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The Constitution of Bosnia and Herzegovina¹, is an integral part of the General Framework Agreement for Peace and in Article II paragraph 1 it stipulates as follows: *“Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms”*.

Bosnia and Herzegovina has a very complex constitutional structure consisting of two entities, namely the Federation of Bosnia and Herzegovina and Republika Srpska, the Brčko District of Bosnia and Herzegovina as a separate administrative unit, ten cantons, thirteen constitutions, one statute and fourteen legislative bodies with very important competences and a high level of autonomy and independence from other/higher government levels.

The Constitution of Bosnia and Herzegovina does not govern local self-government issues², while the Constitution of the Federation of BiH³ and the Constitution of the Republika Srpska⁴ govern municipal or city government level. Under the Constitution of Bosnia and Herzegovina, the competence for local self-government issues has been “lowered” to the entity level, while in the case of the entity of the Federation of BiH this is a joint competence of the Federation of BiH and the cantons.

Local self-government issues are governed by the Act on the Principles of Local Self-Government of the Federation of Bosnia and Herzegovina⁵, Local Self-Government Act of the Republika Srpska⁶ and by cantonal laws⁷. Under the Constitution of Bosnia and Herzegovina, the Brčko

¹ Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina

² Article III.3.b mentions only “administrative units of the Entities”

³ Article VI.1 provides that in the performance of its competences each municipality shall undertake all measures necessary to protect the rights and freedoms provided for in Art. II.A.1 to 7 and in the instruments referred to in the Annex.

⁴ Constitution of the Republika Srpska, The Official Gazette of the Republika Srpska, no 21/1992 – consolidated text, 28/1994, 8/1996, 13/1996, 15/1996, 16/1996, 21/1996, 21/2002, 26/2002, 30/2002, 31/2002, 69/2002, 31/2003, 98/2003, 115/2005, 117/2005. Article 102 stipulates that the system of local self-government shall be governed by law.

⁵ The Official Gazette of the Federation of BiH, no 49/06 and 51/09

⁶ Local Self-Government Act of the Republika Srpska, The Official Gazette of the Republika Srpska, no 97/2016

⁷ Local Self-Government Act of Sarajevo Canton, The Official Gazette of Sarajevo Canton, no 19/97 and 14/00, Local Self-Government Act of Una-Sana Canton, The Official Gazette of Una-Sana Canton, no 8/11,

District of Bosnia and Herzegovina is under the sovereignty of Bosnia and Herzegovina and falls within the competences of the institutions of BiH, which ascertains that the Brčko District of Bosnia and Herzegovina is a local self-government unit.

The aim is to achieve transparency of local self-government bodies in Bosnia and Herzegovina through different entity-level laws, primarily through the mentioned laws governing local self-government, then by the Freedom of Information Act of BiH⁸, Freedom of Information Act of the Republika Srpska⁹, Freedom of Information Act of the Federation of BiH¹⁰, Budget Act of the Federation of BiH¹¹, Budget System Act of the Republika Srpska¹², and in the Federation of BiH through different cantonal budget acts, acts on its execution, and in the Brčko District of BiH through the Budget Act¹³, etc.

- INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution established with a view to promoting good governance and the rule of law, i.e. to protecting human rights and fundamental freedoms. It was established under Annexes IV and VI of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Law on Human Rights Ombudsman of Bosnia and Herzegovina¹⁴ and began its operations in 1996.

IHROBiH is accredited with status 'A' by the Global Alliance of National Human Rights Institutions (GANHRI), formerly the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The last accreditation cycle, completed on 24 November 2017, confirms its independence and functioning in line with the Paris Principles, and allows IHROBiH to vote in GANHRI.

- LAW ON HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

The first IHROBiH Law was enacted in 2000. The new IHROBiH Law was enacted in 2002, to be later amended (2004 and 2006). It defines the competences and powers of IHROBiH, the code of practice in monitoring the work of bodies and institutions in complaint procedures initiated by

Local Self-Government Act of West Herzegovina Canton, The Official Gazette of West Herzegovina Canton, no 3/2009, 18/2011 and 11/2017,

Local Self-Government Act of Central Bosnia Canton, The Official Gazette of Central Bosnia Canton, no 1/1998,

Local Self-Government Act of Canton 10, The Official Gazette of Canton 10, no 4/1998 and 10/2005,

Act on the Organisation of the Administration of Herzegovina-Neretva Canton, The Official Gazette of Herzegovina-Neretva Canton, no 9/2009

⁸ Freedom of Information Act of BiH, The Official Gazette of BiH, no 45/06, 62/11 and 100/13

