

# 2021 ALTERNATIVE REPORT ON BOSNIA AND HERZEGOVINA'S PROGRESS ON THE ROAD TO THE EUROPEAN UNION MEMBERSHIP: POLITICAL CRITERIA

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**2021 Alternative Report on Bosnia and Herzegovina's Progress  
on the Road to the European Union Membership: Political Criteria**

Initiative for Monitoring the European Integration of BiH

[www.eu-monitoring.ba](http://www.eu-monitoring.ba)

Sarajevo, April 2022

**Title:** 2021 Alternative Report on Bosnia and Herzegovina's Progress on the Road to the European Union Membership: Political Criteria

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**Editor:** Edo Kanlić

**Language Editing:** Mirnes Sokolović

**Translation into English:** Prevodilačka agencija BARBADOS

**Design/Layout:** B.Ć.

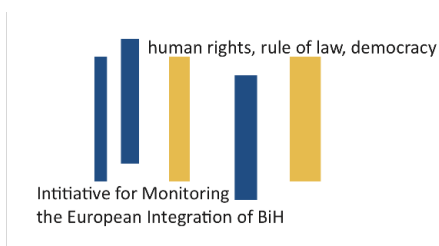
**Publisher:** Sarajevo Open Centre ([www.soc.ba](http://www.soc.ba)) on behalf of the Initiative for Monitoring the EU European of Bosnia and Herzegovina ([www.eu-monitoring.ba](http://www.eu-monitoring.ba))

**On behalf of the Publisher:** Emina Bošnjak

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This publication is the result of the work of civil society organizations within the Initiative for Monitoring the European Integration of BiH and associates outside this coalition. This publication is supported by the National Endowment for Democracy (NED).

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ISSN 2490-2160



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## ABBREVIATIONS AND ACRONYMS

APIK – BiH Agency for the Prevention of Corruption and Coordination of the Fight against Corruption  
APIK – Agency for the Prevention of Corruption and Coordination of the Fight against Corruption  
BD BiH – Brčko District of Bosnia and Herzegovina  
BiH - Bosnia and Herzegovina  
BiH CC – Criminal Code of Bosnia and Herzegovina  
CEPOL – European Union Agency for Law Enforcement Training  
CEC – Central Election Commission  
CoM BiH – Council of Ministers of Bosnia and Herzegovina  
CSO – Civil Society Organisation  
EC – European Commission  
ECtHR – European Court of Human Rights  
EU – European Union  
FBIH – Federation of Bosnia and Herzegovina  
HDZ BiH – Croatian Democratic Union of Bosnia and Herzegovina  
HJPC – High Judicial and Prosecutorial Council  
HLCOs – High Level Corruption Offences  
HNC – Herzegovina-Neretva Canton  
IHRO BiH – Institution of Human Rights Ombudsman of Bosnia and Herzegovina  
IOM – International Organization for Migration  
LAPPL – Law on Amendments to the Public Procurement Law  
LGBTIQ – Lesbians, Gays, Bisexual, Transgender, Intersex and Queer Persons  
MHRR BiH – Ministry of Human Rights and Refugees of Bosnia and Herzegovina  
NATO – North Atlantic Treaty Organization  
NA RS – National Assembly of the Republika Srpska  
ODP – Office of the Disciplinary Prosecutor  
OECD – Organisation for Economic Cooperation and Development  
OHR – Office of the High Representative  
OSCE – Organization for Security and Cooperation in Europe  
PA BiH – Parliamentary Assembly of Bosnia and Herzegovina  
PPA – Public Procurement Agency  
RS – Republika Srpska  
RTV FBiH – Federation of Bosnia and Herzegovina Radio and Television  
SC – Sarajevo Canton  
SDA – Party of Democratic Action  
TCMS – Automatic Case Management System in Prosecutor's Offices  
TC – Tuzla Canton  
UNCEDAW - United Nations Committee on the Elimination of Discrimination against Women  
USC – Una-Sana Canton  
ZDC – Zenica-Doboj Canton

## INTRODUCTION

When asked what they think of the country's European path, the most important political actors in Bosnia and Herzegovina will answer that they support full membership in the European Union. On the other hand, the results in meeting the 14 priorities of the Commission's Opinion on the Application of Bosnia and Herzegovina for the EU membership and the slowed down reform processes suggest that this support is mostly nominal. Same as in previous years, the Initiative for Monitoring the European Integration of Bosnia and Herzegovina<sup>1</sup> has prepared a report that looks at the country's reform processes and progress through the prism of civil society. The publication 2021 Alternative Report on Bosnia and Herzegovina's Progress on the Road to the European Union Membership: Political Criteria follows the structure of the European Commission's 2021 Report on Bosnia and Herzegovina in parts related to political criteria. The authors addressed the topics by referring to the expertise of the organizations they represent.

Although it was expected that after the period marked by the pandemic, 2021 would bring some progress on the reform and European path of BiH, judging by the results, it can be said that another lost year is behind us. It was marked by the decision of the High Representative to ban the denial of genocide and other war crimes and the glorification of war criminals, and by the boycott of the work of the State institutions by representatives from the Republika Srpska Entity that followed the adoption of the said decision. The boycott halted all political processes in the second half of the year, which had a negative impact on meeting the reform requirements for EU candidate status. The State legislative and executive bodies have been blocked, the Entity institutions in the RS have initiated the process of unconstitutional transfer of competencies from the State to the Entity, and the Federation of BiH has not implemented the results of the 2018 elections this year either. The situation has been further complicated by negotiations on reforming election law, which once again highlighted the opposing views of the ruling FBiH parties. Although there were some changes in the judiciary in 2021, such as the election of the new leadership of the High Judicial and Prosecutorial Council (HJPC) and the dismissal of the Chief State Prosecutor, no amendments to the Law on HJPC and other reform laws were adopted. No significant progress has been made in the fight against corruption either.

The pandemic had a negative impact on the human rights situation in BiH, which mostly affected vulnerable categories of the population. Although the High Representative's decision was welcomed by civil society with regret that it had not been brought in the State institutions, the denial of crimes and the glorification of war criminals remain in public. Increasingly visible historical revisionism and hate speech slow down the reconciliation process, and institutions do little to facilitate the exercising the rights of civilian war victims. The State does not ensure favourable conditions for the functioning of civil society, laws on freedom of assembly are not in line with European standards, and hate speech comes from top State officials. Most examples of positive practice have been initiated and advocated by civil society, as is the case in the field of environmental protection. Therefore, the contribution of this sector both in reporting on the progress of the country, but also in the decision-making processes from which it is excluded, is significant.

<sup>1</sup> The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of civil society organisations that contributes to the monitoring of reforms and oversees the application of European Union policies, laws and standards, focusing on the issues of democratisation, the rule of law, and human and minority rights. More information at: <https://eu-monitoring.ba/>

## CLUSTER 1: FUNDAMENTALS OF THE ACCESSION PROCESS

### Functioning of Democratic Institutions and Public Administration Reform

#### Democracy

#### Elections

After the December 2020 elections in Mostar, that had been waited for 12 years, the Mayor of Mostar was appointed in February 2021 and the first session of the newly elected City Council was held, thus partially fulfilling Bosnia and Herzegovina's (BiH) first priority from the European Commission's (EC) Opinion.

By more intensive engagement and mediation of the international community in dialogue with the representatives of the largest political parties, in May 2021, a significant shift was made in the launch of electoral and constitutional reform in BiH – a parliamentary Inter-Agency Working Group on Changes to Election Legislation in BiH was formed,<sup>2</sup> composed of one representative of each club of delegates in the House of Representatives, one representative of each club of peoples in the House of Peoples, and three representatives of the Council of Ministers of BiH (CoM BiH). The task of the Working Group was to prepare laws that would align the electoral framework with the judgment of the European Court of Human Rights (ECtHR) in the case "Sejdić-Finci v. BiH" and European standards.

The Working Group's mandate is to consult representatives of civil society, the Central Electoral Commission (CEC) and academic community in its work, but it has no obligation to do so, so this process remained only within the political representatives, without consultations and the possibility of delegating the proposals by the general public. Without concrete results, the Working Group held eight sessions, and its work was completely terminated after the leaving High Representative Valentin Inzko concluded his mandate in July 2021 by imposing amendments to the Criminal Code (CC BiH) prohibiting the denial of genocide and the glorification of war criminals, which was the reason for the blockade of the work of the State institutions by representatives from the Republika Srpska (RS). The High Representative's decision came after numerous unsuccessful calls, warnings and initiatives by the international community, the Office of the High Representative (OHR), the civil sector<sup>3</sup>, and victims' associations as to the inadmissibility of the practice of denying war crimes and glorifying war criminals.

The main actors of the talks on changes to the Election Law and "limited" constitutional reforms, with the help of the international community, were representatives of the largest political parties from the Federation of Bosnia and Herzegovina (FBiH) - the Party of Democratic Action (SDA) and the Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH). HDZ BiH insisted on the implementation of the Decision of the Constitutional Court of BiH in the "Ljubić" case, which would allow the principle of "legitimate representation" of the constituent peoples in the institutions of government, while the SDA gave priority to the implementation of the decisions of the ECtHR, which would allow all citizens of BiH, regardless of nationality, the right to be elected to the institutions of government. After a series of meetings and representing opposing views,

<sup>2</sup> It was formed following an invitation from the Committee of Ministers of the Council of Europe to the Bosnia and Herzegovina authorities to prepare draft amendments to the Constitution and the Election Law by 1 September 2021 to ensure that 2022 elections are held in accordance with the European Convention on Human Rights.

<sup>3</sup> More at: [https://www.dwp-balkan.org/bh/news.php?cat\\_id=4&text\\_id=620](https://www.dwp-balkan.org/bh/news.php?cat_id=4&text_id=620)



there was no agreement on changing the Election Law, and therefore no “limited” constitutional reform.

Early elections for the Mayor of the City of Prijedor were held on 12 December 2021. According to the preliminary assessment of the Coalition for Free and Fair Elections “Pod lupom”, the elections took place “in accordance with the BiH Election Law and implementing acts in most of the observed polling stations, with recorded irregularities, some of which represent potentially serious violations of election rules”<sup>4</sup>.

In order not to repeat the case from 2020 when the BiH institutions did not provide funds for the holding of elections, which is why the Local Elections were delayed by a month, in April 2021, the MP in the House of Representatives of the Parliamentary Assembly of BiH (PA BiH) Saša Magazinović sent to the parliamentary procedure a proposal for amendments to the Law on Financing of BiH Institutions, which provides for the financing of elections even when the budget has not been adopted, i.e., during the interim financing of institutions. The PA BiH did not adopt this proposal, and BiH entered 2022 without an adopted budget, with uncertainty whether the General Elections would be held on time. In September 2021, the CEC BiH reached a conclusion on the adoption of the Initiative for the adoption of the Law on Amendments to the BiH Election Law. The proposal was sent to the parliamentary procedure, but was not considered by the end of the year.

Some progress in the inclusion of civic initiatives and the opening of the issue of lack of gender equality as a constitutional category in the process of constitutional reform came from the Ministry of Human Rights and Refugees (MHRR BiH), which, in December 2021, through the Gender Equality Agency, organized a joint thematic session of parliamentary commissions<sup>5</sup> on the implementation of the UNCEDAW Committee’s recommendations on the Sixth Periodic Report on the Implementation of the UNCEDAW Convention. The Citizens for Constitutional Change Initiative and the BiH Gender Equality Agency’s gender amendments were presented at the session, which would incorporate a gender perspective into the BiH Constitution.

