do I Have to Do With That, *Istinomjer*, 2017, (<https://goo.gl/GA7tcC>); RSNA, SNSD and RTRS, *Istinomjer*, 2017, (<https://goo.gl/AKz7Zj>).

25 Is Audit Office 'Blackmailing' RS Government?, *Istinomjer*, 2017, (<https://goo.gl/t2soec>).

26 Cvijanović's Private Visit to Washington at Public Expense, *Istinomjer*, 2017, (<https://goo.gl/RiYM95>); Kasipović on RS Prime Minister Travel Expenses to USA, *Istinomjer*, 2017, (<https://goo.gl/AGF2FM>).

27 The Initiative for Monitoring the European Integration of BiH paid particular attention to this field through a series of texts published in 2017. See: Impact assessment of legislation or what kind of legislation are we leaving to our children? (<https://goo.gl/tr8tZR>); How we work with people who work for our country or why the human resource management system is the foundation of good administration (<https://goo.gl/8E559n>); What does lie ahead in the process of public administration reform? (<https://goo.gl/ZgefVD>).

28 Monitoring Report: The Principles of Public Administration – Bosnia and Herzegovina, SIGMA, 2017, (<https://goo.gl/S25oYm>);

Monitoring the public administration reform in BiH: Analysis of the results in the field of human resource management (HRM) in 2016, Transparency International BiH, 2017, (<https://goo.gl/xtzb5j>); Monitoring results in the area of transparency, accountability and integrity in public administration for the period 2015-2016, Transparency International BiH, 2017, (<https://goo.gl/XPb2aq>).

29 Decision of the Constitutional Court of FBiH, number U-13/16 from 7 December 2016, (<https://goo.gl/8pv941>).

and disproportionate to the invested resources.<sup>30</sup> There are still many problems in this field: penal policy in disciplinary proceedings varies among different levels of government; the system of monitoring and employment analysis are not clearly defined, as well as framework rules and procedures relating to engagement under a service contract; all institutions do not have integrity plans adopted. A 2016 research shows that institutions of the executive authorities in BiH, at all levels, meet only 53% of the criteria in terms of ensuring integrity mechanisms.<sup>31</sup>

### *Access to information and openness of government institutions*

The Law on Freedom of Access to Information (ZOSPI) was adopted in 2000 at the state level, and in 2001 at the entity levels, and has been amended several times since. In November 2016, the Ministry of Justice of BiH drafted a new ZOSPI, introducing a series of amendments that would seriously degrade the existing legislative framework. After the public discussion and active advocacy of civil society organisations against the new proposal, the Ministry dropped the proposed law and gave its consent to the harmonisation of amendments to the existing law. There has been no activities in this field ever since.

Organisations involved in the whole process have offered a set of measures to improve the existing law, primarily by introducing the principle of proactive transparency given that mandatory disclosure of most information is not standardised in the existing legislative framework. Transparency of government institutions is generally low and there are no active policies that would regulate and promote it, whereas it depends on the decisions and standpoint of the administration of each institution.

A 2016 research on government's openness shows that institutions at all levels of government in BiH fulfil only 40.38% of indicators of openness and good governance.<sup>32</sup> TI BiH research each year show unsatisfactory level of transparency of public enterprises, including non-compliance with legally prescribed procedures, misinterpretation of provisions and/or application of ZOSPI.<sup>33</sup> Access to information on tender or similar documents, as well as the salaries and allowances of officials and public administration employees, is refused for the protection of third party privacy without conducting a public interest test. Also, there have



30 Monitoring Report: The Principles of Public Administration – Bosnia and Herzegovina, SIGMA, 2017.

31 Aida Ajanović and Selma Aščerić, Openness of institutions of executive power in the region and Bosnia and Herzegovina, Zašto ne/Action SEE, 2017, (<https://goo.gl/NwF41Q>).

32 Regional Openness Index, Zašto ne/Action SEE, 2017, (<https://goo.gl/PTiyXG>).

33 About 55% of enterprises covered by the research failed to submit their replies within the statutory period of 15 days. (Research on the application of the Law on Freedom of Access to Information in BiH, TI BiH, 2017).

been cases of abuse, where access to information that do not require such verification is denied based on the ‘public interest test’.<sup>34</sup> Asset declarations of officials are still available only for inspection and are not published. They cannot be obtained under ZOSPI request, which further violates the provisions of the Election Law of BiH. Information from asset declarations is still not verified, and no steps are taken to remove deficiencies when submitting asset declarations to the CEC (candidates do not report all property, especially property owned by close relatives; financial information is often incomplete).

Laws on freedom of access to information are still not harmonised at all levels of government. Thus, state law contains inspection provisions and provisions on fines, while entity laws do not; the RS ZOSPI prescribes that the decision on refusing access to information is taken in the form of a letter, unlike the laws at BiH and FBiH levels. Judicial protection is available as a remedy in the Federation of BiH and at the state level, but different practices are applied at these two levels of government.

### *Access to information from the judicial system*

Prosecutions and courts in BiH are insufficiently open to the public, which only further strengthens distrust in the work of judicial institutions.<sup>35</sup> The High Judicial and Prosecutorial Council (HJPC) has made recommendations on the manner of providing information about judgments and indictments for serious criminal offences, which were accepted by courts and prosecutions in 2015.<sup>36</sup> Nevertheless, there is still no uniform practice of publishing indictments and judgments, or uniform mechanisms to respond to public inquiries.

A research conducted on a sample of 31 judicial institutions shows that transparency of court proceedings is very poor, since court judgments and minutes of hearings are generally not published. Indictments in current cases are unavailable on the Court of BiH website, while most judgments in the first instance and second instance proceedings are available. Many judicial institutions violate the provisions of the Law on Freedom of Access to Information (ZOSPI), because they neither publish registries of information in possession, nor contact information of persons responsible for ensuring access to information. Judicial institutions generally do not report on their work plans and their implementation, or provide information about their employees, from clerks to judges and prosecutors.

34 Official Vehicles of Presidency of BiH: Public Property, Secret Rules (pt. 2), *Istinomjer*, 2017, (<https://goo.gl/H2UYJN>).

35 Conclusion of the round-table discussion “The public’s right to a transparent judiciary”, organised by the Centre for Investigative Reporting of BiH in May 2017.

36 Selma Učanbarlić, Uniform Practice of Providing Information, 2015, (<https://goo.gl/MPY18R>).

Journalists are still prevented from obtaining full information from war crimes trials. Video recordings of trials are not submitted (out of the 837 such requests<sup>37</sup>, the Court of BiH granted only 21 requests, while in 690 cases only the first ten minutes of trials were granted that do not contain any relevant information<sup>38</sup>). All personal data and names of cities are blacked out in the approved requests for indictments, which makes them unusable for proper and objective reporting to the public on the case, especially if there have been changes in the counts of the indictment. The availability of these data still depends on personal acquaintances, although this is information of public importance.

### *Public procurement*

Numerous contracting authorities further violate the basic principles of public procurement, such as transparency, efficiency, non-discrimination and competitiveness. Despite the fact that there is a public procurement portal that integrates information on institutions at all levels of government, transparency standards require that the financial documents of institutions, including those relating to public procurement, be published on their official websites, which is not the case in practice. In 2016, about 44% of ministries in BiH did not publish a public procurement plan: 39% do not publish calls and decisions on public procurement, while the institutions of executive authorities in BiH meet only 8.9% of the transparency criteria for public procurement.<sup>39</sup> Awarding of contracts without publication (direct settlement) makes up about 40% of total public procurement, which ranks BiH as one of the worst countries in Europe.<sup>40</sup>

### *1.7. Anti-Corruption<sup>41</sup>*

State and entity levels of government have adopted anti-corruption strategies that are not being implemented to a satisfactory extent. In BiH and the Federation of BiH, the adopted strategies cover the period by 2019, while in the Republika Srpska by 2017 (a new strategy is currently being developed). Several assessments of the implementation of the Anti-Corruption Strategy of BiH have been made so far, showing that less than a third of the planned measures were fully implemented,

37 The figure refers to the number of requests sent by journalists of the Balkan Investigative Report Network – BIRN to the Court.

38 Erna Mačkić, *Censorship by Court of BiH*, 2012, (<https://goo.gl/c3XbX7>).

39 Aida Ajanović and Selma Aščerić, *Openness of institutions of executive power in the region and Bosnia and Herzegovina, Zašto ne/Action SEE*, 2017, (<https://goo.gl/NwF41Q>).

40 *Monitoring results: Non-transparent public procurement process conducted by 44% of contracting authorities*, Capital, 2017, (<https://goo.gl/VtRbo1>).

41 Detailed overview of the situation in this field is available in: *Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, the Initiative for Monitoring the European Integration of BiH*, 2017, pgs. 23-41, (<https://goo.gl/dUvk9z>).



while the percentage of unimplemented measures ranged from 3% to 10% in various reports.<sup>42</sup> In the first two years of the Strategy's implementation, apart from the insufficient implementation of specific measures, out of 55 activities that should be taken in continuity after the Strategy's adoption, 31 activities were fully implemented, while four activities are not being implemented at all.

### *Reporting and processing corruption*

Corruption reporting slightly increased in 2016 compared to 2015, but it is still less frequent compared to previous years covered by TI BiH reports<sup>43</sup> (there were 2,023 complaints in 2016, while there were 3,174 corruption cases before prosecutions in BiH in 2012<sup>44</sup>). However, the number of investigations decreased by 3% compared to 2015. In 2015 and 2016, there were 280 court decisions for criminal offences of corruption. Of this number, there were 237 convictions, but they were in most cases suspended sentences, which is not a good result.

### *Conflict of interest*

Considering the obligations of BiH on its European path in the field of rule of law and fight against corruption, the need for changes in terms of improving and harmonising laws dealing with conflict of interest at different levels of government in BiH is indisputable.<sup>45</sup> The 2013 legislative amendments are still in force, which have revoked the competence of the Central Election Commission and given it to the Commission on Conflict of Interest, placing it under the direct control and influence of political parties in the Parliamentary Assembly of BiH. Entity laws on conflict of interest have not yet been harmonised with the state Law, and still stipulate that the Central Election Commission is responsible for their implementation. In practice, this means that from the end of 2013 in the Federation of BiH and Brčko District there is no body to determine a conflict of interest. These laws also do not contain a sanction for ineligible candidates that is contained in the RS law. The Commission cannot impose a sanction for ineligible candidates or revocation of the mandate, because the Central Election Commission,

42 Assessment of the Strategy's implementation was carried out by the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, as well as Transparency International BiH (TI BiH) which published two reports on the Strategy's implementation in the past two years, presenting in detail the percentage of fully and partially implemented measures, and unimplemented measures: Monitoring Report on the Implementation of the UN Convention against Corruption, 2016 (<https://goo.gl/7mg6Fu>) and Second Monitoring Report on the Implementation of the Anti-Corruption Strategy 2015-2019, 2017 (<https://goo.gl/4G9Mub>).

43 Report on monitoring corruption processing before courts and prosecutors in BiH in 2015 and 2016, TI BiH, 2017, (<https://goo.gl/z88TYJ>).

44 Monitoring corruption processing before courts and prosecutions in Bosnia and Herzegovina in 2012 and 2013 – Key findings, TI BiH, 2014, (<https://goo.gl/A5DCcv>).

45 GRECO Evaluation Report on Bosnia and Herzegovina, 2015, (<https://goo.gl/LJTPjV>); European Commission 2016 on Bosnia and Herzegovina (<https://goo.gl/iSQkfi>).

which could only have the mandate to enforce this sanction, does not act upon the Commission's decisions on the grounds of that it is not competent. The Law on the Prevention of Conflict of Interest in the Republika Srpska Authorities is contrary to the state Law in other aspects too, which leads to the creation of different legal norms and legal practices, and also puts public officials at different levels of government at a disadvantage.

Conflict of interest for judicial office holders is not regulated by uniform legislation.<sup>46</sup> In July 2016, the High Judicial and Prosecutorial Council adopted the Guidelines for the Prevention of Conflicts of Interest in the Judiciary, but these are neither binding nor there are sanctions for non-compliance. At its session held on 4 October 2017, the HJPC adopted a proposal form for submitting financial reports of judicial office holders in BiH. However, it is limited to judicial office holders, their spouses and children living in the same household, leaving out some of the key elements for verifying the method of property acquisition (insight into data on income and activities of spouses/common-law partners, children, parents/adoptive parents regardless of whether they live or not in the same household, as well as other members of the joint household of judicial office holders, generated in BiH and abroad). Apart from rejecting a proposal that would include these data in the proposed form, the HJPC also ordered that sections on the date and method of property acquisition be deleted from the proposed form, which is contrary to GRECO recommendations.<sup>47</sup>

### *Political party financing*

The Law on Political Party Financing is still not harmonised with recommendations of the Council of Europe Group of States against Corruption (GRECO)<sup>48</sup>, none of which was fully covered by the recent amendments to the 2015 Law.<sup>49</sup> The Audit Service of the Central Election Commission of BiH is still not fully independent and does not have capacities for efficient law enforcement. Also, the responsibilities of the Central Election Commission in terms of the audit of party costs are still not clearly defined.<sup>50</sup> Also, in the context of GRECO recommendations, it is necessary to analyse in more detail the offences within prescribed

46 See: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring EU Integration of Bosnia and Herzegovina, 2017, pgs. 35-36.

47 HJPC continues to limit the control on the method of property acquisition of judges and prosecutors, TI BiH, 2017, (<https://goo.gl/Z7KuR8>).

48 Monitoring the implementation of anti-corruption reforms in BiH, TI BiH, 2016, (<https://goo.gl/tY4hpW>).

49 Compliance of the draft Law on Amendments to the Law on Political Party Financing with GRECO recommendations, TI BiH, 2015, (<https://goo.gl/pdhiJS>).