⁹ Freedom of Information Act of the Republika Srpska, The Official Gazette of the Republika Srpska, no 20/01

¹⁰ Freedom of Information Act of the Federation of BiH, The Official Gazette of the Federation of BiH, no 32/01 and 8/11

¹¹ The Official Gazette of the Federation of BiH, no. 102/13, 9/14, 13/14, 8/15, 91/15, 102/15, 104/16, 5/18, 11/19 and 99/19

¹² The Official Gazette of the Republika Srpska, no 121/2012, 52/2014, 103/2015 and 15/2016

¹³ The Official Gazette of the Brčko District of BiH, no 34/19

¹⁴ The Official Gazette of Bosnia and Herzegovina, no 32/00, 19/02, 35/04 and 32/06

citizens and *ex officio*, and other important issues related to the functioning of this state-level mechanism for the protection of fundamental human rights and freedoms¹⁵.

IHROBiH's mandate is further provided for by the following laws: Prohibition of Discrimination Act of Bosnia and Herzegovina¹⁶, providing that IHROBiH is a central institution for the protection against discrimination and that it may deal with all natural persons and legal entities; the Freedom of Information Act of Bosnia and Herzegovina¹⁷, Freedom of Information Act of the Republika Srpska¹⁸ and Freedom of Information Act of the Federation of BiH¹⁹, under which IHROBiH is responsible for taking appropriate measures aimed at adhering to the rules for accessing information; and the Act on Ministerial, Council of Ministers and other Appointments of Bosnia and Herzegovina²⁰, Act on Ministerial, Government and Other Appointments of the Federation of Bosnia and Herzegovina²¹ and Act on Ministerial, Government and Other Appointments of the Republika Srpska²², under which IHROBiH is responsible for monitoring the implementation of principles when conducting the appointment procedures and for issuing measures to annul the decisions, etc.

Functionally speaking, IHROBiH is organised into eight departments, divided by human rights area they cover: Department for Monitoring the Exercise of Rights of Children, Department for Monitoring the Exercise of Rights of Persons with Disabilities, Department for Monitoring the Exercise of Rights of National/Ethnic, Religious and Other Minorities, Department for Monitoring the Exercise of Political and Civil Rights, Department for Monitoring the Exercise of Economic, Social and Cultural Rights, Department for the Elimination of All Forms of Discrimination, Department for Monitoring the Exercise of Rights of Persons Deprived of Liberty and Department for Monitoring the Exercise of Rights in the Judiciary and Administration.

Territorially speaking, IHROBiH has its headquarters in Banja Luka, regional offices in Sarajevo, Mostar and Brčko and a field office in Livno.

- Protection of citizens' rights

In order to protect citizens' rights, IHROBiH is obliged to act on individual and class complaints filed by citizens or act *ex officio*, to conduct investigation procedures on violations of human rights, to issue recommendations to competent bodies instructing them to eliminate violations of human rights, to take measures to implement issued recommendations and eliminate evident violations of human rights and fundamental freedoms, to inform natural persons and legal entities of their rights and obligations, etc.

IHROBiH endeavours to influence competent bodies and authorities by the force of its arguments and authority and, using its corrective role, to influence them to eliminate any potential

¹⁵ <https://www.ombudsmen.gov.ba/Default.aspx?id=14&lang=HR>

¹⁶ The Official Gazette of Bosnia and Herzegovina, no 59/06 and 66/16

¹⁷ The Official Gazette of Bosnia and Herzegovina, no 28/00, 45/06, 102/09 and 62/11

¹⁸ The Official Gazette of the Republika Srpska, no 20/01

¹⁹ The Official Gazette of the Federation of BiH, no 32/01 and 48/11

²⁰ The Official Gazette of Bosnia and Herzegovina, no 7/03 and 37/03

²¹ The Official Gazette of the Federation of Bosnia and Herzegovina, no 12/03, 34/03 and 65/13

²² The Official Gazette of the Republika Srpska, no 41/03

shortcomings in their work. Guided by this idea, IHROBiH urges stronger cooperation between competent bodies and IHROBiH. It is important to stress that, as already mentioned, there is a Department for Monitoring the Exercise of Rights in the Judiciary and Administration functioning within IHROBiH, whose primary task is to work on promoting and protecting human rights in the judiciary and administration. With regard to that, it is also important to highlight statistical data concerning IHROBiH actions taken in the past year and related to the work on individual complaints citizens filed with IHROBiH. Namely, IHROBiH received a total of 2,946 complaints in 2021. IHROBiH was approached by 10,114 citizens in total (direct contact, telephone calls, e-mail and written complaints). Out of the total number of complaints, 774 were received by the Department for Monitoring the Exercise of Rights in the Judiciary and Administration, which is a 10.41-percent increase compared to the previous year. Out of this number of complaints, 264 of them referred to bodies of administration and 292 complaints concerning the same issue were received in 2020. The analysis of the data makes it clear that the dissatisfaction with the work of bodies of administration is one of the key issues that Bosnia and Herzegovina is faced with nowadays.