During 2021, the EU showed a greater interest in participation of citizens in the process of constitutional changes in BiH and launched a Citizens’ Assembly project that gives citizens in BiH the opportunity to express their views on constitutional and electoral reforms directly and to recommend concrete solutions for elimination of discriminatory provisions from the BiH Constitution and improving the Election Law.<sup>6</sup>

## Parliament

The PA BiH continued with extremely weak parliamentary activities in 2021, and in this year, it recorded a much worse result than in the previous reporting period.

The PA BiH House of Representatives held only 12 sessions, while the House of Peoples held only 8 sessions, 2 of which were urgent. During 2021, only 2 legal solutions were adopted in both Houses, namely the Law on Amendments to the Law on Civil Procedure before the Court of BiH<sup>7</sup> in February, and the Law on Amendments to the Law on Aliens<sup>8</sup>, which was adopted by the House of Representatives in December 2020, and was

4 Preliminarna ocjena izbornog dana za prijevremene izbore za gradonačelnika Grada Prijedor (Preliminary assessment of the election day for the early elections for the Mayor of the City of Prijedor). Pod lupom, available at: <https://podlupom.org/press-kutak/vijesti/preliminarna-ocjena-izbornog-dana-za-prijevremene-izbore-za-gradonačelnika-grada-prijedor/>

5 The Constitutional-Legal Committees of the House of Peoples and the House of Representatives, Joint Committee on Human Rights and Committee on Gender Equality of the House of Representatives of the Parliamentary Assembly of BiH

6 The Citizens’ Assembly consists of 57 randomly selected citizens of BiH, 4,000 of whom received an invitation in the first round from the EU, US and OSCE Mission ambassadors in BiH to express their interest in participating in the Citizens’ Assembly.

7 The Law is available at: <https://www.parlament.ba/olaw/OLawDetails?lawId=90468>

8 The Law is available at: <https://www.parlament.ba/olaw/OLawDetails?lawId=89546>

confirmed in the House of Peoples in January 2021. The reason for weak parliamentary activity at this level of government was also the decision of the RS MPs not to attend the PA BiH sessions, after amendments to the CC BiH by the OHR. On 26 July 2021, the representatives of parliamentary parties from the RS reached the conclusion "that there are no conditions for the work of Serb representatives in the institutions of BiH".

The National Assembly of the Republika Srpska (NA RS) held<sup>9</sup> 6 regular and 9 special sessions at which<sup>10</sup> 48 legal solutions were adopted. After the High Representative passed amendments to the CC BiH, this legislative body adopted the Law on Non-Implementation of the Decision of the High Representative adopting the Law on Amendment to the CC BiH<sup>11</sup>, as well as the Law on Amendment to the Criminal Code of the Republika Srpska<sup>12</sup>. The Amendment to the Code defines "Violation of the reputation of the RS and its peoples", and as stated in the added Article of the Code, "if the RS is designated as an aggressor or genocidal creation or its peoples as aggressor or genocidal, the perpetrator shall be punished by imprisonment from six months to five years". In December<sup>13</sup>, the NA RS adopted information on "transfer of competencies from BiH to the RS level" in the field of indirect taxation, justice, defence and security, and it had previously adopted the Law on Medicines and Medical Devices in October, which provides for the establishment of an Entity agency for medicines, which has been operating at the State level since 2009.

The FBiH Parliament has not been much more active than in 2020, and the parliamentary majority in this House has not functioned properly since the 2018 elections, after which the FBiH Government, which works in a technical mandate, was not formed. The main reason for the absence of greater dynamics of work at this level of government is the lack of agreement regarding the amendments to the BiH Election Law, by which the HDZ BiH has practically conditioned the formation of a new government after the 2018 General Elections.

During 2021, the House of Representatives of this legislative body held<sup>14</sup> 10 regular sessions, as well as 2 extraordinary sessions, and throughout the year, sessions were held in Hills Hotel in Ilidža due to the Covid-19 pandemic. The House of Peoples of the FBiH Parliament met 15 times<sup>15</sup> and held 9 sessions. As it can be concluded from the minutes of the sessions, 19 proposals of laws were adopted in the House of Representatives, while all the minutes from the sessions of the House of Peoples are not fully available, so it is not possible to determine the exact number of adopted laws in this House through the website. The adopted laws include the Law on Amendments to the Law on Unified System of Registration, Control and Collection of Contributions, the Proposal of the Law on Bankruptcy, the Proposal of the Law on Amendments to the Law on Agriculture, which were adopted in the House of Representatives of the Federation Parliament, as well as the Proposal of the Law on Parents-Caregivers in the FBiH, the Proposal of the Law on Amendments to the Law on Pension and Disability Insurance, the Proposal of the Law on Amendments to the Law on Spatial Planning and Land Use at the FBiH level, which were adopted in the House of Peoples of this Parliament.

## Governance

The work of executive authorities in BiH has been largely stalled. As was the case the previous year, the deadline for the adoption of the State budget in 2021 was broken.<sup>16</sup>

9 News from the NA RS sessions available at: <https://www.narodnaskupstinars.net/?q=la/narodna-skup%C5%A1tina/sjednice/vijesti-sa-sjednica-nrsr>

10 The laws adopted in the NA RS are available at: <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni>

11 The Law is available at: <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-neprijemljenjavanju-odluke-visokog-predstavnika-kojom-se-donosi-zakon-o-dopuni-krivi%C4%8Dnog-zakona-bosne-i-hercegovine>

12 The Law is available at: <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-dopuni-krivi%C4%8Dnog-zakonika-republike-srpske>

13 The text of the Declaration is available at: <https://www.narodnaskupstinars.net/?q=la/vijesti/okoni%C4%8Dana-24-posebna-sjednica-usvojenadeklaracija-o-ustavnim-principima-i-%C4%8Detiri-informacije-o-prenosu-nadle%C5%BEnosti-sa-zaklju%C4%8Dcima>

14 Minutes of the sessions of the House of Representatives of the Parliament of the Federation of BiH available at: <https://predstavnickidom-pfbih.gov.ba/zapisnici-sa-sjednica?page=2>

15 Information on the sessions of the House of Peoples of the Parliament of the Federation of BiH is available at: [https://parlamentfbih.gov.ba/v2/1r/sjednice.php?sjed\\_kat=1](https://parlamentfbih.gov.ba/v2/1r/sjednice.php?sjed_kat=1)

16 The Decision is available at: [https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja\\_sa\\_sjednica/default.aspx?id=36556&langTag=bs-BA](https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=36556&langTag=bs-BA)

The CoM BiH, led by Zoran Tegeltija, has held 45 regular sessions to date, and the current composition has sent 10 laws to the parliamentary procedure, of which seven<sup>17</sup> have been adopted. Although it is possible to find on the CoMBiH's official website the 2020 to 2022 CoM's Medium-Term Work Programme<sup>18</sup>, which states 71 legal solutions that should be proposed by the CoMBiH, it is certain that the fulfilment of this programme will not be satisfactory, just as the fulfilment of pre-election promises<sup>19</sup> made by the parties that formed the government is not satisfactory. The only promise fulfilled concerns the implementation of the Decision of the BiH Constitutional Court for the City of Mostar.

The CoM BiH did not decide on the Draft Reform Programme of BiH for 2021, submitted by the Commission for Cooperation with NATO on 1 June 2021<sup>20</sup>. It took more than three months for CoM Chairman Zoran Tegeltija to schedule<sup>21</sup> the resumption of the 43rd regular session on 4 November 2021. The slowed down work of BiH institutions was halted after the beginning of the boycott by political actors from the RS and was not fully resumed by the end of the year. This called into question the implementation of the Reform Programme and the implementation of<sup>22</sup> 14 priorities from the EC Opinion on the EU membership of BiH.

In 2021, the RS government held 47 sessions. When it comes to the realization of the measures and pre-election promises of the parties that make up this government<sup>23</sup>, 17 out of 149 promises recorded by the Istinomjer during the election campaign for the 2018 General Elections were fulfilled. Most of the fulfilled promises were realized in the first two years of the mandate and they are mostly the promises whose implementation started before this mandate or some infrastructure projects implemented in cooperation with local communities.

The FBiH President, FBiH Vice-Presidents and the new FBiH Government have not been appointed since the 2018 General Elections. The appointment of the new government is conditioned by the adoption of the Election Law, but also by the resolving of other issues, such as the appointment of a new director of the Federal Police Administration, the issue of the FBiH Constitutional Court<sup>24</sup>, which has a problem with the lack of four judges, the issue of the management structures of RTV FBiH, etc. The only issue resolved in 2021 was the appointment of a new Securities Commission. The decision was taken 12 years after the five-year term of office of the then members of the Commission had expired, thus unblocking many of the financial processes that had been halted because the Commission had no quorum for decision-making. When it comes to the work of lower levels of government, the end of last year was marked by the transformation of several Cantonal Governments in FBiH, thus restructuring the Sarajevo Canton (SC) Government and the Tuzla Canton (TC) Government. Anti-corruption offices have been established in several Cantons, however, only the TC Government has adopted a mechanism to prevent nepotism and party employment in administrative bodies and other institutions founded or co-founded by the TC, making this Canton the only one in BiH in which this or a similar mechanism is in force. Local governments are still one of the most active levels<sup>25</sup>. However, the 2020 Local Elections did not bring anything new when it comes to women's representation in politics. Of 425 candidates for mayor, there were only 29 female candidates, which was 6.82% of the total, while only three women mayors were elected.

17 More at: <https://ba.parlamenti.si/legislativa>

18 Programmes and reports of the Council of Ministers of BiH are available at: [https://www.vijeceministara.gov.ba/akti/program\\_rada/Archive.aspx?langTag=bs-BA&pageindex=1](https://www.vijeceministara.gov.ba/akti/program_rada/Archive.aspx?langTag=bs-BA&pageindex=1)

19 Vijeće ministara BiH tokom dvije godine mandata provodilo aktivnosti na manje od pola datih obećanja (The Council of Ministers of BiH conducted activities for less than half of the promises during its two-year term). Istinomjer, 28. 12. 2021., available at: <https://istinomjer.ba/vijeca-ministara-bih-tokom-dvije-godine-mandata-provodilo-aktivnosti-na-manje-od-pola-datih-obećanja/>

20 Podrška informaciji Komisije za saradnju sa NATO (Support to the information of the Commission for Cooperation with NATO). RTRS, 01 June 2021., available at: <https://lat.rts.tv/vijesti/vijest.php?id=433915>

21 Tegeltija zakazao sjednicu Vijeća ministara BiH koja je odgođena u julu, na dnevnom redu i ANP (Tegeltija scheduled the session of BiH Council of Ministers postponed in July; ANP on the agenda). Klix, 02 November 2021., available at: <https://www.klix.ba/vijesti/bih/tegeltija-zakazao-sjednicu-vijeca-ministara-bih-koja-je-odgođena-u-julu-na-dnevnom-redu-i-amp/211102140>

## Civil Society

As a result of the economic crisis created as a consequence of the COVID-19 pandemic, local associations and foundations involved in social and humanitarian work have had multiple requests for support to socially disadvantaged groups in society. The imposed measures of prohibition of movement and action in most cases did not exclude CSOs, and these measures further affected their activities in providing support to citizens. Limited progress has been made in addressing a key priority in the Opinion on ensuring a favourable environment for civil society, in particular by adopting a new law on freedom of assembly in BD BiH<sup>26</sup>, largely in line with EU standards.

The challenges are the lack of transparency in CSO funding and the failure to meaningfully involve civil society in public policy consultations at all decision-making levels. The negative effects of widespread corruption and signs of political capture continued to manifest strongly during the pandemic, directly affecting the well-being of citizens.