50 For more information on amendments to the Law and GRECO recommendations see: BiH Alternative Report 2016: Political Criteria, the Initiative for Monitoring the European Integration of BiH, 2016, pg. 20, (<https://goo.gl/66v48n>).



sanctions, to make them more stringent, as well as to suspend payments of budget funds as one of the sanctions for violation of the provisions on prohibited activities.

### *Protection of persons reporting corruption*

The legislative framework for the protection of persons reporting corruption is uneven and unsuitable.<sup>51</sup> At the state level, protection is provided only for persons employed in the institutions of BiH and legal persons establishing institutions. Protection of persons reporting corruption is provided by the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, but only after the person reporting/identified whistleblower informs that some harmful actions have been taken against them.

In the Republika Srpska, the Law on the Protection of Persons Reporting Corruption was adopted in mid-2017. International organisations and civil society organisations had numerous remarks to the manner of defining corruption in this Law, and other remarks relating to the prescribed procedures for reporting corruption, sanctions for false reporting, and the lack of harmonisation with the state Law. The new law provides for the judicial protection of persons reporting corruption, while the state Law provides for the administrative protection of persons employed in the institutions of BiH who report corruption. Given that it has just entered into force, its effects are not visible yet.

The law on the protection of persons reporting corruption in the Federation of BiH has not been adopted yet.

### *UNCAC implementation*

When it comes to seizure of illegally acquired property, Bosnia and Herzegovina has taken a number of activities to harmonise criminal legislation with the United Nations Convention against Corruption (UNCAC). Criminal legislation has established the basis and method of seizure of property gain obtained by a criminal offence, the manner of protecting the injured parties, and the general principle that “no person may retain property gain obtained by a criminal offence” and that the gain may be confiscated by a court decision establishing that the criminal offence has been committed. Laws on seizure of property emphasise the active participation of the prosecutor in the stage of financial investigation on determining the origin, value and structure of the property obtained by the criminal offence.

The state law does not provide for a body for the management of seized

<sup>51</sup> Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring European Integration of BiH, 2017, pg. 31, (<https://goo.gl/dUvk9z>).

property, while entity laws provided for the establishment of the Seized Property Management Agency within the RS Ministry of Justice, and the FBiH Seized Property Management Agency. In Brčko District, the 2016 law has entrusted this role to the existing Public Property Management Office.

According to the HJPC data on the judgments on seizure of unlawful property gain, a significant increase in the value of seized property was recorded in 2014, when the total monetary value of seized property increased from BAM 662,394 in 2013 to BAM 1,518,325.<sup>52</sup>

### *1.8. Fight against terrorism and violent extremism*

In the period between 2012 and 2015, over 250 persons from BiH went to battlefields in Syria and Iraq. Police and security agencies have not registered any new departures in the last two years. In this period, the state judiciary worked on the prosecution of persons who had returned from the battlefield. Therefore, in the last 18 months, the Court of BiH has rendered 10 final judgments sentencing 16 persons to a total of 30 years and 8 months in prison for staying in Syria, attempting to go to Syria and recruitment. In the same period, the Prosecutor's Office of BiH has brought four indictments for going to Syrian battlefields.

After taking a plea bargain, most accused for participating in the Syrian war were sentenced to one year in prison, and are either serving the sentence or have already served it. The security and justice ministries of BiH say that because of that they have redirected resources for the fight against terrorism to projects of deradicalisation in prisons and in communities after convicts have served their sentences.<sup>53</sup> The Islamic Community in BiH is also involved in these projects, and works on educating imams who will communicate directly with young people. The Law on Execution of Criminal Sanctions provides for an individualised programme of re-socialisation and rehabilitation for each person, but it is not applied due to lack of funds.<sup>54</sup>

The State has only recently started to implement a strategy against violent extremism.<sup>55</sup> There is also a coalition of NGOs brought together by the Organization for Security and Co-operation in Europe (OSCE) in order to work on all types of hate crimes in BiH.



52 Monitoring report on seizure of illegally acquired property in BiH, TI BiH, 2016, (<https://goo.gl/kytYdP>).

53 Haris Rovčanin and Admir Muslimović, Terrorism Focus Shifts from Trials to Deradicalisation, 2017, (<https://goo.gl/9uQeZh>).

54 Denis Džidić, No Deradicalisation Schemes for Bosnian Terror Convicts. 2017, (<https://goo.gl/qkF2Ck>).

55 Denis Džidić, Bosnia 'Failing to Share Terror Threat Intelligence', 2016, (<https://goo.gl/rqeYaf>).

The problem of cooperation between institutions responsible for the fight against terrorism is poor exchange of information in terrorism-related investigations between police agencies and the fact that these act as each other's competition.<sup>56</sup> Although the police has been depoliticised, meetings of police directors and commissioners are also attended by ministers, whereas communication outside of meetings is carried out exclusively via written correspondence. Coordination and sharing of operative data between police agencies is poor, while the Directorate for Coordination of Police Bodies of BiH is unable to intervene because it has no clear competence.<sup>57</sup>

In the past period, political stakeholders in BiH, including some local media, have released on several occasions information about the existence of radical groups and paramilitary formations, some of them announcing investigations by the competent authorities on the actions and nature of such groups. None of these claims has yet received an official epilogue, nor is there information on ongoing investigations. This creates an impression that stories about extremist groups are being used for everyday political purposes, which further undermines trust in system institutions and blurs the boundary between real security threats and political manipulations.

### *1.9. Civilian oversight of security forces*

In BiH, parliamentary oversight of the security sector is regulated by the provisions of the state, entity and cantonal constitutions, as well as laws and regulations, and is performed via authorised committees: the Parliamentary Assembly of Bosnia and Herzegovina, the Entity parliaments, the Brčko District Assembly, and cantonal assemblies. The Office of Human Rights Ombudsman of Bosnia and Herzegovina plays an important role in the oversight of the work of security institutions. The Office of the Parliamentary Military Commissioner was established in BiH in 2009.

At the state level, there is a **Joint Committee for Defence and Security** (ZKOS BiH) as a parliamentary body that initiates the adoption of laws or amendments at the level of BiH, participates in the development and adoption of strategic documents, discusses reports on the work of defence and security institutions, and if necessary, carries out hearings of representatives of defence, police and security agencies. Compared to previous years, in 2017, the Committee for Defence and Security insufficiently used control mechanisms, such as field visits to security institutions, whereas it showed better results in terms of overseeing the security sector by proposing concrete conclusions in the field of finance,

<sup>56</sup> Albina Sorguč, *Slow Cooperation in Anti-Terrorism*, 2017, (<https://goo.gl/H3CDw7>).

<sup>57</sup> Denis Džidić, *Bosnia 'Failing to Share Terror Threat Intelligence'*, 2016, (<https://goo.gl/rqeYaf>).

public procurement procedures and personnel status in the Armed Forces of BiH and the Ministry of Defence of BiH. The Committee is transparent in its work, including proactive disclosure of information and openness of sessions for the interested public.

However, the Committee is often faced with inadequate institutional response, as it lacks instruments and mechanisms to ensure that its recommendations are fully implemented. For this purpose, the Rules of Procedure prescribing its responsibilities should be amended, including the adoption of a law on parliamentary oversight. The draft law is currently in parliamentary procedure. With its adoption, the Parliamentary Assembly of BiH, via its competent committees, would obtain authorisation to investigate BiH institutions, punish those responsible and propose their dismissal.

The second parliamentary committee at the state level is the **Committee for Supervision of the Intelligence and Security Agency of BiH**, which oversees the legality of the work of the Intelligence and Security Agency of BiH, and also carries out the budgetary control of the Agency. Unlike the ZKOS BiH, this Committee does not disclose the minutes from their sessions, its work is closed to the public and there is no timely reporting to the public on the control of financial operations of the Agency. Last year, the Committee had to deal with problems of a more personal nature. Committee's Chairman Nikola Špirić was suspended by the decision of the Committee's members, without appointing a new person to this position. As a temporary solution, on 18 October 2017, Bariša Čolak was appointed to this position for a two-month period, although the Committee's chairperson should come from one of the opposition parties. The legality of the work and activities of the Committee is further brought into question by the fact that its representative has not been appointed yet.

In 2016, the **Office of the Parliamentary Military Commissioner** conducted proceedings in 103 cases, of which 96 complaints (proceedings completed in 82 cases), and 7 requests for legal aid (all proceedings completed)<sup>58</sup>, which is a good indicator of the efficiency of this body. This body also maintains good cooperation with domestic and international institutions, parliamentary bodies and international organisations.

It is difficult to assess the work of committees responsible for overseeing the security sector at other levels, given the extremely low level of transparency in their work. In the Federation of BiH, oversight of the security sector is performed by the Security Committee of the House of Representatives and the Security Committee of the House



58 Report on the work of the Parliamentary Military Commissioner for 2016, (<https://goo.gl/AdB5Cu>).

of Peoples, which propose measures for the organisation, conduct and development of security in the Federation, and are authorised to conduct investigations and request testimonies, evidence and documents. In the Republika Srpska, oversight of the security sector is performed by the Security Committee of the RS National Assembly, which gives opinions, views and recommendations, proposes measures, participates in the discussion on the adoption of budgets of security institutions, monitors its implementation and reviews audit reports on financial operations. At cantonal levels, oversight in this field is performed by independent assembly committees, while in the Brčko District of BiH, there is a Committee for Public Security and Oversight of the Operation of Police as an assembly body.

**The Office of Human Rights Ombudsman of Bosnia and Herzegovina**, among other things, considers complaints in corruption cases in security institutions if they violate the basic human rights of citizens and employees in the security sector. However, this body can only give recommendations that are not binding for the institutions to which they relate.

In 2016, the Institution of Ombudsman received a total of 138 complaints.<sup>59</sup> These complaints are usually related to the treatment of police officers which is not suitably regulated by internal control mechanisms. Citizens' complaints are generally considered unfounded, and as a response they receive a notice about the conducted internal investigation under an act that cannot be appealed by a legal remedy. A significant number of complaints is filed by police officers for violation of labour rights and for discrimination. The Ombudsman's report evidently shows that their recommendations are repeated year after year, which indicates the reluctance of police agencies to accept and implement them. About 40% of the recommendations are implemented annually.<sup>60</sup>

59 Annual report on the results of the activities of the Institution of Human Rights Ombudsman of BiH for 2016, 2017, (<https://goo.gl/U4tKG7>).

60 The results of research conducted by the Public Law Centre, presented in the context of expert discussion "Do we need ombudsmen in the legal system of BiH?". The discussion was held at the Parliamentary Assembly of BiH on 20 September 2017.

## 2. HUMAN RIGHTS AND PROTECTION OF MINORITIES

### 2.1. Fight against discrimination

#### *Legal framework*

Amendments to the Law on Prohibition of Discrimination entered into force in mid-2016, which have improved the legal framework for protection against discrimination. The list of grounds prohibiting discrimination has been harmonised and expanded, which now includes age, disability and sexual characteristics. Also, harassment and sexual harassment are more clearly defined. Novelties in the procedural aspect of the law (situational testing) have been introduced, and provisions have been improved concerning collective lawsuits, redistribution of burden of proof, participation of third parties, security measures, special lawsuits, jurisdiction of courts, deadlines, and urgency of proceedings. The implementation of the law still cannot be assessed, and it remains to be seen how the introduced novelties, such as situational testing, will be implemented in practice, especially since the Law stipulates the obligation of notifying the Ombudsperson when conducting situational testing.

#### *Current situation*

The Ministry of Human Rights and Refugees, under its 2016 work programme, planned to develop an Anti-Discrimination Strategy, which has not been developed. At its session held on 21 September 2017, the Council of Ministers received the Information on the activities on the development of the Strategy which tasked the Ministry to prepare a Medium-Term Programme for Combating Discrimination in BiH 2017-2022. The Strategy has been dropped in favour of the Programme, while the process of its development is in its initial stage.

The Ministry of Human Rights and Refugees of BiH still has not established a central database for committed acts of discrimination, although the Law on Prohibition of Discrimination stipulates this obligation. In June 2017, the Ministry adopted a Rulebook on the method of collection, use and exchange of human rights data in Bosnia and Herzegovina under the competence of the Ministry of Human Rights and Refugees of BiH, which stipulates that the database will be established by the end of 2017, which did not happen. Mapping and documenting cases of discrimination still largely depends on the work

of civil society organisations, whereas the lack of a central database on committed and reported cases of discrimination continues to hinder accurate and comprehensive mapping of discrimination prevalence. The provision of legal aid and support still largely depends on civil society organisations.

In 2017, there were no major public campaigns aimed at informing the public about the existence of the Law on Prohibition of Discrimination and its amendments, as well as protection mechanisms. In the past two years, the Ministry has not published a Report on Occurrences of Discrimination.

## 2.2. Institution of Human Rights Ombudsman of Bosnia and Herzegovina

The International Coordinating Committee for Accreditation of National Institutions for the Promotion and Protection of Human Rights has brought into question re-accreditation of the BiH Institution of Ombudsman, after failing to adopt the Law on Human Rights Ombudsman in 2015. The Committee, as well as the Venice Commission, gave recommendations on improving the legal framework, cooperation with civil society, ensuring financial independence and ensuring the role of ombudsman in the promotion of human rights.

In September 2017, the Council of Ministers of BiH adopted the draft Law on Amendments to the **Law on Human Rights Ombudsman of BiH** prepared by the Ministry of Human Rights and Refugees of BiH in order to facilitate re-accreditation and retention of status “A” of the Institution. Despite the efforts of civil society organisations and existing recommendations, the said amendments are negligible and do not contribute to a more functional role of the ombudsperson in the protection of human rights, while the process of drafting the proposal itself was non-transparent and did not include public consultation. The issue of financing the institution is resolved presumptively, cooperation with civil society organisations is only mentioned, while the issue of the functioning of the Institution of Ombudsman as a national preventive mechanism and its promotional role is only partially regulated. Responsibilities of the institution, the transfer of the appointment procedure of ombudsperson from the *ad hoc* commission to the permanent human rights commission, division of fields and activities between ombudspersons and the establishment of a permanent advisory body for cooperation with civil society are not covered by the amendments.