IHROBiH²³ stresses that the quality of public services and the work of public administration bodies is a tangible indicator of the functionality of a state. A good administration should be in the service of the public and promote society's trust in the executive power, should contribute to political stability and stimulate economic growth and social well-being. In contrast, a non-functional administration may trigger citizen resistance and their protest against the state, and in the worst-case scenario it can lead to a non-functional state. The right of citizens to a good administration is, *inter alia*, governed by the European Union Charter of Fundamental Rights (Article 41). This right is also governed by the (general) administrative procedure acts at the state, entity and BDBiH levels, in particular through the principle of protection of citizen rights and protection of the public interest, principle of effectiveness, principle of hearing both parties and a number of other provisions guaranteeing the right to access and participate in procedures, right to appeal, right to assistance, prohibition of discrimination, etc.

Thus, IHROBiH is responsible for examining cases related to the poor functioning or violations of human rights and freedoms committed by any authority in Bosnia and Herzegovina, it can act upon receiving complaints or *ex officio*, and following the investigation procedure it can recommend appropriate individual and general measures²⁴. Also, in its annual reports on the results of its activities, IHROBiH presents the situation in the Department for Monitoring the Exercise of Rights in the Judiciary and Administration²⁵.

- SPECIAL IHROBIH REPORTS

Paragraph 2 of Article 34 of the Law on Human Rights Ombudsman of Bosnia and Herzegovina stipulates as follows: “*Where the public interest and urgency of the case so warrant, IHROBiH may issue a special report*”, and IHROBiH has therefore drafted and publicly presented more than fifty special reports.

²³ <https://www.ombudsmen.gov.ba>

²⁴ Article 32, Law on Human Rights Ombudsman of BiH

²⁵ https://www.ombudsmen.gov.ba/documents/obudsmen_doc2021030808580995cro.pdf

Some of the special reports issued:

I – Starting from its role of a national mechanism for ensuring good governance and the rule of law and with a view to protecting the freedoms and rights of national minorities, IHROBiH drafted the Special Report on the Status of the Roma in Bosnia and Herzegovina²⁶, as well as the Report on the Implementation of the IHROBiH Recommendations from the Special Report on the Status of the Roma in Bosnia and Herzegovina²⁷;

II – In 2017, IHROBiH drafted the Special Report on the Position of Journalists and Cases of Threats Made against Journalists in BiH²⁸, pointing to frequent attacks against journalists, both physical and verbal, and sent recommendations to the competent authorities and bodies, but there is no visible progress given that there are still complaints registered alleging violations of rights in this area;

III – IHROBiH drafted the Special Report on the Role of Inspection Bodies in the Protection of Human Rights in BiH²⁹, to serve as an instrument to policy and law makers when designing measures and enhancing the functioning of inspection as an element of the rule of law.

IV – IHROBiH noted shortcomings in the applicable legislation governing the right to access information, difficulties and inconsistencies in its application, experienced by both public bodies and natural persons and legal entities requesting information, which resulted in the drafting of the Special Report on the Experiences in the Application of Freedom of Information Acts in BiH³⁰ and in issuing recommendations to the competent authorities.

V – IHROBiH drafted the Special Report on Hate Speech in BiH³¹ in 2021 and its representatives started the campaign to promote it, including presentations and conferences held in cities and institutions of BiH, its entities and lower government levels. The recommendations pointed to the steps that need to be taken in order to raise awareness about this phenomenon and establish efficient mechanisms to prevent, protect and penalise hate speech.

VI – IHROBiH noted shortcomings in the applicable legislation governing professional rehabilitation and employment of persons with disabilities, difficulties and inconsistencies in its application, experienced by both public bodies and employers hiring persons with disabilities, which is why it drafted the Special Report on the Efficiency of Legal Solutions on Professional Rehabilitation and Employment of Persons with Disabilities³² in 2021, with a view to establishing the current state of play in this area in Bosnia and Herzegovina.