According to the Monitoring Matrix on Enabling Environment for Civil Society Development Report 2020 for Bosnia and Herzegovina<sup>27</sup>, the results of the BiH Ministry of Justice, which in 2016 undertook to collect the annual financial statements of associations and foundations and thus control the work of CSOs with the aim of preventing money laundering, are not visible. The challenge is also to define the status of CSOs that do not comply with legal obligations and do not submit financial statements to the competent authorities, or do not submit copies thereof to the BiH Ministry of Justice, which further complicates the process of monitoring the work of CSOs. While competent institutions do not initiate investigations in such cases, there are grounds for suspicion of selective and non-transparent criminal prosecution and judicial monitoring of CSOs that are the target of investigations into corruption and abuse of office.

The FBiH Tax Administration has published an overview of taxpayers with the amount of debt based on taxes, contributions, fees and other charges above EUR 25,000.00, according to the records of the Cantonal Tax Administrations, on 31 December 2021. Of 4,405 legal entities on the list, only 33 are associations, while the rest are sports clubs/associations<sup>28</sup>. This additionally speaks of the need to separate associations and foundations according to their primary activities, which would additionally help in obtaining accurate data on associations and foundations that are not characterized as related to sports, veterans, etc.

CSOs were not protected or supported by the Government to adequately cope with the consequences of the COVID-19 crisis, because the prohibition and restriction of movement affected the implementation of their activities (implementation of projects, provision of services, sale of products), while costs were still present (personnel salaries, running costs, etc.). In addition, they continued to face the negative consequences that have followed them since 2020. Uncertainty in restoring adequate economic resources for the future and the enormous impact that the pandemic has had on CSO elements can jeopardize hundreds of jobs and acquired skills, creating tensions within organizations (both personal and work groups, and even users and the local community). Certainly,

22 Dvije godine od Mišljenja EK – godine koje su pojeła “mišljenja o Mišljenju” (Two years after the EC Opinion - the years that ate the “opinions on the Opinion”). Istinomsjer, 26 May 2021, available at: <https://istinomsjer.ba/dvije-godine-od-misljenja-ek-godine-koje-su-pojela-misljenja-o-misljenju/>  
23 Vlada RS ispunila 17 obećanja za tri godine mandata (The RS government has fulfilled 17 promises in three years). Istinomsjer, 17 December 2021, available at: <https://istinomsjer.ba/vlada-rs-ispunila-17-obecanja-za-tri-godine-mandata/>

24 More at: [https://www.ustavnisudbih.ba/bs/open\\_page\\_nw.php?l=bs&pid=86](https://www.ustavnisudbih.ba/bs/open_page_nw.php?l=bs&pid=86)  
25 Čelnici 15 općina i gradova provodili aktivnosti na ispunjavanju dvije trećine obećanja (Leaders of 15 municipalities and cities carried out activities to fulfill two thirds of the promises). Istinomsjer, 22 December 2021, available at: <https://istinomsjer.ba/celnici-15-opcina-i-gradova-provodili-aktivnosti-na-ispunjavanju-dvije-trecine-obecanja/>

26 International Community representatives commend the adoption of the Law on Peaceful Assembly by the Brcko District Assembly | OSCE (available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/458428>)

27 Full report available at: [https://civilnodrustvo.ba/wp-content/uploads/2021/11/63-5-BiH-Country-Report-2020\\_FINAL\\_compressed-1.pdf](https://civilnodrustvo.ba/wp-content/uploads/2021/11/63-5-BiH-Country-Report-2020_FINAL_compressed-1.pdf)

28 More at: PUFBiH, <http://www.pufbih.ba/v1/novosti/2258/pregled-poreznih-obveznika-sa-iznosom-duga-preko-5000000-km-na-dan-30092021godine>

the impact of CSOs on human resources is strictly related to the inability of CSOs to obtain assistance from local authorities.

During 2021, in addition to several regulations at the Entity and Cantonal levels on supporting certain sectors<sup>29</sup>, no concrete mechanisms were observed in supporting vulnerable groups during COVID-19 by CSOs that continued to work on their own initiative and adapt their programs to the needs of society. In BiH, most CSOs could not apply for local economic recovery measures, such as those in the private sector. As a result, CSOs have largely continued to seek non-governmental and international resources to obtain the financial and material support needed in the "urgent" phases of work, as was the case in 2020<sup>30</sup>. At the same time, there are very few open calls for proposals for projects in this regard. The adoption of a framework for transparent CSO funding remains unresolved. There was a decrease and diversion of public funds intended for CSOs during the 2020 pandemic, and this trend continued in 2021.

Amendments to the programmes of Ministries at the Entity and Cantonal levels in 2020 and 2021 mainly redirected funds to other items due to the limitation and cancellation of numerous events and project activities of CSOs due to the COVID-19 pandemic. There are different procedures (especially in administrative organizations, funds, etc.) for allocating CSO funds, i.e., the procedures for allocating funds are still different in the segment related to regulating the allocation procedure through the creation of application forms, the rights of applicants, during and after the allocation procedure, the manner of evaluating applications, etc. Untimely publication of calls for funds, delays in the allocation of funds or the allocation of funds after the expiry of the year or the deadline defined by the contract for the allocation of funds, are very present in the administrative bodies. Essential analyses and monitoring of the submitted reports on the implementation of certain allocated funds are not carried out in order to collect the necessary data to examine the situation in a particular area in order to find the best possible solutions or strategies for future activities. In most cases, the allocation of grants from the current reserve is still without a previously published call. CSOs plan minimum funds for government funding<sup>31</sup> and there is a relatively low level of preparedness of BiH associations and foundations to withdraw funds approved by the competent authorities due to insufficient quality of projects, reduced number of applications, failure to meet the requirements of the public call and failure to submit reports on the dedicated spending of funds.

## Public Administration Reform

One of the key priorities of the EC Opinion on the BiH's application for EU membership is also public administration reform, which requires the formation of a more efficient, accountable and transparent public administration. Public Administration Reform in BiH is outlined in the Strategic Framework for Public Administration Reform 2018-2022<sup>32</sup>, adopted by the CoM BiH in September 2018, and the Public Administration Reform Action Plan<sup>33</sup>, adopted in December 2020.

SIGMA Monitoring Report<sup>34</sup> for 2021 indicates limited progress of BiH in public administration reform, emphasizing that this is the conclusion of a partial assessment of selected areas of public administration in BiH, which include policy development



29 Decree on intervention measures to support vulnerable sectors of economy of the Federation of Bosnia and Herzegovina in circumstances of the COVID 19 pandemic: <https://www.paragraf.ba/proписi/fbih/uredba-o-interventnim-mjerama-za-podrsku-ugrozenim-sektorima-privrede-federacije-bosne-i-hercegovine-u-okolnostima-pandemije-covid-19.html> and Decision on indirect tax exemptions and tax refund of already paid indirect taxes on equipment and resources donated by domestic and international entities for prevention and suppression of COVID-19: <https://www.paragraf.ba/proписi/bih/odluka-o-oslobadjanju-od-obracuna-i-placanja-indirektnih-poreza-i-povratu-vec-placenih-indirektnih-poreza.html>

30 Research available at: <https://civilnodrustvo.ba/novo-istrazivanje-uticaj-covid-19-na-civilno-drustvo-u-bih-tokom-2020-godine/>

31 This kind of data should be taken with reserve since a large number of CSOs do not have a strategy of raising funds at all or a strategic approach to the development of the organization, is the conclusion made on the basis of the research on the impact of COVID-19 on civil society, 2020, Centre for Civil Society Promotion Sarajevo.

32 More at: <https://parco.gov.ba/wp-content/uploads/2016/08/Strateski-okvir-RJU-BOS-2018-2022.docx>

33 More at: <https://parco.gov.ba/wp-content/uploads/2016/08/BOSANSKI-AP-JULI-2020.pdf>

34 Report available at: <https://www.sigmaweb.org/publications/monitoring-reports.htm>

and coordination, accountability and two aspects of financial management (budget management and public procurement). While there is some progress, the implementation of the reform is continuously weak and failing to achieve the main objectives of the reforms. All civil service laws at all levels of government need harmonisation with European standards, in order to depoliticise the civil service. In addition, it is necessary to ensure proactive transparency of processes, digitalization, and the development of a methodological framework for monitoring the implementation of plans by all responsible institutions.

As stated in the State PAR Monitor Report<sup>35</sup>, decision-making powers are divided between the Entities and the BD BiH, and it is difficult to have only one central government institution in charge of policy making and coordination in BiH. This means that each of these levels of government has its own legal system governing this area. At the State level, the key legal acts that define the legislative framework and manage the decision-making processes are the Law on the CoM BiH, the Rules of Procedure of the CoM BiH, the Unified Rules for Legislative Drafting in the Institutions of BiH, and the Rules for Consultations in Drafting of the Legal Regulations in BiH.

The SIGMA Monitoring Report for 2021 states that, despite the fact that the processes of planning and monitoring of the work of institutions and the processes of policy and tools making are mostly regulated, detailed guidelines on sectoral strategic planning exist only in the RS and the BD BiH. There are significant problems with monitoring and reporting practices for key government documents and policy planning documents at all levels. Regulatory impact assessment, as ex ante policy analysis tool, is formally established at all levels, but is not used systematically and fully in practice.

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Lower levels of government have adopted their public financial management strategies for 2021-2025, but BiH still needs to create and adopt a strategy for reforming the public financial management at the State level. The EC Opinion for BiH cites a performance-based monitoring strategy as one of the eligibility criteria for sectoral budget support. The strategy at the State level aims to establish common reform priorities and coordinate the work of institutions. However, the EC Opinion indicates that public institutions at all levels lack the capacity for internal audit and adequate internal control. This is particularly noticeable in the field of public procurement, and in the backlog of public sector commitments (especially the health sector and public companies).

Although the practice of publishing the budget for citizens was launched in 2020, the transparency of the budget has not yet been achieved. The adoption of the budget was delayed, and thus the budget for 2021 was adopted at the end of July 2021, which was the case the previous year. When it comes to publishing information related to financial management and control, a proactive approach of Ministries is lacking and such information is not available on the Internet. The Law on the Financing of BiH Institutions defines the obligations to publish quarterly, semi-annual and annual reports on internal financial controls in the public sector, while the Law on Internal Audit of BiH does not define a deadline for the preparation of the consolidated annual report. The available reports of the Ministry of Finance on the implementation of the budget cover the period from 2011 to 2020.

BiH needs to launch a policy dialogue in reforming the governance of public finances that would be led by BiH institutions with the EC, sector development partners and international

35 Report available at: [https://weber-new.s3.us-west-2.amazonaws.com/wp-content/uploads/2018/11/21165139/BOSANSKA-13.09.2021\\_compressed.pdf](https://weber-new.s3.us-west-2.amazonaws.com/wp-content/uploads/2018/11/21165139/BOSANSKA-13.09.2021_compressed.pdf)

financial institutions. Also, it is necessary to improve external communication, bring reports closer to citizens, as well as implement an open data policy, publishing all budgetary data.

No progress has been made regarding the responsibility of public administration in BiH. Accountability mechanisms exist in the legislative framework at all levels, but their implementation is absent. There has been no progress when it comes to improving regulations that define the different functions of administrative bodies, or conditions for establishing, merging or abolishing them.<sup>36</sup> Recommendations of supervisory bodies, such as the Audit Offices of Institutions (BiH, FBiH and RS) and the Institution of Human Rights Ombudsman of BiH (IHRO BiH), are still almost not implemented.