Amendments to the Law still contain an indirectly discriminatory provision concerning the election of ombudsmen, since three

ombudsmen are appointed. Although the Law leaves a possibility of appointing a person from the rank of Others, this has never been the case so far, whereas this seemingly neutral provision results in indirect discrimination of persons from the rank of Others.

In the past period, there has been no significant progress in the implementation of the Law on Prohibition of Discrimination. According to the 2016 Annual Report on the results of the activities of the Institution, there were 150 cases, while 27 recommendations were issued, mostly for mobbing, discrimination based on affiliation with a national minority, education, and other grounds.<sup>61</sup> Positive examples in the institution's work are publishing of the Special report on the use of the official language and script in Bosnia and Herzegovina and the Special report on the status and cases of threats to journalists in Bosnia and Herzegovina.

### 2.3. Gender equality

#### *Legal framework*

The Constitution of Bosnia and Herzegovina prohibits gender-based discrimination, but it does not contain a clear definition of gender equality and prohibition of all forms of discrimination against women. The issue of equality between women and men is regulated by the Law on Gender Equality of BiH, and indirectly by other laws at the entity and cantonal levels that regulate specific fields, such as labour and employment or protection against domestic violence. In addition, BiH has ratified all major international documents in the field of women's rights, and special gender equality bodies (gender mechanisms) have been established.

Although the legal framework is solid, there is a huge discrepancy between laws and their application in practice. There is not a single sphere of life in which significant progress has been made in the application of gender equality in the past year.<sup>62</sup>

#### *Istanbul Convention*

Bosnia and Herzegovina ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in 2013, but the legislation has not



61 2016 Annual report on the results of the activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Institution of Human Rights Ombudsman, Sarajevo, 2017, (<https://goo.gl/PAfGwF>)

62 For an overview of the situation in the past period, see: BiH Alternative Report 2016: Political Criteria, the Initiative for Monitoring the European Integration of BiH, 2016, pg. 23, (<https://goo.gl/66v48n>).

been fully harmonised with it yet. In the Republika Srpska, the new Criminal Code entered into force in 2017 that is partially harmonised with the Istanbul Convention by introducing new criminal offences (female genital mutilation, forced sterilisation, stalking, sextortion, sexual harassment, and forced marriage). There were no legislative changes in this regard in the Federation of BiH and Brčko District. In the Republika Srpska, domestic violence still has dual criminality as a criminal offence and as a misdemeanour offence, which is contrary to the provisions of the Convention.

The application of legal provisions aimed at preventing and punishing violence against women is unsatisfactory. Monitoring of court proceedings conducted at 22 courts showed that domestic violence is still perceived as a less serious offence, for which the courts generally impose suspended sentences and low fines, even in cases of recidivist perpetrators who have committed the same criminal offence multiple times.<sup>63</sup> At the same time, other protective and preventive mechanisms, such as protective measures<sup>64</sup> and urgent procedure, are not used, while the injured parties are exposed to additional financial costs (referral to property litigation) and long-term court proceedings. Psychological violence is not taken into consideration in judicial practice.

There are no official statistical data on the number of gender-based killings of females (femicide) in BiH. Also, the modalities for monitoring femicide, in line with the recommendations of the UN Special Rapporteur on violence against women in 2015, have not been established.

The financing system of safe houses for victims of domestic violence remained unchanged compared to 2016.<sup>65</sup> Payments of funds remain irregular which affects their sustainability and efficiency. In 2017, a total of BAM 162,000 was allocated from the budget for the operation of five safe houses in the Federation of BiH, while a total of BAM 255,000 was allocated for the operation of three safe houses in the Republika Srpska.

### **Women's participation in decision-making processes**

The percentage of women in governing bodies of political parties are still between 10% and 20%, while the representation of women in parliamentary bodies is below 20%. After the 2016 local elections,

63 Analysis of monitoring criminal and misdemeanour proceedings in the field of gender-based violence in Bosnia and Herzegovina, United Women and Centre for Legal Aid to Women, 2017, (<https://goo.gl/DDztDB>).

64 Protective measures include: compulsory psychiatric treatment and compulsory addiction treatment, prohibition of carrying out an occupation, activity or duty, ban on driving a motor vehicle, and forfeiture of property.

65 See Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, the Initiative for Monitoring the European Integration of BiH, 2017, pg. 55, (<https://goo.gl/dUvk9z>).

18.34% of women entered the local municipal assemblies. Six women are currently serving as municipal mayors and no women serving as city mayors (out of 143 municipalities/cities). Continued underrepresentation of women in the executive authorities at all levels of government has led to their extremely low representation in political bodies of the coordination mechanism, which bring the most important political decisions in the EU integration process: only 6% of women are in the EU Integration Collegium, whereas 17% of women are in the Ministerial Conference.<sup>66</sup> As is the case in public administration, women have much better representation in technical bodies (working groups) that bear the greatest burden of work. At the same time, chairpersons in these working groups are predominantly men (62%).

The practice of non-inclusion of women, their needs and priorities is also visible on the example of the Reform Agenda. When defining measures, neither gender inequalities were taken into account, nor was a gender-sensitive assessment made on how these measures would affect women.<sup>67</sup>

### **Gender equality in labour rights, social protection and health care**

The principle of equal pay for equal work is contained in the labour laws of both Entities. However, there are no clearly defined indicators for systematic monitoring of gender pay gaps. Research and analysis conducted by civil society organisations show an evident pay gap between men and women in BiH.<sup>68</sup> Harmonisation of personal and work life of women and men is set as one of the strategic objectives in the Gender Action Plan of BiH 2013-2017. Progress in this field is not yet visible. Except for the parental leave policy, there are no other official measures aimed at improving the situation in this field.

Maternity benefits and labour rights of mothers remain uneven throughout BiH. New developments in relation to the previous situation<sup>69</sup> are the adoption of the Law on Protection of Families with Children in the Herzegovina-Neretva Canton in 2017, and the introduction of benefits for unemployed new mothers in the Republika Srpska in the amount of the minimum salary<sup>70</sup>, but only for children born after 1 December 2017, causing protests of unemployed mothers whose children were born before this date. The father's right to use paternity leave in both

66 Where are Women in the Coordination Mechanism for EU Integration?, published by *Prava za sve* (Rights for All), 2017, (<https://goo.gl/miomF3>).

67 A Feminist Review of Post-Conflict Restructuring and Recovery – the Case of Bosnia and Herzegovina, Women Organizing for Change in Bosnia and Herzegovina of the Women's International League for Peace and Freedom, 2017, (<https://goo.gl/QBP7Tc>).

68 See: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire.

69 BiH Alternative Report 2016: Political Criteria, the Initiative for Monitoring the European Integration of BiH, 2016, pg. 42, (<https://goo.gl/66v48n>).

70 See the section "Labour rights and employment" in this document.

Entities is not regulated as a non-transferable right, but as a matter of consensual agreement of parents.

Women's reproductive rights are also unequal, especially in terms of infertility treatment by assisted reproductive technology. In April 2017, a draft Law on Infertility Treatment by Assisted Reproductive Technology in the Federation of BiH was adopted, while the proposal of the law is still in parliamentary procedure. Civil society organisations are actively involved in the process and have drafted amendments to improve the proposed law.

### *Vulnerable groups of women*

Single mothers are exposed to greater risk of poverty and are not properly protected by the State. In BiH, there are no accurate data on the number of single parents raising their children alone, without any participation of the second parent. It is estimated that the percentage of single-parent families in BiH are between 10% and 15%, of which 70-85% are single mothers.<sup>71</sup> The status of single mothers is not suitably recognised in laws. Although avoiding payment of child support is a criminal offence, about 70% of parents do not pay child support, while only 6% fulfil this obligation regularly.<sup>72</sup> In 2017, the Institution of Human Rights Ombudsman of BiH had 172 cases concerning disrespect for children's rights, of which one-third related to complaints for non-payment of child support.

Civil society organisations have been advocating the establishment of a Child Support Fund in the Republika Srpska for nine years, where child support would be paid from the budget, while the funds would be compensated by charging child support and costs of proceedings from the parent who avoids their obligations. In October 2017, Ombudsman Ljubinko Mitrović said that the issue of establishing such fund was initiated by the Committee on Equal Opportunities of the RS National Assembly, and that its establishment could be expected in 2018.<sup>73</sup>

Third age women are also a particularly vulnerable category which is not recognised in any of the strategic documents in BiH. Third age women are classified in the category of 'pensioners', which makes those women who are not eligible for retirement invisible in the social protection system. Despite the fact that BiH is obligated to keep gender-sensitive statistics, the Pension and Disability Insurance Institutes statistics show



71 Marina Blagojević and Jelena Milinović, *Single Parents in the Republika Srpska: Little Support, Big Problems*, 2012, (<https://goo.gl/5rwWko>).

72 Data of the Banja Luka Association of Single Parents Ponos.

73 Teaching discipline to negligent parents: Whoever fails to pay child support will have to deal with the State, <https://www.blic.rs/vesti/republika-srpska/disciplinovanje-nesavesnih-roditelja-ko-ne-bude-placao-alimentaciju-imace-posla-sa/5768nv5>

only the number of registered pensioners, not including information on the number of women who have exercised that right.

#### 2.4. Status and rights of the Roma people

Roma are the most numerous<sup>74</sup> and most vulnerable national minority in Bosnia and Herzegovina. The position of Roma women is particularly bad given that they are exposed to double discrimination, which can be recognised in the (few) official measures being taken in order to improve the position of the Roma minority in BiH.

In the past period, a revised Action Plan (2017-2020) of the National Roma Integration Strategy by 2020 has been developed, covering the fields of employment, housing and health care. The funds earmarked for implementation were reduced in 2017 and now amount to BAM 2,000,000, which is insufficient for its actual implementation. The Action Plan is not gender-responsible because the position of Roma women is mentioned in one sentence only on improving the health care of Roma women and children. In 2017, a new convocation of the Roma Committee within the Council of Ministers of BiH was appointed, consisting of eight men and three women, which is a breach of the provision of the Law on Gender Equality of BiH on 40% participation of underrepresented gender in public bodies.

There is no national strategy for economic empowerment of Roma. This is mainly carried out by Roma non-governmental organisations through projects promoting social entrepreneurship, while this segment is partly covered by the Action Plan for Roma Employment. Methodology and the system of training realisation aimed at active job searching have not been established within employment bureaus. Also, the problems regarding the applications for the allocation of funds for self-employment and education in the field of entrepreneurship have not been addressed. Problems reported by the employment bureaus during the implementation of these programmes include: low qualifications of the registered unemployed Roma, insufficient knowledge and skills necessary for managing independent work, poor employers' interest to employ Roma, as well as lack of coordination with local authorities in order to facilitate Roma entry into independent work through support for registration and licensing.

There are no official data on how many Roma receive social allowance. According to research by the organisation *Bolja budućnost* (Better

74 According to the estimates by Roma associations, between 60 and 80 thousand Roma live in BiH. The 2013 census does not provide actual data on the number of Roma in BiH. A survey conducted by organisations *Bolja Budućnost* from Tuzla and Women's Roma Network *Uspjeh* under the project "Where are Roma in the upcoming census?", showed that the Roma people were instructed to declare themselves as members of one of the constituent peoples in BiH

Future), a large number of Roma neither have income nor social allowance. Only persons unfit to work, i.e. persons with 90% and 100% disability, are entitled to social protection and health care through a social work centre. Even where this type of assistance exists, it is not regular or sufficient to cover the minimum cost of living, because it amounts to 80-100 BAM monthly depending on the place of residence.

Roma communities are still insufficiently informed how to exercise the right to health care. Roma women are particularly deprived of these rights, because in most cases they are unemployed, which is further caused by early marriage or dropping out of school before the age of 15, migration or lack of personal identification documents. For the same reasons, they do not report to the Employment Service within the legally stipulated deadline, and as a result, lose access to health care. Inadequate nutrition and infrastructure in Roma communities, where many households do not have the basic conditions (electricity, water, sewage), especially affects women and children who spend most of their time in the household. An additional problem is non-transparent allocation of funds for implementation of the Action Plan for Roma Health Care.

The 2015 Law on Permanent and Temporary Residence further aggravated the position of Roma, as it imposed an obligation to prove a 'valid basis' for registration of residence based on documents that the Roma people most often do not have (certificates of ownership or co-ownership of property, tenancy agreement, proof that the procedure of legalisation or registration of property has been initiated, etc.). Given that the registration of residence is required to obtain personal identification documents, such legislative changes have created new administrative obstacles to the exercise of the rights of Roma within the system of social protection and health care, and other rights guaranteed by law. Instead of facilitating administrative procedures, there are now situations in which persons who had personal identification documents cannot extend them or renew them in case they have expired, because they cannot obtain the required 'evidence' for it. This creates a 'vicious circle' of marginalisation that is very difficult to break out.

In terms of the exercise of the right to education, it is quite alarming that Roma girls drop out of school for various reasons, mainly poverty, emigration from BiH to other countries, and even early marriage. Entities and cantonal governments themselves decide whether and how much funds they will allocate for Roma education, while in the Federation of BiH, the application of educational action plans varies from canton to canton.

In terms of marking significant dates for Roma, the Ministry of Human Rights and Refugees of BiH, only in 2017, introduced 8 April – International Romani Day, in the calendar of significant dates.