VII – IHROBiH pays particular attention to the field of social protection and, bearing in mind its particularities, it drafted the Special Report on the Status and Problems Faced by Social Welfare

²⁶ <https://www.ombudsmen.gov.ba/>

²⁷ <https://www.ombudsmen.gov.ba/Download.aspx?id=216&lang=HR>

²⁸ <https://www.ombudsmen.gov.ba/Download.aspx?id=220&lang=HR>

²⁹ <https://www.ombudsmen.gov.ba/Download.aspx?id=310&lang=HR>

³⁰ <https://www.ombudsmen.gov.ba/Download.aspx?id=288&lang=HR>

³¹ <https://www.ombudsmen.gov.ba/Download.aspx?id=321&lang=HR>

³² <https://www.ombudsmen.gov.ba/Download.aspx?id=318&lang=HR>

Centres/Services in Bosnia and Herzegovina³³. The Report is based on the weaknesses of the system acknowledged by social welfare centres themselves but also recognised in complaints filed with IHROBiH by citizens looking to protect their rights. Recommendations were issued to the competent authorities.

VIII – In 2020, IHROBiH drafted the Special Report on the Right to Freedom of Peaceful Assembly in Bosnia and Herzegovina³⁴ with a view to establishing what the situation in this field in Bosnia and Herzegovina was, which in turn included the evaluation of the degree of harmonisation of domestic legislation with international standards and the presentation of the challenges that the organisers of public assemblies on the one hand and the law enforcement agencies on the other faced when public gatherings were held. A set of recommendations was issued to the competent bodies at all government levels and to representatives of the non-governmental sector.

IX – In 2020, IHROBiH drafted the Special Report on the Representation of Constituent Peoples and Others in the Institutions, Administration Organisations and Regulatory Bodies of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina and Cantons in the Federation of Bosnia and Herzegovina (by unit of appropriation), excluding Law Enforcement Structures³⁵, with a view to taking stock of the situation, i.e. the ethnic structure of staff in the institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina and cantons in the Federation of Bosnia and Herzegovina.

X – In 2016 and 2018, IHROBiH, in cooperation with UNICEF in Bosnia and Herzegovina, visited all institutions in the territory of the Federation of Bosnia and Herzegovina and Republika Srpska where minors in conflict with the law are institutionalised to serve sentences imposed. Following the visits, documents entitled “Analysis of the Situation in Institutions Accommodating Minors in Conflict with the Law in Bosnia and Herzegovina”³⁶ and “Report on the Implementation of the Recommendations from the Document Entitled Analysis of the Situation in Institutions Accommodating Minors in Conflict with the Law in Bosnia and Herzegovina”³⁷ were drafted. Starting from the best interest of children, IHROBiH tried to identify the main shortcomings and issues in the then structure of the institutional treatment of minors serving imposed penalties and offer relevant solutions and recommendations to the competent bodies which would essentially and pragmatically contribute to improving the status of minors in conflict with the law and provide support for the process of reforming their institutional treatment. However, IHROBiH revisited all institutions in 2021, which resulted in drafting the Special Report on the Situation in Institutions Accommodating Children in Conflict with the Law³⁸, and this time in addition to drafting the Report, IHROBiH drafted a comprehensive Methodology for Visiting Institutions Accommodating Children in Conflict with the Law Implemented with a View to Establishing the Situation³⁹. Namely, the Methodology represents a kind of matrix for representatives of the competent

³³ <https://www.ombudsmen.gov.ba/Download.aspx?id=284&lang=HR>

³⁴ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020022808504462cro.pdf

³⁵ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020072012451914cro.pdf

³⁶ <https://www.ombudsmen.gov.ba/Download.aspx?id=197&lang=HR>

³⁷ <https://www.ombudsmen.gov.ba/Download.aspx?id=242&lang=HR>

³⁸ <https://www.ombudsmen.gov.ba/Download.aspx?id=322&lang=HR>

³⁹ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2022012609485815cro.pdf

institutions in BiH or the non-governmental sector when visiting institutions for the execution of penalties in order to collect data on children accommodated there.

- ACTIVITIES – PROMOTION AND PROTECTION OF HUMAN RIGHTS

Pursuant to the IHROBiH Law, early every calendar year IHROBiH submits to the Presidency of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina, National Assembly of the Republika Srpska and Parliament of the Federation of Bosnia and Herzegovina annual reports⁴⁰ on the results of its activities, which are publicly presented and submitted to professionals, professional organisations, domestic and international organisations, civil society, the media and the public. Annual reports must provide the total number and nature of complaints received, the number of complaints that IHROBiH did not review and the reasons for that, and the number of complaints that were investigated and the findings of the lawyers assigned to the cases. Annual reports also present data on the number of IHROBiH recommendations issued and accepted by the competent authorities and statistical data on the number of issued recommendations not accepted by the competent authorities, i.e. unimplemented recommendations.