When it comes to free access to information, there has been no progress in this area. The legislative framework for access to information formally provides access to public data, however, adequate oversight of the implementation of the law is lacking. In addition, "legal provisions on data protection and access to information continue to be interpreted in such a way that they protect private than public interests more."<sup>37</sup> Unlike other countries in the Western Balkans region, BiH has not established a special body in charge of overseeing the implementation of the law on freedom of access to information. Although certain competences have been given to the IHRO BiH, this institution does not have the authority or capacity to effectively implement the role of the supervisory authority in the part of freedom of access to information. In addition, the legislative framework does not provide for the obligation of proactive disclosure of data, while the Standards and Policy of Proactive Transparency have been adopted only at the State level. In the previous period, SIGMA supported the competent institutions by analysing the regulatory framework and prepared a model law on freedom of access to information, but the institutions did not take any steps as to amending the legal framework.

The Strategic Framework for Public Administration Reform 2018-2022 has defined some aspects for improving the beneficiary-oriented administration. However, there is still no specific road map in BiH, nor is there a strategy that deals exclusively with the provision of services. The legal basis for this area varies depending on the area in which the beneficiary is located. In 2021, there was no major shift in the country as to modernizing public services. The adoption of the Law on Electronic Identification and Trust Services for Electronic Transactions is still pending. The only significant improvement has been achieved at the level of BD BiH, where a single-counter system was introduced in the past year, as well as the Integrated System for Electronic Registration of Business Entities<sup>38</sup>, which significantly simplifies, accelerates, but also cheapens the whole process. The removal of bureaucratic barriers to registering new entities should also be accelerated in the other two Entities. In order to improve user-oriented administration – physical persons and legal entities, it is essential to work on modernization, simplification and digitization of services, and pay more attention to the users themselves and monitor their satisfaction with public administration services in BiH.

## Rule of Law and Fundamental Rights

### Chapter 23: Judiciary and Fundamental Rights

#### Functioning of the Judicial System

36 SIGMA, Monitoring Report: The Principles of Public Administration, Bosnia and Herzegovina, available at: <https://www.sigmaxweb.org/publications/Monitoring-Report-2021-Bosnia-and-Herzegovina.pdf>

37 Report on Bosnia and Herzegovina for 2021, available at: [https://europa.ba/wp-content/uploads/2021/10/izvjestaj-o-bosni-i-hercegovini-za-2021-godinu\\_1636467943.pdf](https://europa.ba/wp-content/uploads/2021/10/izvjestaj-o-bosni-i-hercegovini-za-2021-godinu_1636467943.pdf)

38 More at: <https://bizreg.osbd.ba/>



## Strategic Documents

In its Opinion on BiH's application for EU membership<sup>39</sup> and in its Report on BiH for 2021<sup>40</sup>, the EC has accurately identified all areas within the judiciary that need to be reformed and improved, which also form an integral part of the Justice Sector Reform Strategy. This is all in order to achieve the expected level of the State preparedness for the implementation of the EU *acquis* and European standards in the field of justice.

Consequently, in 2022 it is necessary that:

1. The BiH Ministry of Justice completes the development of the BiH Justice Sector Reform Strategy for the period 2021-2027 and the accompanying Action Plan;
2. The BiH Ministry of Justice develops a financial plan for the implementation of the BiH Justice Sector Reform Strategy for the period 2021-2027;
3. The CoM BiH adopts the BiH Justice Sector Reform Strategies for the period 2021-2027 and the accompanying Action Plan.

## Legislative and Institutional Framework

No progress was made in meeting the priority 6 of the Opinion, requiring the country to adopt the new Law on Courts of BiH and the new Law on the High Judicial and Prosecutorial Council (HJPC).

The BiH Ministry of Justice has prepared a Proposal of the Law on Amendments to the Law on the HJPC, which focuses on the integrity and accountability of the holders of judicial functions. At the end of June 2021, the Proposal was also adopted by the CoM BiH, and was sent for approval to the PA BiH, where it has not yet been adopted by the House of Peoples. The draft adopted by the CoM BiH and the PA BiH House of Representatives does not address the recommendations from the Opinion of the Venice Commission (VC) concerning the reasons for the dismissal of the Council members. The wording of "violations of the laws or other acts seriously damaging the reputation of the Council" has been retained, which would have to be further elaborated. The provision on the obsolescence of disciplinary proceedings remains disputed because the subjective period of obsolescence is linked to the Office of the Disciplinary Prosecutor (ODP) and their knowledge and treatment of lawsuits. However, there should only be an objective period of five years from the day on which the offence was committed, independently of the effectiveness of the work and conduct of the ODP.

The VC states in the Opinion that the allegations that the proposed measures on conflict of interest prohibiting judges and prosecutors from performing incompatible duties remain modest. They retain the current provisions and give judges and prosecutors, with only a few exceptions expressly provided for by law, the opportunity to engage in any duty and activity. Taking into account the dysfunction of the judiciary in BiH, the VC considers that the chance would be missed if this law did not limit the scope of activities that judges, prosecutors and Council members can perform, which could lead to an undue influence on their duties. The provision on providing information on income

39 Communication from the Commission to the European Parliament and the Council Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, <http://europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahhtjevu-Bosne-i-Hercegovina-za-%C4%BDlanstvo-u-Evropskoj-uniji.pdf>. See p. 7 the second (2) paragraph, p. 13 the third (3) paragraph, p. 13 the sixth (6) paragraph, p. 14 Recommendation no. 4 c), p. 14 Recommendation no. 4 d), p. 14 Recommendation no. 4 e), p. 14 Recommendation no. 6, accessed 02 March 2022.

40 Bosnia and Herzegovina 2021 Report, European Commission, see p. 15 Chapter 23: Judiciary and fundamental rights, p. 16 Functioning of the judiciary and Strategic documents.



and property only for members of the same household certainly does not contribute to the improvement of integrity in the judiciary, bearing in mind the space left in practice to transfer assets and interests to close relatives, e.g., adult children who do not live in the same household with the aim of avoiding verification and hiding the amount and manner of obtaining property. No misdemeanours or fines have been provided for judges and prosecutors who fail to provide initial and annual reports of assets and interests within the prescribed time limit, as well as for judges and prosecutors who knowingly, deceptively, provide inaccurate and incomplete information. The current solution puts judges and prosecutors in a comfortable position because they do not bear any sanctions if they do not provide asset and interest reports, or if they provide incomplete and inaccurate information.

Also, the amendments to the Law provide for the establishment of an Integrity Unit, as external monitoring of the work of the Unit and disciplinary procedures, that is, the involvement of independent experts in the verification of the work of the integrity unit. However, contrary to the VC's opinion, the provisions are not sufficiently clear and elaborated as regards functional independence and the composition of experts who have an advisory role, and the procedure for the selection of experts is not clear.

### Judicial Self-Governance Body

In February 2021, following the resignation of the previous president, who resigned amid corruption allegations, the new leadership of the HJPC was appointed. Although the platform of the new management was declaratively based on the fight against corruption, there were no visible results in terms of ensuring additional accountability of the Council members. On the other hand, pressures on the work of the HJPC persist, and the initiative for the formation of a special HJPC at the RS level directly delegitimizes the work and competence of this institution.

The HJPC Communication Strategy for the period 2022-2025 has been adopted, with accompanying guides for communicating of courts and prosecutors, which should improve the transparency of the work of the HJPC, as well as courts and prosecutors' offices. The preparation of the Strategy took 6 years, and the effects themselves are still not visible because the document adopted in December 2021 was not published until the end of the year.

The integrity unit under the HJPC, which should be responsible for the implementation of provisions related to the integrity of the holders of judicial functions, as well as members of the Council, and the control of property records, has not yet been established, bearing in mind that the necessary amendments to the Law on the HJPC have not been adopted. In addition, its very placement in the HJPC Secretariat puts under question its independence and impartiality in relation to the members of the Council themselves.

### Independence and Impartiality

The process of appointing judges and prosecutors has not been improved yet to achieve objectivity and transparency of the process. The comprehensive reform in the form of the adoption of the new Law on the HJPC foreseen one year after the adoption of the

so-called urgent amendments to the existing Law (transitional solution) has not been started due to delays in the adoption of urgent amendments.

Some progress has been made in improving the criteria for evaluating judges and prosecutors, and remains largely based on subjective elements, and standardization remains primarily quantitative. On the other hand, previous results and disciplinary procedures are insufficiently taken into account when appointing and promoting the holders of judicial positions, including the most responsible ones.

In addition to the undisputed prosecutorial discretion, which greatly affects the lack of impartiality, numerous affairs and disciplinary procedures that were in the public eye in the previous period, including the Chief Prosecutor of the BiH Prosecutor's Office, have shown the avoidance of objective and automated systems for the distribution of cases through the Automatic Case Management System in Prosecutors' Offices (TCMS). This indicates the presence of individual interference by the heads of judicial institutions in the distribution of cases with a view to influencing processes.<sup>41</sup>

### Accountability

The proposal for so-called urgent amendments specifies disciplinary violations of judges and prosecutors, provides for special disciplinary violations for the HJPC members, elaborates the provisions on conflicts of interest of the HJPC members, specifies judicial protection in the process of appointing and dismissing judges and prosecutors, provides for the procedure for filing reports on the assets and interests of judges and prosecutors, as well as the work of a special organizational Unit (within the framework of the HJPC Secretariat) for the conduct of procedures on reports. These are all measures that should strengthen integrity mechanisms in the judiciary by preventing conflicts of interest and unauthorised influences, as well as through the control of reports on the assets and interests of the holders of judicial functions. In the newly proposed solutions, however, not all the recommendations of the VC were followed, and so a possibility was left that some cases of conflicts of interest will be regulated in more detail by the HJPC rulebook, although the VC's view is that all circumstances regarding conflicts of interest must be provided for by law.

The Interim Investigative Committee for Inquiry into the State of the Judiciary began its work in June 2020 with the aim of investigating the situation in the judiciary, with particular reference to the ability of the HJPC to participate in the processes necessary on BiH's path to EU membership. However, the announced Draft Report of this Committee was not adopted in 2021. It was to be discussed at the Committee session, but this did not happen because of the blockage of<sup>42</sup> the State institutions.

When it comes to conducting disciplinary procedures against judges and prosecutors, the system is still ineffective, both due to the lack of the ODP's capacity and due to the increasing obstruction of the ODT's work, but also due to the complex procedure of determining disciplinary responsibility and the three-stage decision-making process. The Law stipulates that the ODP is, as a rule, obliged to resolve the citizens' complaint of a suspected disciplinary offense within two years from the date of receipt. However, the experience with complaints of Transparency International BiH shows that complaints are

41 BiH: Disciplinske prijave protiv glavne tužiteljice i predsjednika Suda BiH (BiH: Disciplinary charges against the Chief Prosecutor and the President of the Court of BiH). Voice of America, 02 April 2021, available at: <https://ba.voanews.com/a/bih-sud-tuzilastvo-disciplinske-prijave/5838162.html>

42 Izvještaj o stanju u pravosuđu na čekanju zbog blokade Parlamenta (Report on the State of the Judiciary pending due to Parliament's blockade). Detektor, 04 November 2021, available at: <https://detektor.ba/2021/11/04/izvjestaj-o-stanju-u-pravosuđu-na-čekanju-zbog-blokade-parlamenta/>

most often resolved within a year and a half to two years from the date of submission, which is too long a period of time. On the other hand, according to the ODP's data from the last available report, the average complaint handling time in 2020 was 276 days. This is 31 days shorter compared to the average of 307 days of complaint handling in 2019.