## 2.5. Persons with disabilities

Legislation in BiH is still not harmonised with the UN Convention on the Rights of Persons with Disabilities. In the period after the last report<sup>75</sup>, no law has been adopted in this field, while the laws in force are not applied adequately.

Both Entities have strategies for improving the social status of persons with disabilities. In the Federation of BiH, the new strategy entered into force on 29 December 2016 and covers the period by 2021. In the Republika Srpska, after the expiry of the Strategy 2010-2015, the new strategy was adopted only in 2017 and covers the period by 2026. Implementation of previous strategies was unsatisfactory.

In 2017, the application of the Convention on the Rights of Persons with Disabilities in BiH was reviewed before the UN Committee on the Rights of Persons with Disabilities, first time since the ratification of the Convention in BiH in 2010. The Committee reviewed the official state report, as well as the alternative report, and recognised numerous obstacles that need to be removed, for which it gave over 40 recommendations. In August 2017, the Council of Ministers of BiH reviewed the recommendations and gave clear tasks to the Ministry of Human Rights and Refugees of BiH. The FBiH Government accepted the recommendations in June 2017 and set tasks for all ministries. The Committee's recommendations are already being used as advocacy tools by coalitions of organisations of persons with disabilities.<sup>76</sup>

Organisations of persons with disabilities from the Republika Srpska and the Federation of BiH have been advocating for some time the adoption of or amendments to the legislation regulating the right to orthopaedic and other aids as well as assistive technologies. In the past period, a slight positive change was made only in the Herzegovina-Neretva Canton, while in the Tuzla Canton, a rulebook entirely contrary to the agreed and proposed amendments was adopted. In the Sarajevo Canton, the agreed amendments to the rulebook are still pending. In the Republika Srpska, it has been 16 months since the Ministry of Health provided its support for amending the legislation, while the RS Health Insurance Fund still has not responded to the attempts to include persons with disabilities in the work on amending legislation.



75 BiH Alternative Report 2016: Political Criteria, the Initiative for Monitoring the European Integration of BiH, 2016, pg. 28, (<https://goo.gl/66v48n>).

76 Coalitions of organisations of persons with disabilities which are part of the MyRight capacity building programme and which bring together over 60 organisations are: *Kolosi* Bijeljina (RS), Informal Coalition of Organisations of Persons with Disabilities Doboj (RS and FBiH), Coalition of Organisations of Persons with Disabilities of the Tuzla Canton (FBiH), Coordinating Committee of Organisations of Persons with Disabilities of the Sarajevo Canton (FBiH), Coalition *Stronger Together* of the Herzegovina-Neretva Canton (FBiH).

In the past year, there have been some positive examples, such as cooperation with the entity health care accreditation agencies in the development and promotion of a Brochure for health care workers on the treatment of persons with disabilities. The Brochure has become obligatory study literature for some subjects at the Faculty of Medicine in Sarajevo. For the first time, students are being acquainted with the specifics of communication and approach to persons with disabilities. The FBiH Agency has also revised some clinical practice standards and incorporated the rights of persons with disabilities. Inclusive standards for health institutions are in a pilot phase in Sarajevo General Hospital. The Communications Regulatory Agency of BiH has expressed willingness to engage more prominently in securing accessibility of programs, and information and communication technologies to persons with disabilities.

### *Inclusive education*

The interests of children with disabilities are still not being taken into consideration when drafting new laws, and no efforts are being made to apply the principles of inclusive education in practice.

In the Sarajevo Canton, the Law on Primary Education was adopted in 2017, which made no improvements for the inclusive and quality education of children with disabilities. All amendments proposed by organisations advocating inclusive education were rejected. Once again the Law does not provide for a budget for inclusive education in regular schools, whereas ‘special schools’ remain the only places for education of children with disabilities. The role of parents in the educational process, i.e. in the development of individualised education plans (IEPs), is completely left out.

### *Early growth and development of children and support for children on the autism spectrum*

In the Sarajevo Canton, 135 children with developmental disabilities were deprived of early intervention, preschool and school programmes carried out by the organisation ‘Education for All’ (EDUS) in cooperation with the Institute for Special Education and Upbringing *Mjedenica*. The cooperation contract for the 2017/2018 school year was not renewed, after which a group of parents launched a campaign titled ‘Where is my school?’ As part of the campaign, in late 2017, an expert study on the introduction of system support for these educational programmes was presented to the cantonal assembly. The Assembly obligated the Government to provide current and system solutions to the problems presented. However, this has not happened yet. Proposals made by some parliamentary deputies to provide funds for education and support of

children with disabilities at the entity and state level were rejected in the FBiH and state parliaments.<sup>77</sup> The Sarajevo Canton is not the only example, as the situation is similar throughout BiH. In the Republika Srpska, parents of children with developmental disabilities addressed the Government pointing to the long-standing problem of non-implementation of the legal obligation of providing teaching assistants in regular schools.<sup>78</sup> A disturbing story has shocked the public recently. Namely, a young man with autism was kicked out of secondary school in Rudo, and he is still banned from it.<sup>79</sup>

## 2.6. Youth and Children's Rights

### *Caring for children without parental care<sup>80</sup>*

Both Entities developed a few years ago appropriate strategies for deinstitutionalisation<sup>81</sup> and improvement of the alternative care system for children without parental care. However, their implementation is still weak.<sup>82</sup> Deinstitutionalisation and transformation of the existing large-capacity institutions for children without parental care involves the relocation of children from institutions into family types of childcare, as well as the opening of alternative services to support children and families depending on the needs of the local community (day centres for children at risk, children's shelter, maternity home, family counselling centres, etc.).

In the Republika Srpska, the field of foster care is regulated by the Rulebook on Foster Care. In February 2017, the FBiH Parliament adopted the Law on Foster Care in order to finally regulate this field. The application of the Law should begin in March 2018, but the comments of the cantonal governments made during the public discussion, where majority had stressed that the implementation of the law would be a financial burden for the budgets, indicate that the application will not be uniform throughout the FBiH. On 7 December 2017, the FBiH Government gave its consent to the Action Plan for implementation of the Strategy of Deinstitutionalisation and Transformation of Social

77 No Level of Government Shows Responsibility for Children with Disabilities, *Istinomjer*, 2018, (<https://goo.gl/7mLC6v>).

78 Letter from parents of children with developmental disabilities, 2017, (<https://goo.gl/VEeA6c>).

79 Slavko Mršević gets kicked out of school in Rudo for being autistic, his school friends start petition for his return to school, *Klix*, 2018, (<https://goo.gl/5ftJem>).

80 See also: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, the Initiative for Monitoring the European Integration of BiH, 2017, pg. 57, (<https://goo.gl/dUvk9z>).

81 Strategy of Deinstitutionalisation and Transformation of Social Protection Institutions in the Federation of BiH 2014-2020; Strategy for Improving Social Protection of Children without Parental Care in the Republika Srpska 2015-2020.

82 Situational analysis of the position of children without parental care and families at risk of separation in the Federation of BiH, 2016, FBiH Ministry of Labour and Social Policy and Hope and Homes for Children in BiH.

### Protection Institutions in the Federation of BiH 2014-2020.<sup>83</sup>

The main problem of transforming institutions for children is that there are still no funds that would cover the necessary infrastructure and personnel alterations. Therefore, this process still depends more on the partnership of non-governmental organisations and international funds than on the system action by the competent institutions. Since 2015, UNICEF and partner organisations have been implementing the programme “Transformation of Institutions and Prevention of Separation of Families” funded by IPA II Fund. Furthermore, in 2017, this programme supported transformation of four institutions for children without parental care (Sarajevo, Tuzla, Mostar and Banja Luka), and two institutions for children and adults with developmental disabilities (Prijedor and Višegrad). The process of deinstitutionalisation and transformation is long-lasting, while in the most listed institutions the reform itself is in the initial stage and requires more investment in order to complete the process.

The analysis conducted as part of the programme has shown that even the number of children without parental care in BiH cannot be determined with certainty. It is estimated that their number ranges between 1,640 and 2,435 (between 0.24% and 0.35% of the total child population in BiH).<sup>84</sup>

### 2.7. Returnees and displaced persons

Protection of human rights and civil liberties of returnees in their pre-war place of residence is still at an alarmingly low level. In both Entities, the nominal protection of the ‘constituent peoples’ prevents returnee communities (which are constitutive, but an ethnic minority) from exercising even those rights guaranteed to national minorities. On the other hand, there are no specific public policies that advocate integration and inclusion of returnee communities.

Returnees are unequal in relation to the ethnic majority population in the place of return in various aspects: unequal access to employment in public institutions and enterprises; exclusion from the decision-making process; unequal rights in education (right to mother tongue, representation in teaching staff and in parents’ councils, failure to meet special needs of returnee children).<sup>85</sup> Public funds are not equally available to minority and majority communities (different treatment of victims’ associations, religious communities, and other forms of association relating to ethnic/minority identity). Attacks on persons and property of the returnee community are not processed and adequately



83 131th session of the FBiH Government, (<https://goo.gl/XHzbFL>).

84 Estimates based on the research data by Custom Concept (30 June 2016) received from the social work centres and TransMonEE 2015, based on the official statistical data of the authorities in BiH.

85 See the section “Right to education” in this document.

recorded. There are cases when such criminal offences are qualified as misdemeanours, or a motive that would qualify them as a hate crime is ignored completely.

## 2.8. Lesbians, gays, bisexual, trans\* and intersex persons

Measures for the protection of LGBTI human rights were included in the implementation plans of the Gender Action Plan at the state and entity levels in late 2017. In early 2018, the Gender Equality Agency of BiH started preparations for drafting an Action Plan for Equality of LGBTI Persons. In September 2016, the Institution of Human Rights Ombudsman of BiH published a Special Report on the State of LGBT Rights in Bosnia and Herzegovina, stating that there are still no cases of judicial processing of discrimination based on sexual orientation.

There has been some progress in the past year in terms of the cooperation of organisations working on the rights of LGBTI persons with the competent institutions<sup>86</sup>, which, through the broader CSO coalitions, were involved in important processes, such as work on amendments to the Criminal Code and the anti-discrimination legislative framework. There were no changes regarding the procedure of changing the gender marker in official documents that would allow the change of these documents without having to complete full gender reassignment treatment (which is still not covered by health insurance). There were no initiatives of the competent bodies to regulate the status of same-sex unions.

In early 2016, a new Law on Asylum was adopted in BiH. Despite the efforts of civil society organisations, the Law still does not recognise sexual orientation and gender identity as the reasons for persecution in the country of origin, i.e. as a basis for seeking asylum. Amendments to the Law on Aliens also failed to recognise same-sex unions as grounds for obtaining temporary residence in BiH. In its Special report on the rights of LGBTI persons in BiH, the Institution of Human Rights Ombudsman gave special recommendations for the treatment of LGBTI persons seeking asylum in BiH in order to protect their rights in this process and to reduce social isolation and discrimination that LGBTI persons experience in asylum centres.

Hate speech, discrimination and attacks on LGBTI persons are still present, with a rising tendency.<sup>87</sup> In 2017, there were 23 cases of violence



<sup>86</sup> Although these were symbolic funds, organisations dealing with LGBTI rights were financially supported for the first time last year by public institutions, in particular by the City of Tuzla (Tuzla Open Centre) and by the FBiH Ministry of Culture and Sports (Sarajevo Open Centre), for the organisation of the Merlinka Festival in Tuzla in 2017 and in Sarajevo in 2018 respectively.

<sup>87</sup> In 2016, SOC documented four cases of discrimination or incitement to discrimination against LGBTI persons, while by September 2017, there were seven such cases, from discrimination in employment, to discriminatory content in textbooks and public incitement to discrimination.

motivated by hatred towards LGBTI persons, of which eight cases of domestic violence and four cases of peer violence. Homophobia and transphobia are still prominent in the education system. Although, the University of Sarajevo Senate condemned such outbursts of the former president of the Students' Parliament a year later, he was still appointed to the University's Steering Committee in 2018.

## 2.9. Asylum

Although BiH has adopted the Strategy on Migration and Asylum 2016-2020, there is no clear policy for dealing with migrants. In October 2017, the Service for Foreigners' Affairs of BiH in its press release stated that in comparison to the previous year, the number of entries increased by 350%, and that in the first nine months of 2017, a total of 605 persons were detained and "placed under supervision or directly deported to the country they entered BiH from".<sup>88</sup> The media do not report on these activities, whereas the competent services rarely and scarcely provide information. The statements bordering on hate speech given by public officials are quite alarming. These statements characterise asylum seekers as violators and threats. This is further corroborated by the statement given by assistant minister of safety of BiH Marijan Baotić saying that "95% of them are addicted to narcotics."<sup>89</sup>

## 2.10. Trafficking in human beings

As in previous years, most detected cases of trafficking in human beings were within the country, while the victims were nationals of BiH. In 2016, a total of 48 potential victims of trafficking in human beings were identified<sup>90</sup> (38 adults and 10 minors; 30 women and 18 men), which is 13 more victims than in the previous year. Of this number, there were 7 cases of sexual exploitation, 12 cases of labour exploitation, 22 cases of begging, one case of sale for the purpose of forced marriage, and 6 cases that included various forms of exploitation. There were 43 victims from BiH.

The number of victims was determined based on the data provided by the centres for social work, police, prosecutors and non-governmental organisations. However, the number of identified victims is not entirely consistent with the number of open investigations and indictments filed by the competent prosecutors.<sup>91</sup> An alarming fact is that in 2016, only 15

88 Increased number of illegal migrants in BiH, Service for Foreigners' Affairs, 2017, (<https://goo.gl/kTPCjh>).

89 Baotić: There are drug addicts among migrants, they have destroyed part of the asylum centre, Radio Sarajevo, 2018, (<https://goo.gl/ZRYt9W>).

90 Situation report on trafficking in human beings in Bosnia and Herzegovina for 2016, Ministry of Security of BiH, (<https://goo.gl/SANVLx>).