In addition to the topics covered in its special reports, IHROBiH issues press releases on current events in society and other IHROBiH activities carried out to protect and advance human rights in Bosnia and Herzegovina. They also note and mark important human rights dates in Bosnia and Herzegovina.

The IHROBiH website is a special outreach mechanism of IHROBiH for both the public and the media. On the website they can learn about their rights and procedures for exercising their rights, find other information falling within IHROBiH's competence, and they can also download the complaint form and file a complaint with IHROBiH by sending an email to the address of any of the IHROBiH offices.

With the support of a number of cities and municipalities and the OSCE Mission to Bosnia and Herzegovina, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina organises office days to facilitate citizens' access to IHROBiH as a mechanism for protection of their rights. When office days are held, IHROBiH lawyers receive complaints from natural persons and legal entities alleging human rights violations committed by any authority of Bosnia and Herzegovina and its entities. Office days⁴¹ are currently held in Tuzla, Bijeljina and Bihać.

In cooperation with the OSCE Mission to Bosnia and Herzegovina, the ombudspersons of BiH carry out an activity called "Ombudsperson in Your Town". The activity is aimed at reviewing the status of human rights in the field and enabling citizens to approach IHROBiH. In 2019, the ombudspersons of BiH visited^[1]: Prijedor, Prnjavor, Travnik, Gradiška, Foča, Trebinje, Istočna Ilidža, Zvornik, Livno, Posušje, Glamoč, Grude, Doboje, Višegrad and Ljubuški. However, due to the epidemiological situation, only one visit, namely to Novi Grad municipality^[2], took place in

⁴⁰ <https://www.ombudsmen.gov.ba/Default.aspx?id=8&lang=HR>

⁴¹ <https://www.ombudsmen.gov.ba/Default.aspx?id=41&lang=HR>

^[1] <https://www.ombudsmen.gov.ba/Download.aspx?id=301&lang=HR>

^[2] <https://www.ombudsmen.gov.ba/Download.aspx?id=313&lang=HR>

2020. In that period, IHROBiH made a decision to suspend this activity, taking primarily into account the health of both the staff and citizens approaching IHROBiH.

Since this activity has proved to be highly important for all local communities, IHROBiH continued it in 2021 and visited Sarajevo City^[3], Mostar City^[4], Trebinje City^[5], Bijeljina City^[6], and Jezero Municipality and Ilidža Municipality.

Therefore, IHROBiH acting on individual complaints is the most important form of the protection of human rights. IHROBiH, within its competence and capacities, also takes part in promotional activities and trainings on anti-discrimination, freedom of access to information, hate speech⁴², freedom of assembly, etc.

The systemic training of civil servants is undoubtedly needed in order to prevent violations of human rights. The continuing reluctance of the authorities to comply with IHROBiH recommendations and cooperate with IHROBiH is particularly worrisome. Therefore, IHROBiH stresses that the public administration needs to be further reformed and that it is not a one-time process but a long-term one instead, i.e. the reform is a permanent process. Strengthening the role of IHROBiH, as one of the institutions in which citizens place great trust, is becoming one of the imperatives in the process. In addition, IHROBiH is trying to influence and raise citizens' awareness about the impartial and professional judiciary, including the public administration which is primarily tasked with justifying the trust of citizens and society as a whole. IHROBiH believes that the authorities and institutions in Bosnia and Herzegovina need to act in a way that is not contrary to the rule of law in order to resolve these issues and must not create a feeling of insecurity in citizens, because such actions by the authorities would result in violations of individual human rights and fundamental freedoms.

Finally, the need therefore arises to further train civil servants, create an atmosphere in which the cooperation of the competent bodies with IHROBiH would be strengthened, and strengthen citizens' awareness about the rule of law, all of which represent the critical tasks of the state in this regard. The mentioned tasks are the priority and reaching European standards and improving the quality of citizens' lives will be impossible without resolving them.

THE INSTITUTION OF OMBUDSPERSONS OF BOSNIA AND HERZEGOVINA

^[3] Ombudsperson Jasminka Džumhur, PhD, on 24 May 2021

^[4] Ombudsperson Nives Jukić on 16 June 2021

^[5] Ombudsperson Professor Ljubinko Mitrović on 6 July 2021

^[6] Ombudsman Professor Ljubinko Mitrović on 6 September 2021

⁴² <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=2186&lang=HR>