According to the data from the ODP's 2020 Annual Report, 722 complaints were filed in that year, 31 disciplinary procedures were initiated against the holders of judicial functions and 27 disciplinary measures were imposed (two dismissals from office). In a significant number of complaints, the complainants expressed dissatisfaction with court and prosecutorial decisions (82 complaints or 11%), and complained of negligent or careless performance of official duties by judges (64 complaints or 9%) and prosecutors (48 complaints or 7%). The number of founded complaints is only 5.5% of the total number of resolved complaints.

The penal policy is mild - the most common disciplinary measures imposed are public warnings and salary cuts. In particular, there was a controversial practice to anonymise final decisions imposing public warnings on judges and prosecutors, thus making the disciplinary measure imposed meaningless. The mild penal policy is, among other things, a consequence of very broad powers of disciplinary committees, i.e., the HJPC, in the process of determining disciplinary measures, which also leads to an uneven practice, but also disproportionately small penalties compared to the measures proposed by the ODP. One example of inefficiency in disciplinary procedure is the case against the President of the Court of BiH, Ranko Debevec. He was first issued a public warning for not listing the assets in the property record. Such a decision also raised the issues of the mild penal policy in disciplinary procedures against judges and prosecutors, and drew attention to the importance of prevention. By the second-instance decision, Debevec was relieved of disciplinary responsibility.

In addition, prosecutorial decisions review mechanisms remain ineffective – due to the high level of prosecutorial discretion and the very low level of requests for explanation of decisions, more than 90% of complaints against prosecutorial decisions are dismissed.<sup>43</sup> BiH still has the ten-year problem of establishing the Court of Appeals<sup>44</sup> at the State level, and many believe that apart from political reasons, there are no other legitimate reasons why this court should not be established, in the manner as regulated by the Entities.

### Professionalism and Competence

In addition to the dominant ethnic criteria that affect the selection of the most qualified candidates and the constant visible political pressures on the appointment processes, mechanisms for ensuring competence and professionalism are also threatened by the lack of timely supervision of the work of prosecutors and judges, and an inadequate system of standardisation of their work.

Thus, the HJPC BiH adopted a new Rulebook on orientational standards for the work of prosecutors in BiH prosecutors' offices, which increases the standards for prosecutorial decisions and at the same time reduces the standard for filing indictments. In the

43 Report available at: [https://osfbih.org.ba/images/Progs/17+/LP/Pubs/Je\\_li\\_pravda\\_u\\_BiH\\_zaista\\_slijepa.pdf](https://osfbih.org.ba/images/Progs/17+/LP/Pubs/Je_li_pravda_u_BiH_zaista_slijepa.pdf)

44 Manjak političke odgovornosti skoro deceniju koči osnivanje Apelacionog suda BiH (The lack of political responsibility is holding back the establishment of the BiH Court of Appeals for almost a decade). Detektor, 09 August 2021, available at: <https://detektor.ba/2021/08/09/manjak-politicke-odgovornosti-skoro-deceniju-koci-osnivanje-apelacionog-suda-bih/>

long run, this can have negative effects on the quality of work and resort to making a larger number of negative prosecutorial decisions instead of orders to investigate and file indictments. Again, the opportunity to introduce more qualitative criteria in standardisation was missed.

### Quality of work of the judiciary

The BiH judiciary has made some progress in the previous period in terms of proactively publishing information on work and publishing databases of court decisions and information on indictments. Nevertheless, this practice remains uneven and internal protocols and guidelines are very often applied which are unfoundedly placed before the Law on Freedom of Access to Information. As a result, requests for access to information by citizens, civil society and the media are very often unjustifiably rejected. This practice is particularly present in prosecutors' offices, where the delivery of basic information, including confirmed indictments, is refused under the pretext of endangering proceedings.

During 2021 Transparency International BiH conducted a survey on the monitoring of trials in corruption cases, where information was requested on ongoing and completed criminal proceedings in a total of 34 cases, and requests were sent to the addresses of 34 judicial institutions. The courts submitted information from 15 cases within the time limit set by law, and for 2 requests the information was submitted according to the stated urgency. The Sarajevo Cantonal Court demanded an additional time due to the higher number of requests. Differences between courts are also noticeable, and the practice of the Cantonal Court in Tuzla, which did not respond to any of the requests and according to the stated urgencies, is worrying. Some courts, such as the Cantonal Court in Bihać, the Basic Court in Banja Luka and the Court of BiH have demonstrated enviable transparency and up-to-datedness in their work by providing timely and complete information. However, there have also been cases where the courts consider that the fact that the proceedings have not been finally concluded means that the public does not have the right to access information from the case, which includes copies of the first-instance judgment.

In most cases, the courts pointed out in the decisions on the requests that they first required the approval of the acting judge for access to information from the case, although the Law on Freedom of Access to Information stipulates that the information officer acts independently in the first instance.<sup>45</sup>

### Efficiency

The judiciary in BiH still faces inefficiency and slowness when it comes to the prosecution's actions after the crimes have been committed and in terms of the length of proceedings before the court.

From September 2019 to mid-2021, the TI BiH monitored trials in corruption cases throughout BiH, and according to the findings from monitoring<sup>46</sup>, the average duration of first-instance proceedings is about three years and four months. Procedural indiscipline continues to characterize court proceedings in which corruption is prosecuted, so it

45 Izvještaj o primjeni Zakona o slobodi pristupa informacijama (Report on the implementation of the Law on Freedom of Access to Information). Transparency International BiH, Banja Luka, 2021. Available at: <https://ti-bih.org/wp-content/uploads/2021/09/Izvjestaj-FOI-2021-odvojene-tabele-WEB.pdf>

46 Available at: <https://ti-bih.org/izvjestaj-o-pracenju-sudjenja-u-predmetima-korupcije-2021/>

was determined on the monitored sample before the Court of BiH that hearings were scheduled on average every 22 days.

Of particular concern is that certain proceedings for prosecuting petty corruption (receiving bribes from a police officer in a smaller amount) have lasted more than eight years before the first-instance court. Such length of proceedings cannot be justified by anything and places a question mark on the entire repressive apparatus and the judiciary's reach in the fight against corruption. There is a similar practice in complex cases of so-called grand corruption. At the beginning of 2017, the indictment for criminal offences of organised crime related to abuse of official position or authority against the former director of the RS Banking Agency, Slavica Inajc (Bobar Banka case), was confirmed. The time of the commission of the criminal offence goes back to 2014, and the first-instance judgment has not yet been issued. There is almost no practice that trials in corruption cases take place in a concentrated manner or day by day, and such management of proceedings explains why (first-instance) judgments are so long awaited.

The only indictment for grand corruption filed by the BiH Prosecutor's Office in 2021 is the indictment against Selmo Cikotić for offense of abuse of public office that allegedly occurred between 2009 and 2011, i.e., more than 10 years before the indictment was filed. Inefficiency is also present in the resolution of administrative disputes. Analysing administrative disputes due to violation of the provisions of the Law on Freedom of Access to Information initiated by the TI BiH before the competent courts in the context of the length of proceedings before the court, it was concluded that disputes of this type are mostly resolved within 1-2 years from the date of filing the lawsuit.

The monitoring findings also show that the penal policy against corruption offences is predominantly mild. In the case of a classic offense of corruption - receiving gifts and other forms of benefits, and where the range of prison sentences (taking into account all forms of the offense) ranges from one to ten years of imprisonment, the established average prison sentence (as the criminal offence was most often committed in conjunction with other offenses) in relation to ten convicted persons was less than two years of imprisonment. Monitoring of corruption prosecution has also shown that, if the official rank of accused persons is observed, persons of middle official rank are most often prosecuted.

There is an interesting case against Mirsad Kukić, convicted of a criminal offence of accepting a reward or other benefit in exchange for trading in employment-related influence, which is punishable by imprisonment for a term between one to eight years. Mirsad Kukić was sentenced to one year's imprisonment in the first instance. Monitoring showed that the court lightly appreciated and found extenuating circumstances in relation to the convicted person, such as family circumstances, older age (58 years at the time of committing the offense), elapse of time (the offense was committed four years ago), proper behaviour during the proceedings, etc. The sentence imposed in this way in the case of political corruption that is extremely widespread in BiH will not have effect on the reduction of this socially unacceptable phenomenon, because the sentence of imprisonment for a term of one year (which can be replaced by a fine) will not achieve the goals of general prevention in terms of deterring possible perpetrators, holders of real political power, from committing corrupt practices.

## War Crimes Prosecution before the Domestic Judiciary

According to the Balkan Investigative Reporting Network Bosnia and Herzegovina (BIRN BiH), since the beginning of 2021, the BiH Prosecutor's Office has filed 14 indictments for war crimes, which is lower than in 2020<sup>47</sup>. The accused include four people already convicted by The Hague Tribunal and the State Court, which has sentenced 18 people to a total term of 116 years in prison during the past 12 months.

This downward trend in indictments filed continues from year to year, given that during 2020, 29 prosecutors of the State Prosecutor's Office<sup>48</sup> indicted 45 people in 16 indictments. In 2019, prosecutors filed 22 indictments against 32 people. In the period from July 2020 to July 2021, the Court of BiH<sup>49</sup> brought only a first-instance conviction against Srećko Aćimović, former battalion commander in the area of Zvornik, for the genocide in Srebrenica. In addition to the State judiciary, similar or the same problems can be found at Entity levels, so in the Cantonal Prosecutor's Office in Goražde<sup>50</sup> all war crimes cases are against unknown persons, and in one active case the accused are in Serbia and there is no possibility of forming a Court's Chamber.

The BiH judiciary faces the problem of non-implementation of the Revised War Crimes Processing Strategy, as the CoM BiH has not yet appointed the supervisory body. That is why the victims are increasingly dissatisfied with the Strategy and are not optimistic that the processing of the cases will be completed by 2023, as envisaged in this document. The statement of the acting Chief Prosecutor of the BiH Prosecutor's Office, Milanko Kajganić<sup>51</sup>, who told BIRN BiH that the public can no longer expect a large number of indictments as it used to be six or seven years ago, because there were a lot of cases then in which there was evidence.

According to the EC's 2021 Report, BiH should implement the Revised War Crimes Processing Strategy and adopt a new Strategy. The CoM BiH must establish a supervisory body without delay and ensure sufficient financial resources.

A particular problem in war crimes cases is poor regional cooperation<sup>52</sup>. Transferring war crimes cases to the judiciaries of neighbouring states through international legal assistance is a slow process that is rarely reported to victims, and in most cases, there is a delay in the feedback exchanged by courts through their countries' ministries of justice. The previous year marked 365 days from the day the identity of a protected witness in the war crimes case was revealed to the public, and the same period has passed since the BiH Prosecutor's Office opened an investigation but refuses to announce the stage of the investigation.

## Fight Against Corruption

According to this year's Corruption Perception Index<sup>53</sup>, BiH ranked third worst in Europe with a score of 35 on a scale from 0 to 100. This overall ranks it 110th out of 180 countries, with only Ukraine and Russia scoring worse. The score is the same as last year and is the worst in the last decade, because BiH, unlike the surrounding countries, has not made any progress in the fight against corruption, primarily due to political obstruction of key reforms.