91 According to the same source, the High Judicial and Prosecutorial Council received data from the prosecutor's offices that in 2016 they received 27 reports on these criminal offences against 48

potential victims of trafficking in human beings were accommodated in safe houses, while there are insufficient data on the assistance provided for 33 potential victims. The institutional response to the increasing number of these cases remains inadequate.

There is insufficient information about citizens of BiH who are victims of trafficking in human beings outside the country, since this information is available only in cases when BiH nationals are involved in trafficking outside the country. Organisations involved in combating trafficking in human beings<sup>92</sup> also recorded cases of victims being deported from an EU member state without being referred into their rights and available help services. The RING Network's activists also point out to new, yet unrevealed trends in trafficking in human beings (marriages for the purpose of obtaining residence permits in EU countries)<sup>93</sup>, as well as the risks of recruitment via the Internet. Young people often use unverified channels for finding jobs abroad, and the risks of labour and sexual exploitation in and outside the country are greater.

Trafficking cases for the purpose of sexual exploitation are still qualified as 'soliciting for sex' in both Entities.<sup>94</sup> This practice directly harms the victims, calling into question the status of a victim of trafficking in human beings and their right to assistance<sup>95</sup>, and creating a risk of re-victimisation during the testimony.

Prevention and direct assistance to victims still largely depends on international assistance. In 2016, only BAM 160,000<sup>96</sup> was allocated in public budgets for victims of trafficking in human beings. Funds for preventive activities are also symbolic and insufficient, whereas concrete assistance to victims still depends on the engagement of non-governmental organisations.

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persons, and seven investigations were conducted against 33 persons.

92 Members of the RING Network are: Lara Foundation (Bijeljina), United Women Foundation (Banja Luka), Women's Rights Centre (Zenica), Women's Association Derventa, Women's Association Most (Višegrad), Citizens' Association Budućnost (Modriča), NGO Women BiH (Mostar), Women's Association Maja (Bratunac) and Association Goraždanke (Goražde).

93 The RING Network provided legal aid to a young woman who had been repaying for five years a marriage with a foreign national on the basis of which she obtained a residence permit in the given foreign country. The 'marriage' cost more than EUR 30,000.

94 This criminal offence did not exist in the Criminal Code of the Republika Srpska in the period 2000-2013, when it was reintroduced.

95 Contrary to CEDAW recommendations, persons forced into prostitution still do not have any social rights (Concluding observations on the combined 4th and 5th periodic reports of Bosnia and Herzegovina, Recommendation 26, (<https://goo.gl/neyGhK>).

96 The Ministry of Security of BiH allocated BAM 100,000 for care and legal aid to victims of trafficking in human beings (foreign nationals), while the Ministry of Human Rights and Refugees allocates about BAM 60,000 annually for the care of victims in BiH. (Situation report on trafficking in human beings in Bosnia and Herzegovina for 2016, Ministry of Security of BiH).

## 2.11. Freedom of assembly

The police generally do not obstruct the organisation and conduct of public assemblies, but there are exceptions that indicate unequal treatment of various public assemblies, which is not in line with the law.

In the Republika Srpska, the prohibition of assembly at a distance less than fifty meters from buildings with special security is applied selectively, based on arbitrary and non-transparent risk assessment made by the competent authorities.<sup>97</sup> There were two particularly controversial public protests from the standpoint of the right to freedom of assembly and freedom of opinion and expression: disciplinary measures against the RS Railways workers who went on hunger strike; misdemeanour charges against President of the Association ‘ReStart Srpska’ Stefan Blagić, and councillor in the Banja Luka Assembly, Draško Stanivuković.<sup>98</sup> These misdemeanour orders continue to exert pressure on individuals and organisations operating in the public sphere and openly criticising the authorities.

In the Federation of BiH, there was a case of administrative silence of the Sarajevo Canton Ministry of Transport, due to which it was not possible to organise a protest march against violations of the rights of LGBTI persons. The Ministry failed to issue a timely requested permission to hold the assembly, which violated freedom of assembly.<sup>99</sup>

## 2.12. Right to education

In the past period, there have been no major developments in addressing discrimination in education. The key issues remain division of schools on the lines of national subjects, with emphasis on the mother tongue. In the Federation of BiH, there was no progress in terms of the phenomenon of ‘two schools under one roof’, so that this practice is continued in the Herzegovina-Neretva Canton, the Central Bosnia Canton and the Zenica-Doboj Canton. Although in the Herzegovina-

97 Analysis conclusions of the Youth Centre Kwart which conducted monitoring of nine public assemblies in the Republika Srpska in the period from 1 December 2016 to 31 May 2017. The reasons for the seven public protests were: labour rights, payment of salary arrears, bad financial situation, poor state of agriculture and poor economic position of women. Two protest marches were organised in remembrance of killed non-Serb civilians. Almost all protests were ended with peaceful dissipation of the protesters, except the blockade by the RS Railways workers, which was ended with the arrival of President Milorad Dodik, who promised them the payment of salaries.

98 The protests were organised due to the closure of 15 primary schools in the RS, while at the same time, it was disclosed that RS minister of education and culture Dane Malešević was buying a BAM 115,000 worth car. Stanivuković was fined in the amount of BAM 1,500 or imprisonment instead, while Blagić was served a misdemeanour order for BAM 500, for “not taking all necessary measures to ensure peace and order”, because he was allegedly encouraging the participants during the peaceful protests to attack the RS Government building.

99 The protest march was scheduled for 13 May 2017, while the permission arrived five hours after the press conference at which Sarajevo Open Centre had announced the cancellation of the march.

Neretva Canton, the Municipal Court determined, and the Supreme Court confirmed, that this practice constitutes discrimination based on ethnicity, no measures have been taken to enforce the final judgment. At the same time, in the Sarajevo Canton, the Ministry of Education issued an instruction to conduct a survey among parents to determine which one of the three official languages will their children use in primary schools, since the abbreviation BHS (Bosnian/Croatian/Serbian) is currently being used. This survey has raised an issue whether language-based segregation will be introduced in the Sarajevo Canton schools, as it is the case with other cantons.

Unequal access to education, restricting the rights of pupils in primary and secondary schools in the RS to call their mother tongue the Bosnian language, inadequate regulation of the status of official languages and their names at the state/entity level, remain the most visible example of violation of the rights of returnees. The pupils in branch schools in Vrbanjci near Kotor-Varoš and in Konjević Polje near Bratunac continue to boycott classes and maintain instructional teaching in cooperation with schools in the Federation of BiH. The Municipal Court in Srebrenica delivered a first instance judgment in favour of the parents of pupils from Konjević Polje, confirming the right to call the language being taught at school the Bosnian language.<sup>100</sup> This judgment is important, but the process is still pending and the judgment is still not final.

The issue of the Bosnian language diverted the attention from other requests made by the parents that the competent ministry still has not addressed. The Interim Agreement on the Educational Rights and Needs of Returnee Children is not being implemented, material and technical conditions for the teaching process in schools where most pupils are returnees remain inadequate, including inappropriate content in textbooks used in teaching. There is still inequality in access to employment and adoption of education policies.

100 Parents from Konjević Polje and Srebrenica: Judgment as Expected, TV N1, 2017, (<https://goo.gl/1QXbm3>).

### 3. ECONOMIC AND SOCIAL ISSUES

#### *Labour rights and employment<sup>101</sup>*

Labour and social rights in BiH are regulated by laws and regulations at the entity and cantonal level. Disparity in social rights is particularly prominent, considering that in the Republika Srpska this field is regulated at the entity level, while in the Federation of BiH it is regulated at the entity and cantonal level.

Unemployment remains high in BiH, although it declined in the past year compared to the previous period. Therefore, in October 2017, there were 478,191 persons registered at the employment bureau, while in October 2016, there were 512,496 persons registered.<sup>102</sup> However, the decline in the number of registered unemployed persons is not always the result of new employment, but also deletion from the register for refusing a suitable job, meeting the requirements for retirement, reaching the age of 65, receiving monetary benefits, serving prison sentence, death, etc.

#### *Labour laws*

Even two years after the adoption of new entity labour laws, it is not possible to assess their effect in the protection of workers' rights. According to the assessment by the Association *Vaša prava BiH* (Your Rights BiH)<sup>103</sup>, new legislation have not brought about significant changes in terms of ensuring respect for labour rights. Practices such as delays in payment of salaries, failure to register employees for pension and health insurance, non-payment of overtime work, etc. are further continued. The RS Labour Inspectorate's report states that the rights of pregnant women and new mothers are further violated, and that employers un-register their registered business and re-register it in the name of family members in order to avoid sanctions for dismissal of pregnant women and new mothers.<sup>104</sup> The same report underlines more unfavourable solutions introduced by this law, such as inability to issue a misdemeanour order higher than the minimum prescribed penalty, which encourages employers to continue violating labour rights. Trade unions in BiH also caution about deficiencies in new legislation.

101 For a detailed overview of the situation in this field, see: Submission for 2017 Alternative Opinion and Report, Chapter 19: Social Policy and Employment, Anđela Pepić, 2017, (<https://goo.gl/hHx-Fpp>).

102 Overview of labour market situation as of 31 October 2016 and 2017, Labour and Employment Agency of BiH, 2016 (<https://goo.gl/XuUmHi>) and 2017 (<https://goo.gl/FexTBL>).

103 Analysis of labour legislation in BiH, Your Rights BiH, 2016, (<https://goo.gl/RrZ6tQ>).

104 2016 Report on the work of the RS Administration for Inspection Affairs, 2017, (<https://goo.gl/kUvryC>)

In the Republika Srpska, a new General Collective Agreement has not been adopted yet, although the previous one expired in June 2016, while the branch collective agreements were signed mostly with trade unions in the public sector. Therefore, many employers regulate labour rights independently by their rules of procedure, which leaves room for abuse.

### *Protection of labour rights*

The problems of privatised companies that are in bankruptcy, as well as the settlement of arrears towards employees, remain unsolved for most companies. Unbound length of service, irregular payment of contributions, unpaid salaries and other arrears towards employees are still the main problem in most companies throughout BiH. Workers' protests due to deprivation of labour rights continued in 2017. These protest include: the protest of workers of the former footwear factory *Fortuna* that the police tried to forcibly remove from the factory building; the protest of workers of *Borac* in front of the FBiH Government that the FBiH prime minister called 'paid'<sup>105</sup>; and hunger strike of workers of the RS Railways that resulted in the death of one worker.<sup>106</sup> The case of the RS Railways workers also points to a problem with the current provisions of the RS Law on Strike, which stipulates penalties for launching a strike if it is not launched by a decision of a representative majority union or with the consent of more than a half of the employees. Timely initiation of proceedings for the protection of labour rights has been further aggravated by shortening the deadline within which a worker may initiate a lawsuit for the protection of rights under the new labour laws. Workers usually do not choose to initiate any kind of proceedings for the protection of labour rights, especially in cases of mobbing that is difficult to prove. According to available data, only three verdicts have been rendered for workplace mobbing to date.

### *Social protection and health care*

In the past period, there has been no significant changes in legislation that regulate the system of social protection and health care in BiH. The rights in the field of social protection and health care between the Entities, i.e. cantons, remain unbalanced, while data on the number of persons living in poverty are alarming. According to statistical data, at the end of 2016, there were about 180,000 social protection beneficiaries registered in both Entities, whose income is insufficient for subsistence. In addition, almost a quarter of employed persons cannot cover the basic costs of living, and do not exercise the rights under social protection.



105 We Looked at the Pictures and the Prime Minister is Definitely Lying, *Istinomjer*, 2017, (<https://goo.gl/3H4aFd>).

106 Gordana Katana: Restructuring of RS Railways, What is in it for Workers, 2017, (<https://goo.gl/96u5os>).

The criteria for exercising the right to social protection are rigid, whereas the amounts of permanent financial assistance do not provide for a minimum of social protection.

In the Republika Srpska, a new Law on Child Protection was adopted, introducing the right to monthly maternity allowance of BAM 405 for unemployed mothers, which can be transferred to the father in case of death of the mother or inability to care for the child directly.<sup>107</sup> The Law was adopted in late December, but to the moment of writing of this report, funds for its implementation have not been provided yet. It remains an open question when will this happen, considering that the payment of maternity allowance is already delayed by more than six months.

107 Law on Child Protection, 29 December 2017, (<https://goo.gl/ZwHa1s>).

## 4. MEDIA AND FREEDOM OF EXPRESSION

### *Economic status of journalists*

Labour rights of journalists in BiH are not respected, and they are encountering the same problems that are typical in this field, among which the most common is unreported employment, without proper contracts<sup>108</sup> or without any contract at all. Part-time work, employers not registering their employees, non-payment of contributions for the full amount of salary<sup>109</sup> are frequent occurrences. Violations of labour rights are most often not reported<sup>110</sup>, both due to journalists' insufficient familiarity with their labour rights and due to fear of dismissal in the market where there is greater supply than demand for this kind of personnel. Estimates show that there are about 5,000 journalists working in BiH, while over 1,000 of journalists are registered as unemployed.<sup>111</sup> The material status of journalists varies considerably in relation to the financial situation of the media in which they work. Therefore, salaries can range from EUR 200 in local media to EUR 900 in larger media, especially in international media.<sup>112</sup>

There is no significant union organisation in order to protect labour rights<sup>113</sup> of journalists. Only 40% of media in BiH are unionised<sup>114</sup>, and there is no uniform union of journalists in BiH, except for the Union of Graphic, Publishing and Media Workers, with about 350 journalist members. There are two unions in BHRT that have about 100 journalist members.<sup>115</sup> The lack of union organisation directly results in a greater violation of labour rights in the media without a union.

These problems are most evident in private media, but they are also present in public media, where, due to continual financial problems, debts for taxes and contributions keep accumulating and there are frequent delays in payment of salaries.<sup>116</sup> Financial problems of public services are closely related to a continuing decline in the payment of RTV fee. Since September 2017, a temporary solution has been introduced under which the collection of RTV fee is carried out via the

- 108 Indicators of the Level of Media Freedom and Journalists' Safety, Association of BH Journalists, 2016, (<https://goo.gl/JiCHNx>).
- 109 Andrijana Pisarević: Journalists are Workers Too, (<https://goo.gl/NARHb2>).
- 110 Ibid.
- 111 BiH: More than Thousand Graduated Journalists at Employment Bureau, MC online, 2017, (<https://goo.gl/tXtB2g>).
- 112 Indicators of the Level of Media Freedom and Journalists' Safety.
- 113 Amer Toskić, Labour Status of Journalists, 2015, (<https://goo.gl/mgbHBu>).
- 114 Mariana Šarčević, Secure Jobs Prerequisite for Media Freedom, 2015, (<https://goo.gl/BGrUjJ>).
- 115 Indicators of the Level of Media Freedom and Journalists' Safety.
- 116 For instance, BHRT has a debt of BAM 7 million, while RTRS has a debt of BAM 5.8 million for unpaid taxes and contributions for pension and health insurance (data from June 2017).

electricity bill. Situation of local public media is particularly difficult because they depend on grants of municipalities or cities.<sup>117</sup>

### *Attacks on journalists and media freedom*

According to the Free Media Help Line data,<sup>118</sup> in 2017, there were 61 cases of violation of journalists' rights, of which six physical attacks and 21 threats, including death threats. Threats are mostly sent via social networks or public comments on online portals. Journalists also report political pressures in their work, even 94% of them believe that censorship affects their everyday work.<sup>119</sup>

Attacks on journalists are not treated as a separate criminal offence<sup>120</sup>, as recommended in the Special Report of the Human Rights Ombudsman of BiH on the status and cases of threats against journalists<sup>121</sup>. Investigations in the event of an attack on journalists are inadequate, whereas judicial proceedings are very slow. Only 15% of cases have been investigated and resolved, since perpetrators are persons in positions of power.<sup>122</sup> In crime databases, special records are not kept for cases in which journalists are the injured party, which makes it difficult to monitor the actual situation and to determine the level of vulnerability and exposure to attacks.<sup>123</sup>

Political pressures on journalists are manifested through the unequal treatment of various media by public office holders, i.e. by withholding information, exhibiting unprofessional behaviour towards journalists in public events, public and private insults and threats, etc.<sup>124</sup> Lawsuits for defamation filed by politicians against journalists are just another form of pressure that journalists themselves emphasise.<sup>125</sup> According to the Free Media Help Line data, an average of 100 lawsuits for defamation are filed annually.

Political pressures are often carried out through the provision of financial support to the media, which directly affects editorial policy and objectivity of reporting.<sup>126</sup> The result of such pressures is that

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- 117 Journalists without Salaries and Health Insurance, MC online, 2017, (<https://goo.gl/YNM3zm>).
- 118 Free Media Help Line operates within the Association of BH Journalists.
- 119 Indicators of the Level of Media Freedom and Journalists' Safety.
- 120 Ibid.
- 121 Special report on the status and cases of threats against journalist in Bosnia and Herzegovina, 2017, (<https://goo.gl/MsnvmQ>).
- 122 Indicators of the Level of Media Freedom and Journalists' Safety.
- 123 Special report on the status and cases of threats against journalist in Bosnia and Herzegovina.
- 124 Lejla Turčilo and Belma Buljubašić, Media and Shrinking Space in Bosnia and Herzegovina: Silenced Alternative Voices, Heinrich Böll Foundation, Office for Bosnia and Herzegovina, 2017, (<https://goo.gl/SAqG8U>).
- 125 Indicators of the Level of Media Freedom and Journalists' Safety.
- 126 Media and Shrinking Space in Bosnia and Herzegovina: Silenced Alternative Voices.

most media, both public and private, are subject to self-censorship in order to stay 'loyal' to certain political parties<sup>127</sup>, which is particularly evident during election campaigns. Journalists usually do not know who owns the media in which they work, whose financing is equally non-transparent as ownership.<sup>128</sup>

Public services are exposed to both direct and indirect pressures that political structures exert through management and steering boards. Some of the examples that indicate the level of political pressures and/or abuse of public services in the past period include: the case of BHRT censorship, which withdrew the announced interview with Sebija Izetbegović, Director of the University of Sarajevo Clinical Centre and the wife of Presidency member and SDA President Bakir Izetbegović<sup>129</sup>; and continuously biased reporting of RTRS, perhaps the most radical example was reporting on the incident in the RS National Assembly and the events that followed, where this public service, like in many other situations, behaved as the media of the ruling party, affirming its story about the alleged 'coup', 'Macedonian scenario', etc.<sup>130</sup> It is an alarming fact that RTRS, as well as the entity public news agency SRNA, continuously report unverified and inaccurate information in a politically aggressive manner.<sup>131</sup>

Financial independence from political stakeholders, necessary for the existence of genuinely free media, is rare. Such media mostly operate within civil society organisations financed by foreign donors (e.g. CIN, BIRN, Analiziraj.ba). They are not exposed to direct interference in editorial policy or to financial pressures as a political control mechanism.

### Regulatory bodies

The Communications Regulatory Agency (CRA) is more concerned with technical issues than media freedom, and journalists generally do not perceive it as body that protects their interests. Given that the CRA's Director General is elected by political line, it is not perceived as an independent body. The Press Council in Bosnia and Herzegovina operates as a self-regulatory body. Its recommendations are not binding. In 2017, the Press Council Complaints Commission processed 220 citizens' complaints of violations of the Press and Online Media Code.<sup>132</sup>

127 Indicators of the Level of Media Freedom and Journalists' Safety.

128 Political Pressures and Economic Uncertainty Major Obstacles to Media Freedom in BiH and Region, Media Centar, 2016, (<https://goo.gl/Az7eNv>).

129 BH Journalists: BHT has to explain why the interview with Sebija Izetbegović has been removed, *Oslobođenje*, 2017, (<https://goo.gl/GA8bPp>).

130 RSNA, SNSD and RTRS, *Istinomjer*, 2017, (<https://goo.gl/AKz7Zj>).

131 Findings of the fact-checking media platform *Raskrinkavanje*, (see: <https://goo.gl/6o5rY5> and <https://goo.gl/WbpdLq>).

132 Citizens' complaints on press writing, Press Council, (<https://goo.gl/Ss9JAj>).

### *Protection of intellectual property and copyright in the media sphere*

The Law on Communications of BiH prescribes that the Council of Ministers and the Communications Regulatory Agency (CRA) undertake measures to protect copyright and other intellectual property rights. This provision does not prescribe the exclusive competence of the Agency in the field of copyright protection. Also, the Law does not further define how and to what extent the Agency has competence in the field of copyright protection. Therefore, after the adoption of the Law on Communications, the Agency continued with previously established practice that involves resolving complaints related to unauthorised use of a copyrighted work. Namely, after receiving the complaint, the Agency requests from the licence holder to submit evidence of acquired right based on the obligation embedded into the relevant regulatory documents.<sup>133</sup>

Agencies that protect copyright and related rights do not have good communication with those media that do not pay fees. Since the adoption of the 2010 Law to date, there are fewer new disputes between media and agencies that protect copyright and related rights. However, these disputes are resolved at a very slow pace.<sup>134</sup>

133 Helena Mandić, CRA's Competence in Field of Copyright, 2016, (<https://goo.gl/bM5SHw>).

134 Reuf Herić, Radio and Television in Relation to Copyright and Related Rights, 2016, (<https://goo.gl/z3BQyj>).

## 5. ALIGNMENT WITH THE EU ACQUIS: SPECIAL AREAS

### 5.1. *Administrative capacities for alignment assessment with the EU acquis*

At the state and entity levels, there are bodies within the executive and legislative authorities that perform alignment assessment of legislation with the EU *acquis*.

#### *Executive authorities*

At the state level, the activities of the institutions in BiH relating to European integration are monitored and coordinated by the Directorate for European Integration of Bosnia and Herzegovina, which is a permanent, independent and expert body of the Council of Ministers of BiH. The Directorate prepares opinions and checks conformity of legislation, prepared and adopted by the institutions of Bosnia and Herzegovina, with the EU *acquis*.

This body is often criticised by the public for being invisible in the processes for which they are responsible, concerning their role of the chief coordinator of the European integration process at the state level and between the state institutions and Entities. Considering that the European integration process was intensified in 2015, 2016 and 2017, the role of the Directorate is intensified in the field of public consultation, cooperation with civil society, media presence, and proactive role in the European integration process in terms of the development of the Action Plan for the implementation of recommendations of the Progress Report on Bosnia and Herzegovina.

In the Republika Srpska, the European Integration Sector within the Ministry of Economic Relations and Regional Cooperation of the RS Government is responsible for monitoring and coordinating the European integration process. Within this Sector, there is a Department of Integration Policy, Analytics and Reporting, Department of Harmonisation of Republika Srpska Laws with EU Regulations, and Department of EU Funds and Development Assistance. In the Federation of BiH, there is an FBiH Government Office for Legislation and Alignment with the EU *acquis*.



### *Legislative authorities*

In BiH, there are also parliamentary bodies that oversee European integration. In terms of the procedure of referring laws at the state level, the Directorate for European Integration of BiH is responsible for conformity assessment of legislation with the EU *acquis* irrespective of whether the proponent is the Council of Ministers or the authorised proponent of the legislative body. The RS National Assembly Committee on European Integration and Regional Cooperation has nine members and one of its responsibilities is to monitor and align the RS legislative system with the EU *acquis*. Within the House of Representatives of the Parliament of FBiH, there is a Committee on European Integration composed of 11 members, while the eponymous Committee composed of five members exists in the House of Peoples.

### *Stabilisation and Association Parliamentary Committee*

There is a Stabilisation and Association Parliamentary Committee within the Parliamentary Assembly of BiH. This body is responsible for the implementation of the Stabilisation and Association Agreement, and it was formed for the purpose of leading a political dialogue and exchanging of opinions between members of the European Parliament and the Parliamentary Assembly of BiH. The Committee was constituted at the joint session of the Delegation for relations with Bosnia and Herzegovina and Kosovo and the Joint Committee on European Integration of the Parliamentary Assembly of BiH. The Parliamentary Committee was required to adopt the Rules of Procedure, but this has not been done yet because agreement has not been reached in terms of the decision-making process in this body.

### *Coordination mechanism and answers to the European Commission Questionnaire*

The problems that accompanied the adoption of the coordination mechanism of the EU integration process in BiH were presented in detail in the previous reports of the Initiative for Monitoring the European Integration of BiH. In the past year, its primary and most important task was to harmonise the answers to the European Commission Questionnaire for Bosnia and Herzegovina, i.e. information requested by the European Commission to the Council of Ministers of BiH for the preparation of the Opinion on the application of Bosnia and Herzegovina for membership of the European Union.

Bosnia and Herzegovina got the Questionnaire in December 2016, when it was announced that the answers would be prepared and delivered within six months. Instead, a ‘saga’ was unfolding in the next 14 months,

accompanied by a series of excuses for the delay with answers that has not been seen in any of the countries in the region, and unrealistic announcements of EU candidate status by the end of the year or by the end of the current term. Contradictory messages given by public officials, among who the most prominent were Council of Ministers Chairman Denis Zvizdić and Presidency member Dragan Čović, were also accompanied by contradictory statements on the functioning of the coordination mechanism. Depending on the occasion, the coordination mechanism was presented as functional or non-functional, depending on the political affiliation of a public official and political moment. The work of the coordination mechanism (the method of election, appointment and composition of working bodies, their meetings, decision-making process, and efficiency) remained equally non-transparent as its adoption. All of this has created a justifiable impression in the public that the coordination mechanism adoption has essentially remained a formality which has not overcome political disagreements to the extent that would ensure its genuine functioning. This is clearly corroborated by the fact that the answers to the Questionnaire were finally prepared and delivered in late February 2018. Judging by the information on non-conformity of the answers relating, for instance, to the number of inhabitants of Bosnia and Herzegovina, it remains to be seen whether a similar painstaking process will be repeated once BiH receives additional questions from the European Commission, which was the case with all the countries in the region.

## 5.2. Statistics

One of the particularly problematic areas during the preparation of answers to the EC Questionnaire is statistics, with emphasis on the use of data obtained from the 2013 census that are still not agreed on among all levels of government. Specifically, the Republika Srpska believes that the official data published by the Agency for Statistics of BiH are inaccurate and uses its own data, which are different from the Agency's data. Divergence between the RS and state level of government has also negatively affected the establishment of the nomenclature of statistical territorial units, which have to be harmonised with the principles of EUROSTAT for the whole country before BiH accedes the European Union.

In late 2017, based on the comments of public officials, it became evident that the issue on the number of inhabitants in BiH was a stumbling block in the preparation of answers to the Questionnaire. It remains to be seen to what extent the prepared answers will be acceptable to the European Commission.

Apart from problems with the implementation and harmonisation of the census data, BiH has had a long-standing problem of non-harmonised statistics in different areas, both between different levels of government, and between different institutions at the same administrative level. The method of collecting and displaying data is different in both entity statistics institutes. Their data are compiled and published by the state agency for statistics in a way that they cannot be mutually comparable and used for further analysis. A particular problem is statistics in areas where responsibilities are divided between entities and cantons, such as health care, social protection, environmental protection, etc. In these areas, there is almost no way of obtaining comprehensive, methodologically uniform and comparable data for the whole territory of BiH.