47 Tužilaštvo BiH nastavilo trend podizanja optužnica protiv već osuđenih za ratne zločine (The BiH Prosecutor's Office has continued the trend of filing indictments against those already convicted of war crimes). Detektor, 30 December 2021, available at: <https://detektor.ba/2021/12/30/tuzilastvo-bih-nastavilo-trend-podizanja-optuznica-protiv-vec-osudjenih-za-ratne-zlocine/>

48 Još jedna godina u kojoj Tužilaštvo BiH ima više tužilaca nego optužnica za zločine (Another year in which the BiH Prosecutor's Office has more prosecutors than indictments for crimes). Detektor, 29 December 2021, available at: <https://detektor.ba/2020/12/29/jos-jedna-godina-u-kojoj-tuzilastvo-bih-ima-vise-tuzilaca-nego-optuznica-za-zlocine/>

49 Od prošlog jula izrečene dvije kazne za genocid u Srebrenici (Two sentences for genocide in Srebrenica have been brought since last July). Detektor, 08 July 2021, available at: <https://detektor.ba/2021/07/08/od-proslog-jula-izrecene-dvije-kazne-za-genocid-u-srebrenici/>

50 U Goraždu nema ko da sudi: Nedostatak dokaza i kapaciteta pravosudnih institucija u procesuiranju ratnih zločina (In Goražde there is no one to adjudicate: Lack of evidence and capacity of judicial institutions in prosecuting war crimes). Detektor, 14 December 2021, available at: <https://detektor.ba/2021/12/14/u-gorazdu-nema-ko-da-sudi-nedostatak-dokaza-i-kapaciteta-pravosudnih-institucija-u-procesuiranju-ratnih-zlocina/>

Although the total number of complaints in the work of prosecutors' offices for corruption offences increased in 2021 compared to 2020, it is still lower than the results recorded in 2018<sup>54</sup>. Of 1691 complaints, 16 or only 0.94% refer to complaints of high-level corruption offences (HLCOs), according to the definition adopted by the HJPC BiH. The number of complaints resolved for corruption offences increased compared to 2020 and there were 968 such reports in 2021. This number is still lower compared to 2018 and 2019. Only 9 resolved complaints or 0.92% refer to complaints for HLCOs.

The number of orders not to conduct an investigation for corruption offences increased to 555 during 2021. This reduced the share of these orders in the total number of resolved complaints to 57.3% (in 2020 it was 60.1%). Nevertheless, it increased compared to 2018 and 2019. In 2021, 514 investigations were initiated for corruption offences at all levels. Although this result is better than the one from 2020, it is worse compared to 2018 and 2019. Only 16 investigations (3.1% of the total) relate to HLCOs. In addition, the number of prosecutorial decisions related to orders to suspend the investigation of corruption offences increased in 2021 compared to 2020. The share of orders to suspend the investigation in the total number of solved investigations for corruption offenses during 2021 is 32.3%. This is a decrease compared to the period 2018-2020. It is important to note that in all prosecutorial systems there was a decrease in the share of negative prosecutorial decisions in the total number of resolved investigations during 2021, except at the level of the BiH Prosecutor's Office, where the share of negative prosecutorial decisions increased from 36.8% during 2020 to 55.5% during 2021. Specifically, out of 18 resolved investigations for corruption crimes at the level of the BiH Prosecutor's Office, as many as 10 were resolved by suspending the investigation.

During 2021, 235 indictments were filed for corruption offences. The biggest contribution was made by the FBiH prosecution system with 185 indictments filed. BiH and BD BiH prosecutors' offices filed fewer indictments than in 2020, while the RS prosecution system registered a slight increase. Only 6, or 2.5%, of the indictments are related to HLCOs. The fact that none of these 6 indictments were confirmed during 2021 is worrying. 227 convictions were brought for corruption offences, which represents an increase compared to 2020. Only at the level of the RS prosecution system, there was almost the same result compared to the previous year, while at other levels there was an increase. Five or 2.2% of convictions refer to HLCOs. Only 79 convictions impose sentence of imprisonment. Although this is a better result compared to the 2018-2020 period, it still accounts for only 34.8% of convictions. On the other hand, as many as 59.9% of convictions are verdicts with a suspended sentence, which is not at all dissuasive for possible perpetrators of these offences, especially considering the gravity of corruption offences, as well as the damage that corruption causes to society as a whole. The increase in the number of convictions is accompanied by an increase in the number of acquittals for corruption offences, of which there were 52 in 2021. In the past year, 147 final convictions were issued for corruption offences, which represents an increase compared to 2020. Only 4 judgments or 2.7 per cent refer to final judgments for HLCOs.

The existing legal protection of persons reporting corruption in BiH institutions, i.e., mechanisms for providing support and ways of eliminating harmful consequences due to reports of corruption are insufficiently developed and efficient. A very small number of persons have been granted whistle-blower status indicating an endemic



51 Intervju – Milanko Kajganić: Desetak optužnica za ratne zločine do kraja godine (Interview – Milanko Kajganić: A dozen war crimes indictments by the end of the year). Detektor, 30 October 2021, available at: <https://detektor.ba/2021/10/30/intervju-milanko-kajganic-desetak-optuznica-za-ratne-zlocine-do-kraja-godine/>

52 Godine čekanja na pravdu uslovljene i sporošću predmeta prosljeđenih susjednim državama (Years of waiting for justice conditioned also by the slowness of cases forwarded to neighbouring states). Detektor, 26 April 2021, available at: <https://detektor.ba/2021/04/26/godine-cekanja-na-pravdu-uslovljene-i-sporoscu-predmeta-prosljedjenih-susjednim-drzavama/>

53 More at: <https://www.transparency.org/en/cpi/2021/index/bih>

54 Izveštaj o monitoringu procesuiranja korupcije pred sudovima i tužilaštvima u Bosni i Hercegovini 2021 (Monitoring the Prosecution of Corruption in Courts and Prosecutor's Offices in Bosnia and Herzegovina 2021), Transparency International in Bosnia and Herzegovina, March 2022



lack of confidence in the protection mechanisms provided. Although the Law defines the competence of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) to provide administrative protection to corruption reporters, the practice shows that the valid application of the law is absent. Since the beginning of the application of the Law (beginning of 2014), a total of 24 requests for the granting of whistle-blower status have been received at the State level. The APIK did not grant the status to as many as 13, on the grounds that good faith could not be confirmed.<sup>55</sup> Corruption reporters who claim the status of a protected whistle-blower under the State law do not have the possibility to complaint against the APIK's decision, so everything is left to the discretion and practice of this institution.

Data on the application of the law in the RS indicate that the existing protection mechanisms are not at all or insufficiently used, and that there is significant lack of confidence in the institutions that implement the regulations and in the method of application of the protection guaranteed by laws. Only 4 court proceedings were initiated in the RS for the protection of corruption reporting persons since the adoption of the Law in mid-2017. The mechanism for reporting and publishing data on corruption reporters enjoying legal protection has not yet come to life in the RS. Although the law in BD BiH was adopted in 2018, the Director of the Office for Prevention of Corruption and Coordination of Anti-Corruption Activities was appointed only in 2021. Although the Draft Law on the Protection of Corruption Reporters in the FBiH has been in parliamentary procedure for several years, this law has not yet been adopted. Corruption reporters are unprotected in this Entity.

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Paper 63

When it comes to punishing of conflicts of interest, the work of the Commission at the BiH level was unblocked by the appointment of a new composition in July 2020. The newly formed Commission then found cases that had not been resolved by the previous Commission. Although a move has been made by initiating procedures, the fact is that the Commission's actions lack timeliness, and with the blockade of the work of the Parliament and the BiH institutions that followed in 2021, the work of this Commission has been halted again.

There is no institution in the FBiH competent for the application of the FBiH Law on Conflict of Interest, although a large number of officials are in a conflict of interest, abusing the absence of this body. According to the Register of Public Office Holders<sup>56</sup> prepared by Transparency International BiH, five MPs in the FBiH Parliament are simultaneously in the administration of public enterprises and institutions. Another 22 officials at the Cantonal level perform additional functions, of which 6 cases refer to ministers in the technical mandate. Also, 41 mayors or councillors in the FBiH are in a conflict of interest due to positions or membership in supervisory boards, management boards of public companies, institutions and the like.

In its decisions and opinions, the RS Commission competent for Law implementation has arbitrarily interpreted the law, which resulted in many unpunished cases of conflict of interest. In most reports of conflicts of interest, it found reasons to avoid the application of the law. The proceedings were suspended in cases against MPs in the NARS who were acting directors of public companies at the same time. It stated that the function of the acting director is temporary, although the Law is unambiguous and does not

<sup>55</sup> Monitoring provođenja antikorupcijskih politika u Bosni i Hercegovini (Monitoring the Implementation of Anti-Corruption Policies in Bosnia and Herzegovina), Transparency International in Bosnia and Herzegovina, December 2021. Available at: <https://acmonitor.ti-bih.org/bs-Latn-BA>

<sup>56</sup> More at: <https://registar.transparentno.ba/bs-Latn-BA>



distinguish between the acting director and the director, and prohibits the elected representatives from being directors of public companies at the same time or three months after the termination of the public office. The Commission also acted similarly with MPs who simultaneously served as directors of local public enterprises, narrowing the interpretation of the law solely to the Entity level. Over the years, there has been a marked decline in the number of decisions adopted and other acts of the Commission. In the last available 2020 Report, the Commission did not identify any cases of conflict of interest, and 4 cases of conflict of interest were identified in 2019 and 2018.

The functioning and coordination of anti-corruption bodies with each other and with APIK remain ineffective. Some progress has been made regarding the professionalisation of Cantonal anti-corruption bodies, the establishment of a professional Office by the TC, and the initiation of the establishment of an Office in the Zenica-Doboj Canton (ZDC). Nevertheless, there is a noticeable lack of action by the APIK, which should be the central point of coordination of all bodies in the field of corruption prevention. The lack of capacity and clear competences of other anti-corruption bodies is also noticeable. There have not been established any adequate mechanisms and methods to ensure regular and continuous reporting on the implementation of plans at lower levels, as well as integrity plans, as well as on the needs for their modification or updating.

In addition, there is still evident lack of compliance with the recommendations of supervisory institutions, such as the competent public sector audit services, the Public Procurement Agency, the CEC, etc., as well as the obstruction of strengthening the capacity of these institutions to ensure timely supervision of the actions of public authorities and political parties and to prevent abuses.

The legislative framework in the field of fight against corruption remains the worst in the FBiH, which has not yet adopted the Law on Conflict of Interest (repealed since 2013) and the Law on the Protection of Corruption Reporters. The last one has been in parliamentary procedure since 2018. The proposal for amendments to the FBiH Law on Conflict of Interest adopted in December 2021 in the House of Representatives of the FBiH Parliament does not comply with international standards<sup>57</sup>. It does not provide for the independence of the law enforcement bodies, as the Commission for Conflict of Interest would be composed of representatives of the FBiH Parliament. The Law on the Prevention of Conflict of Interest in the Institutions of BiH, initiated by Transparency International BiH, international organizations and certain MPs in the House of Representatives of the PA BiH has not yet been finally adopted<sup>58</sup>.

Since the end of 2019, BiH has not had a strategic framework for the fight against corruption. At the beginning of 2020, and after the expiry of the previous Anti-Corruption Strategy, the APIK sent a new Strategy and the related Action Plan for the period 2020-2024. The CoM BiH has not yet adopted the proposal. This also affected the adoption of strategic documents at the level of the FBiH and the Cantons, so that only the Action Plan covering the period from 2021 to the adoption of the new Strategy was adopted at the level of the FBiH, while in the Cantons there is an uneven practice. The TC has adopted a new long-term strategy, the ZDC is in the procedure of adopting the strategic documents, while some Cantons are waiting for the adoption of a new State strategy in order to align their strategic documents with it. On the other hand, the

<sup>57</sup> Following a public hearing held in February 2022, it was announced that the Proposal of the Law would undergo a refinement process in order to align it with the comments made by representatives of the international community and the non-governmental sector.

<sup>58</sup> The PA BiH House of Representatives re-adopted it under urgent procedure on 9 March 2022. On 23 March 2022, the House of Peoples of the PA BiH refused to consider this Proposal in an urgent but abbreviated procedure, so it was returned to the regular procedure. The BiH Ministry of Justice, meanwhile, withdrew its draft of this Law, which the CoM BiH sent to parliamentary procedure, because it is not in line with the Venice Commission's comments and international standards.

Entity strategic documents do not necessarily follow the strategic documents adopted at BiH level, which has resulted in further decentralisation of the process of strengthening institutional integrity. The RS Anti-Corruption Strategy and the accompanying Action Plan have been adopted for the period from 2018 to 2022, but the competent Ministry of Justice and the Commission for the implementation of the Strategy are not prompt with the reporting on the implementation of the envisaged measures.

## Fundamental Rights

### Freedom of Expression

The right to freedom of expression is guaranteed by the BiH Constitution, the FBiH Constitution, Article 2(1), the RS Constitution in Articles 25, 26 and 27, as well as by the Constitutions of 10 Cantons in the FBiH. Freedom of expression is more precisely formulated by other laws - the Law on Freedom of Access to Information adopted in 2001 at the State and Entity level, the Law on Protection against Defamation, adopted in 2002, which decriminalized defamation and abolished the so-called verbal delict, as well as a set of laws on communications and public broadcasting, including the BiH Law on Communications (adopted in 2003), the BiH Law on the Basis of the Public Broadcasting System and on the BiH Public Broadcasting Service, including two laws on the Entity public broadcasters. All these laws reflect the world's highest standards of respect for the right to freedom of opinion and expression, guarantee the free, objective and democratic work of the media, without any (political, economic, proprietary) pressures on journalists and editorial policy.

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Despite legal regulation harmonized with international standards, in 2021, Free Media Help Line<sup>59</sup> (FMHL), operating within BH novinari, recorded 70 attacks on journalists' rights, media and freedom of expression. These cases included: 16 cases of physical and verbal attacks and threats, and 21 cases of political pressure, 10 new defamation lawsuits and 10 cases of prohibition of access to information. Although the unavailability of justice and impunity for attacks on journalists are constant in BiH, some progress was recorded last year - before judicial and other instances, 11 cases were solved in favour of media workers. Most resolved cases are with very low penalties threatened and disciplinary measures<sup>60</sup>.

The unregulated legal dimension of the online space, as well as the insufficiently effective moderation and removal of threatening and hateful comments from the Internet, have resulted in numerous threats, hate speech and endangering the safety of journalists, especially female journalists and other women in the media. The FMHL recorded that over 70% of attacks and threats come from online space, and close to 40% of these attacks were generated by politicians or their followers.

There is an alarming increase in violence against journalists through social networks Facebook and Twitter, with the largest number of threats coming from the profiles of persons affiliated with political parties. One of them was Jasmin Mulahusić, a BiH citizen who lives in Luxembourg and is being investigated by the BiH Prosecutor's Office<sup>61</sup>, who himself points out his closeness to the SDA party and its leaders<sup>62</sup>. Through his Facebook profile, Mulahusić addressed attacks and threats against numerous journalists: Helena

<sup>59</sup> More at: <https://bhnovinari.ba/bs/linija-za-pomoc/>

<sup>60</sup> Novinari kao glineni golubovi: Minimalne kazne za prijetnje po život (Journalists like clay pigeons: Minimum penalties for life threats). Capital, 31 March 2021, available at: <https://www.capital.ba/novinari-kao-glineni-golubovi-minimalne-kazne-za-prijetnje-po-zivot-napadi/>

<sup>61</sup> Ročište / Detalji iz sudnice: Za šta je sve optužen Jasmin Mulahusić (Hearing / Courtroom Details: What Jasmin Mulahusić is accused of). Radio Sarajevo, 07 September 2021, available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/detalji-iz-sudnice-za-sta-je-sve-optuzen-jasmin-mulahusic/429579> and Jasmin Mulahusić pušten na slobodu, nisu mu određene ni mjere zabrane (Jasmin Mulahusić released, no protective measures were imposed against him either). Klix, 07 September 2021, available at: <https://www.klix.ba/vijesti/bih/jasmin-mulahusic-pusten-na-slobodu-nisu-mu-odredjene-ni-mjere-zabrane/210907061>

<sup>62</sup> Mulahusić koji je u BiH hapšen zbog širenja mržnje fotografisao se s izetbegovićem i Novalićem (Mulahusić, who was arrested in BiH for spreading hatred, was photographed with Izetbegović and Novalić). Klix, 22 November 2021, available at: <https://www.klix.ba/vijesti/bih/mulahusic-koji-je-u-bih-hapšen-zbog-sirenja-mrznje-fotografisao-se-s-izetbegovicem-i-novalicem/211122023>

Javor Ibrahimbegović, Amarildo Gutić and Branka Mrkić, members of the Management Board of BH novinari Siniša Vukelić and Sanja Bjelica, Senad Hadžifejzović, Faruk Vele, as well as several attacks on Professor Lejla Turčilo, Secretary General of BH novinari Borka Rudić, and journalists and editors of N1 TV Nikola Vučić and Amir Zukić.<sup>63</sup> Although Mulahusić was arrested on his way out of BiH, the Court released him and rejected the proposal to order his detention because, according to their interpretation, “freedom of speech and a slightly sharper opinion on individuals are not sufficient grounds for determining detention”.

26 cases of threats and attacks against female journalists were also recorded, with pronounced elements of gender-based violence with professional discreditation<sup>64</sup>, as well as sexist and misogynistic statements. The attacks of Milorad Dodik, a member of the BiH presidency from the Serbian people, on journalist and political analyst Tanja Topić from Banja Luka<sup>65</sup>, as well as journalist of BNTV from Bijeljina, Slađana Jašarević<sup>66</sup>, stand out for brutality and inappropriate language.

In 2021, the problems in financing and independent operation of the Public Broadcasting System in BiH with three separate broadcasters: BHRT, RTVFBiH and RTRS, were deepened. Ten years ago, public broadcasters signed contracts for the collection of the RTV tax via phone or electricity bills for a certain period<sup>67</sup>, but this legal provision is not respected.<sup>68</sup> BHRT claims about 60 million KM from RTRS for the collected RTV tax that the Entity broadcaster from the RS does not pay to the joint accounts of the PBS.<sup>69</sup> This debt called into question the survival of BHRT, as well as the fate of 800 employees of this media.

Pressure on the free work of the media and the journalistic profession has been intensified by a growing number of defamation lawsuits – currently there are close to 300 active defamation cases, including a significant number of so-called SLAPP lawsuits<sup>70</sup>. These lawsuits have a very negative impact on the free critical reporting of journalists and the economic survival of the media. In the last year, two media, Dnevni avaz<sup>71</sup> and Žurnal, were particularly affected, which had to pay about EUR 200,000 due to these lawsuits. About 80% of the plaintiffs in the defamation lawsuits against journalists and the media are politicians, representatives of the judiciary and/or public officials.<sup>72</sup>

63 BH novinari: Nedopustiva huškačka retorika Jasmina Mulahusića protiv novinara i medija u BiH! (BH novinari; Inadmissible incitement rhetoric by Jasmin Mulahusić against journalists and the media in BiH!). BH novinari, 03 December 2021, available at: <https://bhnovinari.ba/bs/2021/12/03/bh-novinari-nedopustiva-huskacka-retorika-jasmina-mulahusica-protiv-novinar-a-i-medija-u-bih/> and BH novinari: Nećemo objaviti e-mail poruke huškača i širitelja mržnje sa Facebooka (BH novinari: We will not publish email messages from inciters and spreaders of hatred from Facebook). BH novinari, 07 April 2022, available at: <https://bhnovinari.ba/bs/2021/12/06/bh-novinari-nećemo-objaviti-e-mail-poruke-huskaca-i-siritelja-mrznje-sa-facebook-a>

64 Konferencija BH novinara: Mediji imaju ključnu ulogu u podizanju svijesti o rodno zasnovanom nasilju (BH Journalists Conference: The media have a key role in raising awareness of gender-based violence). BH novinari, 18 March 2021, available at: <https://bhnovinari.ba/bs/2021/03/18/konferencija-bh-novinar-a-mediji-imaju-kljucnu-ulogu-u-podizanju-svijesti-o-rodno-zasnovanom-nasilju/>

65 BH novinari: Dodikovi verbalni napadi na novinare zaslužuju medijski bojkot! (BH novinari: Dodik's verbal attacks on journalists deserve a media boycott!). BH novinari, 25 May 2021, available at: <https://bhnovinari.ba/bs/2021/05/25/bh-novinari-dodikovi-verbalni-napadi-na-novinare-zasluzuju-medijski-bojkot/>

66 Pogledajte sukob Dodika i novinarku BN Televizije: “Lično vas upozoravam...” (See the conflict between Dodik and BN Television journalist “I personally warn you...”). Radio Sarajevo, 30 September 2021, available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/pogledajte-sukob-dodika-i-novinarke-bn-televizije-licno-vas-upozoravam/432111>

67 Naplata RTV takse putem računa za električnu energiju (Collection of the RTV tax through the electricity bills). EPBiH, 2017, available at: <https://www.epbih.ba/novost/21886/naplata-rtv-takse-putem-racuna-za-elektricnu-energiju>

68 Currently, in the FBiH, the RTV tax is collected through Elektroprivreda BiH, and in the RS through Elektroprivreda RS and through bill collectors, which have “separate budgets”, which is contrary to the Law on the Public Broadcasting System, which says that the revenues from the RTV tax will be collected into one account and allocated to three public services, namely BHRT, RTRS and RTVFBiH, in accordance with legal provisions. (Radević, Maja. Indikatori nivoa medijskih sloboda i sigurnosti novinara u BiH 2019 (Indicators of the Level of Media Freedom and Security of Journalists in BiH 2019). BH novinari, p. 9, available at: <https://safejournalists.net/wp-content/uploads/2020/12/BiH-BiH-2019.pdf>)

69 BH novinari: Rukovodstva javnih servisa moraju prestati da rade u interesu politike! (BH novinari: Public Services Managers must stop working in the interests of politics!). BH Novinari, 17 December 2021, available at: <https://bhnovinari.ba/bs/2021/12/17/bh-novinari-rukovodstva-javnih-servisa-moraju-prestati-da-rade-u-interesu-politike/>

70 SLAPP (Strategic Lawsuits Against Public Participation)

71 BH novinari: Sudske odluke ne smiju ugrozavati ekonomski opstanak medija u BiH (BH novinari: Court decisions must not jeopardize the economic survival of the media in BiH). BH Novinari, 28 June 2021, available at: <https://bhnovinari.ba/bs/2021/06/28/bh-novinari-sudske-odluke-ne-smiju-ugrozavati-ekonomski-opstanak-medija-u-bih/>

72 Rudić: Političari podnose najviše tužbi za klevetu protiv medija i novinara (Rudić: Politicians file the most defamation lawsuits against the media and journalists). BH Novinari, 01 July 2021, available at: <https://bhnovinari.ba/bs/2021/07/01/rudic-politiciari-podnose-najvise-tuzbi-za-klevetu-protiv-medija-i-novinar-a/>

The BiH, FBiH and BD BiH criminal codes recognise the public inciting of national, racial and religious hatred, discord or hostility among the constituent peoples and others living in BiH. For this criminal offence, the sentence of imprisonment for a term between 3 months and 3 years, or between 1 and 5 years in the BD BiH, is also provided for. However, these criminal laws do not recognize incitement and incitement to hatred on other grounds, such as gender, sexual orientation, gender identity, disability, gender characteristics, etc. On the other hand, the RS Criminal Code prescribes a term of imprisonment of up to 3 years for those who publicly invite, provoke or incite or make available to the public leaflets, pictures or other materials calling for violence or hatred directed against a certain person or groups because of their national, racial, religious or ethnic origin, skin colour, gender, sexual orientation, disability, gender identity, origin or any other properties.