On the other hand, in the Federation of BiH, there are problems of different methodologies used by institutions working in the same areas, which has been especially emphasised in the past period when it comes to the number of employed persons in this Entity. The most important topic discussed in this term is the increase in employment in Bosnia and Herzegovina. Due to the different methodologies in keeping records of the number of employed persons used by the entity Statistics Institute and the Tax Administration, their data vary by tens of thousand of employed persons. A number of data circulated in the public explaining why this is so. According to some data, the Tax Administration has also recorded persons who are not employed (persons who are engaged under service contracts or work of authorship), or that the FBiH Statistics Institute does not record registrations in companies that have fewer than 10 employees. After the inquiry sent to both institutions, the received information read that the FBiH Statistics Institute has not yet harmonised its procedures with the Law on Unified System of Registration, Control and Collection of Contributions (it does not register changes in companies with fewer than 10 employees), which results in a difference of almost 40,000 employed persons compared to the Tax Administration data. This situation does not benefit anyone, least of all citizens of BiH, who are deprived of information on one of the most important economic indicators.

### 5.3. Intellectual property<sup>135</sup>

In the field of intellectual property, BiH continued to apply the legislative framework taken from the Federal Republic of BiH until 2002.<sup>136</sup> The first laws that regulate the whole areas in BiH were adopted in 2002, resulting in partial harmonisation with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization. Under the project European Union Intellectual Property Rights (EUIPR) – CARDS 2006, in the period 2007-2009, draft laws regulating copyright and related rights, patents, trademarks, industrial design, etc. were developed, as well as draft amendments to the Criminal Code. New laws on intellectual property were adopted and entered into force in 2010.

At the time of drafting and entry into force, the laws were aligned with the then existing *acquis*, but have not been amended since, so that they are not aligned with the directives adopted thereafter. Also, there is a problem with the application of the existing legislative framework in practice. Intellectual property awareness is still quite low. Litigation and criminal proceedings take a long time, often without the possibility of enforcement. In BiH, there are no uniform data on the number and type of infringement of intellectual property, which further complicates the analysis of these data and development of efficient methodology to improve the protection of these rights.

The Institute for Standardization, Metrology and Intellectual Property of Bosnia and Herzegovina (BASMP) was established in 1992. This Institute was divided into three separate bodies in 2006. The Institute for Intellectual Property of BiH, the legal successor of BASMP, was established in 2004 as an independent state organisation. It has taken over the affairs of copyright and related rights, and industrial property since 2007. The Institute's financial and personnel capacities insufficient. There are also limitations regarding the coordination mechanism with institutions in the system of intellectual property rights enforcement, and the process of amending laws is rather slow. Copyright and related rights can be managed either individually or collectively. Collective management is carried out via collective organisations whose work permits are issued by the Institute, and whose work is also supervised by the Institute. There are five such organisations in BiH in 2017.<sup>137</sup>

135 Note: A detailed overview of the situation in this field, including the legal framework with all laws and regulations governing intellectual property; overview of its conformity with EU directives; as well as overview of ratified conventions in this field, are available in the document: Submission for 2017 Alternative Opinion and Report: Intellectual Property, Lejla Gačanica, Sarajevo, January 2018, (<https://goo.gl/z4rdRH>).

136 Law on Takeover and Application of Federal Laws Used as Republican Laws in Bosnia and Herzegovina (Official Gazette of RBiH, 2/92 and 13/94).

137 Organisations for: the rights of authors of musical works, the rights of performers of musical works, the rights of producers of phonograms, the rights to compensation for cable retransmission of au-

#### 5.4. Environmental protection

In its document *Alternative Answers of Civil Society Organizations to the European Commission Questionnaire*, the Initiative for Monitoring the European Integration of BiH has indicated numerous problems that BiH citizens encounter in the field of environmental protection, primarily due to an alarming level of air pollution.<sup>138</sup> The beginning of each heating season again raises the question of air pollution in Sarajevo and other larger/industrial cities, such as Tuzla and Zenica. Enormous exceedance of allowed airborne particles was also recorded in this heating season. The Zenica-Doboj Canton and the Sarajevo Canton adopted the Plan of Intervention Measures in cases of excessive air pollution. However, despite numerous announcements by cantonal officials on urgent and basic measures to be taken in order to reduce air pollution, little has been done in this field in the previous period. In the Sarajevo Canton, implemented measures mostly focused on analyses and measurements rather than on the pollution prevention. One of few concrete measures was the allocation of funds, although insufficient (BAM 500,000 for 2017, and BAM 400,000 for 2018), as subsidies for connecting new users to the gas network in order to reduce the number of households that use solid and liquid fuels for heating.

#### 5.5. Regional issues

The fourth Western Balkans summit, which is organised within the Berlin Process Initiative, was held on 12 June 2017 in Trieste, Italy. The summit's main message was strengthening of regional cooperation as a key element for accelerating the European integration process, primarily through the strengthening of economic cooperation. All Western Balkans countries (Montenegro, Serbia, Albania, Macedonia and Kosovo) signed the Transport Community Treaty at the summit, except BiH. The Treaty was not signed because the RS Government refused to give its consent, believing that it would derogate the competence of the Entity. This is the reason why other initiatives and international projects involving other countries in the region<sup>139</sup> were previously stopped or considerably slowed down. The Treaty was subsequently signed in October, but its application in practice will be questionable, since the RS continues to contest it.<sup>140</sup>



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138 Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring EU Integration of Bosnia and Herzegovina, 2017, pgs. 99-103, (<https://goo.gl/dUvk9z>).

139 Similar problems arise in terms of the harmonisation of legislation necessary to fulfil the requirements for EU pre-accession funds (see: Why will we (again) lose EU funds for agriculture, *Istinomjer*, 2017, (<https://goo.gl/guGPKW>)).

140 What is the Problem with the Transport Community Treaty, *Istinomjer*, 2017, (<https://goo.gl/uZBNMx>).

In the past period, there has been no progress in resolving outstanding issues between BiH and Kosovo, and a rigid visa regime remains in force which considerably hinders freedom of movement or any kind of economic cooperation. These issues are not being resolved, while there are no indications of them being resolved any time soon because political representatives from the Republika Srpska oppose the development of any relations with Kosovo, whose statehood they do not recognise.

*Regional cooperation from the perspective of transitional justice and dealing with the past*

Political tensions are constantly present in the relations of Bosnia and Herzegovina with neighbouring countries and most often arise from the issues related to dealing with the past, which remains highly politicised in all countries of the region. Denial of international judgments and lack of political will to break with the wartime regimes do not help the process of dealing with the past and building reconciliation in the region. Reactions of political officials to judgments for war crimes are particularly controversial. Judgments, as a rule, are disputed by public officials depending on their political position.

The International Criminal Tribunal for former Yugoslavia (ICTY) officially closed its door in late 2017, after 24 years of existence. Cases against 13 persons have been transferred to regional courts, whereas some appeal proceedings and retrials will be completed before the Mechanism for International Criminal Tribunals, a body that will bring proceedings to their final judgments in the next two years. The second instance judgment in the Vojislav Šešelj case, the second instance judgment in the Ratko Mladić case, as well as completion of the retrial in the Stanišić and Simatović case, are all of key importance to BiH.

In November 2017, the International Criminal Tribunal for former Yugoslavia rendered the first instance judgment in the case of RS Army General Ratko Mladić, who was sentenced to life imprisonment for war crimes committed in BiH in 1992-1995. After the pronounced judgment, RS President Milorad Dodik said that Mladić was a “hero and patriot”<sup>141</sup>, while presidency member Mladen Ivanić<sup>142</sup> also showed support to Mladić and contested the judgment, as many other officials from the Republika Srpska and Serbia. The second instance judgment in the Prlić et al. case, in which it was determined that there was a joint criminal enterprise in the territory of BiH carried out by the six convicted and political leadership of the Republic of Croatia, also sparked violent reactions. Presidency member Dragan Čović said that the judgment was



141 Dodik on the judgment: Mladić was a hero, N1, 2017, (<https://goo.gl/hjnTvW>).

142 Ivanić: We should not give up on support to General Mladić, *Radio Sarajevo*, 2017, (<https://goo.gl/Uh2U4J>).

legally unfounded<sup>143</sup>, while Croatia's officials also contested the court's decision. Presidency member Bakir Izetbegović has also contributed to rising of political tensions in the region with his decision, without the consent of the other two Presidency members and without a suitable legal representative, to initiate a request to review the judgment on the lawsuit of BiH against Serbia for genocide. The International Court of Justice rejected the request in March 2017.

A positive example of regional cooperation is the Regional Youth Cooperation Office (RYCO), which officially began its work in July 2017. Its main goal is to promote reconciliation and youth cooperation in the region.

### *Cooperation of judicial institutions at the regional level – war crimes*

Processing of war crimes committed in the former Yugoslavia is inconceivable without effective cooperation between relevant institutions in the region, because of the cross-border nature of the armed conflict in the former Yugoslavia. The victims, witnesses, offenders and evidence are generally not within the competence of a single national judiciary, while almost all former Yugoslavia countries prohibit extradition of its citizens to other countries. However, regional cooperation in the processing of war crimes has been evaluated as slow and inefficient.<sup>144</sup>

Because of the ban on extradition, dual citizenship of defendants continues to pose a problem for prosecution. The exchange of documents and archives is still not satisfactory, which also indicates political influence in judicial cooperation. The exchange of documents between BiH and Serbia works on a small scale, but not when it comes to important evidence. Requests of BiH judiciary for access to documentation located in Croatia are usually rejected, leaving prosecution of BiH without evidence in particular cases. There are also problems with different qualifications of the act, like the ongoing trial for crimes against civilians in Kravica (Srebrenica), instead of genocide, since Serbia does not recognise genocide in Srebrenica. Croatia does not prosecute war crimes happened in BiH<sup>145</sup> and has reacted strongly to the arrest of former Croatian Defence Council members for crimes committed in Orašje.<sup>146</sup>

Establishment of joint investigative teams between the prosecution of BiH and Serbia, whose work has resulted in indictments for murder of

143 Judgment in Prlić et al. case legally unfounded, *Oslobođenje*, 2017, (<https://goo.gl/88nVo6>).

144 Consequences of Political Tensions on Prosecution of War Crimes: For the first time, Serbia does not participate in the regional conference of war crimes prosecutors, Humanitarian Law Center, 2016, (<https://goo.gl/CRLMsv>).

145 UN Prosecutor to Report Croatia to Security Council, *Balkan Insight*, 2017, (<https://goo.gl/8CES3k>).

146 Rift between Sarajevo and Zagreb for investigation of war crimes, *N1*, 2016, (<https://goo.gl/o2nEMV>).

hundreds of Bosniak civilians in the village of Kravica (Srebrenica), and the torture and murder of 20 people abducted from a train at the station in Štrpci, has indicated the possible positive effects of regional cooperation.

## 5.6. Transitional justice

### *Processing of war crimes*

Under the 2008 War Crimes Strategy, the most complex war crimes cases should have been resolved by the end of 2015, while other cases within 15 years. However, as this did not happen, the Prosecutor's Office of BiH requested an extension of the deadline for the implementation of the Strategy. There are still over 1,000 unresolved war crimes cases and about 5,000 unprosecuted persons in BiH. A working group has been formed to set new deadlines, but the process is slow.

Efficient processing of war crimes is hampered by having parallel processes at the state and entity level for the same crimes, uneven legal classification of crimes, weak indictments, inexperience of some prosecutors, and poor quality of the process. Also, prosecutors avoid complex cases because they have to meet the norm of five cases (reduced to four cases in 2017), which is why they rather choose less complex cases.

In the past period, there have been unsettling tendencies towards the weakening of the penal policy in the form of a motion of the Ministry of Justice of BiH to allow amnesty to prisoners sentenced for the criminal offences of genocide, war crimes and crimes against humanity, after serving three-fifths of the sentence. The minister justified this motion in public by "obligations under the Geneva Convention"<sup>147</sup>, while the UN Committee on Missing Persons explicitly requested that the motion be withdrawn.<sup>148</sup>

### *Statistical data*

According to the HJPC data, in the first 11 months of 2017, the state court sentenced 35 persons (of which 19 were final judgments) to a total of 291 years and two months in prison, while 34 persons were acquitted of war crimes (11 final judgments). The Court of BiH abolished the convicting part of the judgment and ordered a retrial in three cases.

In the Federation of BiH, eight final judgments were rendered: three by the Cantonal Court in Sarajevo, two in Bihać, and one judgment each by courts in Mostar, Novi Travnik and Zenica. In the Republika Srpska, the same number of judgments was rendered: three judgments by the District Courts



147 The Geneva Convention Does not Prescribe Amnesty for War Crimes, *Istinomjer*, 2017, (<https://goo.gl/cvRTyz>).

148 Concluding observations on the report submitted by Bosnia and Herzegovina under article 29 (1) of the Convention, UN Committee on Enforced Disappearances, par 25/26, 2016, (<https://goo.gl/dBmD8L>).

in Banja Luka and Dobož, and one judgment each in Bijeljina and Trebinje. The Brčko District Basic Court rendered one final judgment. In terms of first instance judgments in the Entities, the FBiH courts rendered 15 convictions and nine acquittals, while the RS courts rendered seven convictions and two acquittals. The Brčko District Basic Court rendered one acquittal.

The Prosecutor's Office of BiH filed indictments in 18 cases against 25 persons. The prosecutions in the Federation of BiH filed indictments in 14 cases against 19 persons, of which the Prosecutor's Office of Herzegovina-Neretva Canton filed indictments in six cases against 11 persons. The prosecutions in the Republika Srpska filed indictments in five cases against 12 persons.

### *Rights of victims of torture*

Legislation on the rights of victims of torture is not harmonised. The draft Law on the Rights of Victims of Torture in BiH, which should establish the number of victims of torture, reparation for victims and memorialisation of war crime sites, was rejected in parliament in 2014, because deputies from the Republika Srpska did not support it.<sup>149</sup> The Joint Committee on Human Rights of the Parliamentary Assembly of BiH last discussed the drafting of the law in 2016. In December 2017, an inter-ministerial working group finalised a draft Law, which has not been sent in the procedure yet. The Republika Srpska continues to oppose the adoption of the state law on the rights of victims of torture, because it plans to adopt the entity law this year. Preliminary draft of this Law was made in 2016 and it points out to the same issues already present in the entity Law on the Protection of Civilian Victims of War.<sup>150</sup> Specifically, it includes some propositions which are vague, restrictive (such as strict cut-off deadlines, which would automatically exclude most survivors and their families), or discriminatory towards non-Serb victims,<sup>151</sup> or vague. The draft Law was supposed to be presented by the end of 2017, but that still has not happened.

Beginning in 2015, the judicial system in Bosnia and Herzegovina has started to award damages to victims in criminal proceedings (so far, eight victims have been awarded compensation in criminal proceeding at the Court of BiH, and two at entity level). However, the compensations have

149 Dragana Erjavec, No Consent on State Law on Rights of Victims of Torture, 2017 (<https://goo.gl/cLWJZu>).

150 See: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring EU Integration of Bosnia and Herzegovina, 2017, pg. 60, (<https://goo.gl/boEShM>).

151 See UN Committee against Torture, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, Paras. 18-19(c), CAT/C/BIH/CO/6, November 2017. The CAT recommended the State to ensure that authorities at the entity level remove restrictive and discriminatory provisions in their legislation and policies relating to redress for civilian victims of war, including survivors of wartime sexual violence. For similar findings, see Report by Nils Muiznieks, the Council of Europe Commissioner for Human Rights following his visit to Bosnia and Herzegovina, from 12 to 16 June 2017, para. 33.

not been paid yet, so these court decisions are not in effect. Some courts, for instance the Banja Luka District Court, have not shown readiness to decide upon such claims.

However, the judgments of the Constitutional Court of BiH in 2016 removed the subsidiary liability of the State and the Entities for damage, further limiting the ability of victims to effectively claim and obtain compensation. The court found that **statute of limitations** is to be applied to the compensation claims for non-material damage directed against the Entities or the State, and that such claims could be directed only against the perpetrators. Aside from not meeting the standards of Article 6 of the ECHR, the decision contravenes the well-developed case-law in former Yugoslavia. This decision strongly indicates that it was adopted as a result of political pressure, with the main goal to preserve public funds, rather than deliver justice for the victims.<sup>152</sup>

The decision removed any option for the victims to enforce this internationally guaranteed right. Civil litigation before local courts now regularly result in dismissal of claims, based on statute of limitations. Survivors of torture and sexual violence consequently have to pay high court fees<sup>153</sup> (which, according to the Amnesty International report<sup>154</sup>, range from BAM 3,000 to BAM 10,000, and sometimes amount to over BAM 15,000) and face repossession of their assets, which is highly traumatising, especially for many who already live in poverty.<sup>155</sup>

The changes of case-law, on top of already existing lack of harmonisation, have created unacceptable legal uncertainty, undermining the rule of law and trust in the judicial system. Several international bodies, including the UN Human Rights Committee and the Council of Europe Commissioner for Human Rights<sup>156</sup> have noted concerns over such practice and recommended that legislative and practical measures be urgently taken to ensure that survivors of torture and sexual violence have access to effective

152 The Republika Srpska has already rejected claims against the Entity by applying the statute of limitations, while the Supreme Court of FBiH found in 2011 that statutes of limitations cannot be applied to those claims. After the adoption of the Constitutional Court's decisions, however, the FBiH court was also forced to change its interpretation of the application of statute of limitations in these cases.

153 In the *Cindrić and Bešlić v Croatia* case (2016), the European Court of Human Rights concluded that imposition of considerable financial burden, such as an order to pay fees for the representation of the State, could be regarded as a restriction on the right to court and the right to property. In the application of those principles, some courts in the Federation of BiH have started rejecting court fees claims filed by the Entities and/or the State, while others ignore the reasoning from this judgment and continue the negative practice, creating another non-harmonised legal approach.

154 Amnesty International, "We need support, not pity": Last chance for justice for Bosnia's wartime rape survivors, 2017, (<https://goo.gl/eVVbWx>).

155 AlJazeera Balkans, „Wartime rape victim: Who will make up for my ruined life?“, 2017, (<https://goo.gl/atyXPA>).

156 Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights following his visit to Bosnia and Herzegovina, from 12 to 16 June 2017, para. 36.

remedies.<sup>157</sup> In December 2017, a coalition of 40 civil society organisations addressed all relevant stakeholders, requesting that war crimes victims be relieved from paying court costs. There still has not been any effective response to either the criticisms, or the requests to remedy the current, both ethically and legally unacceptable, situation.

Transferring cases from criminal to civil courts also means loss of identity protection for witnesses, since criminal courts offer identity protection, while the civil courts do not. This is particularly damaging for survivors of sexual violence and can discourage them from pursuing the redress they are due.<sup>158</sup> An expert working group, organised by TRIAL International, drafted amendments to the civil procedure codes which would secure identity protection for victims in civil proceedings. The amendments were submitted to the competent ministries at all levels and actively advocated in 2017. The feedback was generally positive, but it remains to be seen whether the amendments will be accepted and what specific steps, if any, will be taken.

### *Wartime sexual violence*

The latest Amnesty International report<sup>159</sup> shows that, in BiH, there are more than 20,000 victims of wartime sexual violence who still have not received justice in court. Although there has been a noticeable increase in the prosecution of war crimes cases involving sexual violence in recent years, the number remains too low, the cases are processed at a slow pace, and the state of impunity continues. This is further exacerbated by the practice of imposing minimum penalty (3-5 years) and/or allowing the perpetrators to commute their prison sentences into fines.<sup>160</sup> Both practices are especially common at entity-level courts. There are also courts, such as the one in East Sarajevo, which render a large number of acquittals in these cases.

157 See UN Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, Paras. 17-18, CCPR/C/BiH/CO/3, April 2017; Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights following his visit to Bosnia and Herzegovina, from 12 to 16 June 2017, paras. 37-38.

158 Several international bodies have expressed their concern over this situation. See UN Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, Para. 17, CCPR/C/BiH/CO/3, April 2017.

159 Amnesty International, “We need support, not pity”: Last chance for justice for Bosnia’s wartime rape survivors, 2017.

160 The UN Committee against Torture has expressed its serious concern about the practice of diminished sentences and the conversion of prison sentences into fines, and recommended the State to adopt legislative measures in order to remedy the situation. See UN Committee against Torture, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, Paras. 16-17, CAT/C/BiH/CO/6, November 2017.

The OSCE Mission to BiH has also recommended to eliminate the possibility of commuting war crimes sentences. Following this recommendation, TRIAL International prepared amendments to the Criminal Code of the Federation of BiH and submitted them through one of the MP’s of the Parliament of the Federation of BiH. At the time of writing, the amendments have still to be put on the agenda of the Parliament of the Federation of BiH.

Victims of wartime sexual violence find it difficult to access reparation because there is no comprehensive reparation system and laws are inconsistent. In the criminal proceedings of this kind, only four decisions had been made, which were not enforced because the perpetrators did not have enough funds. BiH is bound by the European Convention on the Compensation of Victims of Violent Crimes and the UN Convention against Torture to establish national mechanisms of paying compensations in cases when the perpetrators are unable or unwilling to fulfil their obligations, which could be implemented by establishing a fund where the compensations would be paid by the state, which, in turn, would seek repayment from the perpetrator. Instead, as noted above, the decision of the Constitutional Court has further diminished their right to court and possibilities to seek reparations.

### *Missing persons*

The process of electing new members to the board of directors of the Missing Person Institute took place in 2017, which is a step forward compared to the previous years.<sup>161</sup> A new board of directors was appointed in September, with the Bosniak and Croat members remaining the same, while a new Serb member was appointed. There has been no significant changes in the work and the decision-making process of the Institute, leaving the space for the politicisation of missing persons still open.

In 2017, the International Commission on Missing Persons (ICMP) initiated the process of relocating a DNA analysis laboratory from Sarajevo to The Hague, with the obligation to apply the same procedures for the collection, processing and storage of biological samples and the highest standards in personal data protection. The ICMP has also undertaken to retain its regional office in BiH, which will be in charge of preserving biological samples from the region and providing technical assistance. The Council of Ministers of BiH opposed this decision<sup>162</sup>, and formed a commission to negotiate with the ICMP on future activities in the identification of missing persons. At the same time, BiH still allocates significant funds for renting facilities where exhumed mortal remains are kept and still does not own suitable facilities. On the other hand, the institutions have not shown willingness to address this problem so far.

There were no significant developments in 2017 in terms of the rights of families of missing persons.<sup>163</sup> The Fund for Providing Assistance has not been established yet, and the Central Records of Missing Persons has not been completed. A step forward in the process of searching for missing



161 Alternative Answers of Civil Society Organizations to the European Commission Questionnaire, Initiative for Monitoring EU Integration of Bosnia and Herzegovina, 2017, pg. 67, (<https://goo.gl/dUvk9z>).

162 120th session of the Council of Ministers of BiH, 9 November 2017, (<https://goo.gl/tdyuo3>).

163 See: Alternative Answers of Civil Society Organizations to the European Commission Questionnaire.

persons was made in Prijedor, where the exhumation of a mass grave at Korićanske stijene was completed, in which 137 mortal remains were found.<sup>164</sup>

### *Transitional justice and remembrance policy strategy*

Bosnia and Herzegovina has not adopted the Transitional Justice Strategy to date. In 2017, the Ministry of Justice of BiH proposed that the final working draft of the Strategy and the Action Plan be included on the agenda of the Council of Ministers of BiH, however, this has not happened yet. The current remembrance policies in BiH are still focused on ‘marking the territory’ of the ethnic or religious majority, ignoring the pain and suffering of ‘others’, and rendering monuments, memorial plaques, names of streets, schools and other public spaces at the service of ethno-political elites.<sup>165</sup> BiH and the Federation of BiH do not have laws that regulate the construction of memorials, and these decisions are left to each local community, canton, entity, and even to individuals. Under the law in force in the Republika Srpska, a memorial may be built if it is of significance to the local community, which is determined by the local authority responsible for veteran and disability protection in cooperation with veterans’ organisations.

This approach to remembrance policies is also present in other fields, such as education and media. Each separate school system unilaterally interprets war events in accordance with the ‘national curriculum’ it applies, which includes activities such as visits to places of suffering of only one ethnic group. The media space is also a scene where conflicts occur, inter-ethnic hostilities are emphasised and fear is provoked with other groups. This was particularly the case with the latest convictions of Ratko Mladić and six Bosnian Croats. The manner of reporting on war crimes judgments depends on the ethno-national policy that a particular medium favours, and accordingly, court facts are contested and court decisions interpreted, while convicted war criminals are treated as unjustly convicted heroes.<sup>166</sup>

164 Klix, 137 mortal remains exhumed from mass grave at Korićanske stijene, 2017, (<https://goo.gl/b21v1B>).

165 Some of these examples prompted the Network for Building Peace to launch the campaign “(Ab) use of memorialisation in the public space” aimed at countering such practices. Some of the recent examples include: the announcement by the Centar Municipality on planning to erect a tank monument in the park next to Secondary School Druga Gimnazija in Sarajevo; a plaque dedicated to Radovan Karadžić on the eponymous student dormitory in Pale; a memorial cross to Russian volunteers in Višegrad; the announcement of the construction of a special cemetery in Mostar for Croatian WWII victims; naming of a primary school in Sarajevo after Mustafa Busuladžić – a WWII Nazi collaborator; a mural featuring figures of war crimes convicts Ratko Mladić and Radovan Karadžić, painted next to the mass crime site in Višegrad; etc. In 2017, an informal initiative ‘Unmarked sites of wartime suffering’ was launched, with the aim of showing reverence for all victims regardless of their ethnicity.

166 In such a setting, every dissonant voice within an ‘ethnically defined’ public is exposed to risk and public attacks. This was a scenario after the conviction of Ratko Mladić in 2017, when journalist Dragan Bursać received death and lynching threats, and had to temporarily leave Banja Luka for safety reasons, for writing his piece titled “Is Banja Luka celebrating the Srebrenica genocide?”

## ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of forty civil society organisations which contributes to monitoring the reforms and oversees the implementation of policies, rights and standards of the European Union, focusing on the issues of democratisation, rule of law, and human and minority rights.

Learn more about the Initiative at: <http://eu-monitoring.ba/o-inicijativi/>

### *Active member organisations:*

Association for Democratic Initiatives, Sarajevo  
BH Journalists, Sarajevo  
BIRN BiH, Sarajevo  
Centre for Investigative Reporting, Sarajevo  
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## INITIATIVE FOR MONITORING THE EU INTEGRATION OF BOSNIA AND HERZEGOVINA

### Title:

2018 ALTERNATIVE ANALYTICAL REPORT ON THE  
APPLICATION OF BOSNIA AND HERZEGOVINA FOR EU  
MEMBERSHIP: POLITICAL CRITERIA

### Publisher:

Sarajevo Open Centre and Helsinki Citizens' Assembly Banja Luka on  
behalf of the Initiative for Monitoring the EU Integration of Bosnia and  
Herzegovina, [www.eu-monitoring.ba](http://www.eu-monitoring.ba)

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This publication is the result of the work of civil society organisations within  
the Initiative for Monitoring the European Integration of BiH, The Initiative  
“Women Citizens for Constitutional Reform” as well as associates outside  
this coalition. This publication is supported by the National Endowment for  
Democracy, the Henrich Böll Foundation - Office for Bosnia and Herzegovi-  
na, Kvinna til Kvinna.

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