Provoking religious hatred and intolerance is prohibited by the Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BiH, and the BiH Election Law prescribes a sanction for political entities that use a language that could incite or provoke someone to violence or spread hatred, or for those political entities that publish or use images, symbols, audio and video, SMS messages, Internet messages or other materials that may act that way.<sup>73</sup>

During 2021, the BiH Prosecutor's Office initiated an investigation and confirmed the indictment against Fatmir Alispahić, owner and author of the portal Antimigrant.ba. The BiH Court acquitted him with a first-instance verdict. In doing so, it showed an extremely limited interpretation of the CC BiH, stating, among other things, that the Prosecutor's Office did not prove that Alispahić had committed the criminal offence of inciting national, racial and religious hatred and intolerance. The verdict states that the defendant's statements are within the framework of a political, publicist free narrative, protected by freedom of speech in BiH, and that they are addressed to "migrants", not to one people, race, religion and other specific group. Hate speech, in this case addressed to persons on the move, has its grounds precisely because persons in movement do not belong to constituent peoples in BiH but to other peoples, other races and other ethnicities, which was the basis (context) of generating animosity and expressing and inciting hatred towards them. The Court of BiH has not taken into account the fact that the name of the media itself, ANTIMIGRANT, indicates quite clearly that its basic mission is to incite hatred towards people on the move among the general public in BiH. Alispahić further "intensified" incitement to hatred by a series of texts and posts on this portal, which the Court of BiH did not examine with due care and accepted as credible evidence of the content and intent of hate messages.<sup>74</sup>

### Freedom of Assembly

Laws on freedom of peaceful assembly are enacted at the level of 10 Cantons, the RS and the BD BiH. Out of a total of 12 laws regulating the area of freedom of peaceful assembly, only the law in the BD BiH is fully compliant with international standards. During 2021, tendencies aimed at harmonizing certain Cantonal laws with international standards were observed. Thus, the Canton 10 and the SC drafted a law on freedom of peaceful assembly, but these laws were not passed until the time of writing this report. A positive practice that occurred in 2021 was the financing of the Third BiH Pride Parade

73 Sokol, Anida, Regulacija govora mržnje I dezinformacija u Bosni I Hercegovini: propisi i praksa. (Regulation of hate speech and disinformation in Bosnia and Herzegovina: regulations and practice. SEENPM, Tirana, Peace Institute, Ljubljana and Mediacenter Foundation Sarajevo, Sarajevo, November 2021. Available at: [https://media.ba/sites/default/files/rsl\\_factsheet\\_bih\\_21-11-09a\\_final.pdf](https://media.ba/sites/default/files/rsl_factsheet_bih_21-11-09a_final.pdf)

74 Reakcija civilnog društva na presudu Fatmiru Alispahiću: Govor mržnje nije sloboda govora (Civil society reaction to Fatmir Alispahić's verdict: Hate speech is not freedom of speech). Media, 23 November 2021, available at: <https://media.ba/bs/vijesti-i-dogadaji-vijesti/reakcija-civilnog-drustva-na-presudu-fatmiru-alispahicu-govor-mrznje-nije>

by the City of Sarajevo, the Municipality of Centar Sarajevo and the SC.

The laws on freedom of peaceful assembly include nine areas (assumptions in favour of gatherings, definitions, general prohibitions, gatherings on the move, location restrictions, time restrictions, notification of gatherings, obligations of organizers and attendants, and criminal provisions) that they regulate. These areas of law (with the exception of the BD BiH) are generally not in line with international standards.<sup>75</sup>

In 2007, the Council of Europe's Committee of Ministers adopted Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe. The laws on associations and foundations at all levels in BiH are mostly aligned with the Recommendation. There are rare situations where the establishment of NGOs is prohibited, but the State needs to much more encourage and support the work of NGOs.

Due to the repression exerted by the police in the RS against the organizers of public rallies in previous years, the organizers of the tenth "Eight March March" in Banja Luka decided to invite other organizations to joint action. For the same reasons, they did not submit the list of attendants with the notification of the gathering. The RS Ministry of the Interior approved this rally with the explanation that it is "a peaceful civic rally, mainly attended by women, and on that basis, there should be no incidents." As in previous years, organizers were informed by telephone that the request had been approved, and it was said that the meeting would be interrupted if members of the informal group Pravda za Davida (Justice for David) joined it. After three years of banning in March 2021, this group held its first gathering in Krajina Square. This is associated with a change in the structure of local authorities, because the consent was given for the use of the public surface on the Krajina Square, which was previously forbidden. In previous years, legal proceedings have been initiated against members of the group and the parents on the basis of criminal charges against violations of public order and illegal assembly. More and more informal groups and NGOs are opting for guerrilla actions in Banja Luka due to police repression.

### Reconciliation, Transitional Justice and Memorialization

BiH is far from meeting reconciliation-related priorities. The political environment does not yet contribute to reconciliation and overcoming the events of the past. High-ranking political leaders often publicly challenge established facts about the events of the war. This raises doubts about the independence and impartiality of international courts, and deepens divisions among BiH citizens, while political parties focus their programmes primarily on ethno-national issues. Conflicting war narratives are present in the public and political spaces, used for daily political purposes, continuing to cause tensions and divisions. The secessionist threats from the RS in 2021 again aroused fear of the war in BiH<sup>76</sup>.

There are still unsolved war crimes cases, and regional co-operation in prosecuting war crimes is almost non-existent. Open questions regarding war crimes cases, related to regional co-operation between BiH, Serbia, Croatia and Montenegro, are a challenge on the road to achieving greater efficiency in investigating and bringing indictments against those charged with war crimes. A large number of war criminals and suspected

<sup>75</sup> More at: <https://www.osce.org/files/f/documents/c/4/500560.pdf> Uživanje slobode mirnog okupljanja u BiH: zapažanja monitoringa misije OSCE u Bosni i Hercegovini (Enjoyment of freedom of peaceful assembly in BiH: observations of the monitoring of the OSCE Mission in Bosnia and Herzegovina), 2021 (page 31)

<sup>76</sup> BiH: Srpski lideri intenziviraju političku krizu nakon zabrane negiranja genocida (BiH: Serb leaders intensify political crisis after banning denial of genocide). Detektor, 23 December 2021, available at: <https://detektor.ba/2021/12/24/bih-srpski-lideri-intenziviraju-politicku-krizu-nakon-zabrane-negiranja-genocida/>

war criminals move freely in neighbouring countries<sup>77</sup>. One example of unacceptable practice in the context of regional co-operation in prosecuting war crimes cases is granting Serbian citizenship to fugitive indicted Mirko Vrućinić before sentencing him for war crimes in BiH<sup>78</sup>.

Victims' associations in BiH are increasingly dissatisfied with the implementation of the Revised War Crimes Prosecution Strategy, and judicial institutions are not optimistic that the prosecution of war crimes cases will be completed by 2023, as envisaged in this document<sup>79</sup>. According to the official data from the International Commission on Missing Persons, there are still 7,628 people in BiH who were killed and disappeared between 1991 and 1996<sup>80</sup>.

BiH has not yet adopted a Transitional Justice Strategy<sup>81</sup>. No significant progress on memory policies can be recorded either. In April and July 2021, commissions to determine historical events funded by the RS Government published their final reports, which open the door to revisionism and minimizing the siege of Sarajevo and the genocide in Srebrenica. A number of paragraphs cited in this document contradict the conclusions reached in several Hague Tribunal judgements, although the commission refers to these judgements in its work.

The practices of historical revisionism<sup>82</sup>, the denial of established court facts, the public denial of genocide, the denial of war crimes and the glorification of war criminals are still commonplace in BiH, and local authorities are ignoring calls from the international community to remove murals in honour of convicted war criminals, which exist in at least five municipalities. As one illustration of this is the fact that there are 16 active Chetnik organizations in our country<sup>83</sup>. And in 2021, the RS held the celebration of 9 January as the RS Day. This event directly disrespects the BiH Constitution and the Decision of the BiH Constitutional Court, as the BiH Constitutional Court has twice declared the commemoration of 9 January as the RS Day unconstitutional.

In 2021, the first-degree sentence of life imprisonment was against Ratko Mladić, former RS Army general for genocide in Srebrenica, persecution of Bosniaks and Croats, terrorizing Sarajevo citizens and taking UN peacekeepers hostage<sup>84</sup>, was confirmed. Following the changes to the CC BiH, at the discretion of the High Representative, the NARS adopted laws rejecting the application of changes to the CC BiH on the territory of this Entity. At the same time, amendments were adopted that punish the calling of the RS a genocidal creation<sup>85</sup>. Although the amendments to the CC BiH reduced the

85 Republika Srpska odbacila Inzkov zakon (The Republika Srpska rejected Inzko's law). DW, 31 July 2021, available at: <https://www.dw.com/hr/republika-srpska-odbacila-inzkov-zakon/a-58713293>

77 AVDO AVDIĆ OTKRIO DETALJE SUSRETA SA RATNIM ZLOČINCEM U NOVOM SADU: "Priznajem da nisam..." (AVDO AVDIĆ REVEALS DETAILS OF MEETING WITH WAR CRIMINAL IN NOVI SAD "I confess I am not..."). Slobodna Bosna, 20 August 2021, available at: [https://www.slobodna-bosna.ba/vijest/212362/avdo\\_avdic\\_otkrilo\\_detalje\\_susreta\\_sa\\_ratnim\\_zlocincem\\_u\\_novom\\_sadu\\_priznajem\\_da\\_nisam.html](https://www.slobodna-bosna.ba/vijest/212362/avdo_avdic_otkrilo_detalje_susreta_sa_ratnim_zlocincem_u_novom_sadu_priznajem_da_nisam.html)

78 Srbija dala državljanstvo objeblom Mirku Vrućiniću pred izricanje presude za ratne zločine u BiH (Serbia grants citizenship to fugitive Mirko Vrućinić before verdict for war crimes in BiH). Voice of America, 22 April 2021, available at: <https://ba.voanews.com/a/srbija-drzavljanstvo-mirko-vrucinic-sud-bih-ratni-zlocini/5862861.html>

79 Žrtve nezadovoljne, u pravosuđu pesimisti za ispunjenje već probijenih rokova iz Revidirane strategije za rad na predmetima ratnih zločina (Victims dissatisfied, the judiciary pessimistic as to meeting the already broken deadlines from the Revised War Crimes Prosecution Strategy).

Detektor, 23 October 2021, available at: <https://detektor.ba/2021/10/11/zrtve-nezadovoljne-u-pravosuđu-pesimisti-za-ispunjenje-vec-probijenih-rokova-iz-revidirane-strategije-za-rad-na-predmetima-ratnih-zlocina/>

80 More at: <http://www.ino.ba/odnosi-s-javnoscu/saopcenja-za-ivnost/default.aspx?id=1301&langTag=bs-BA>

81 Strategija za tranzicijsku pravdu zaboravljena skoro deceniju (The transitional justice strategy has been forgotten for almost a decade). Detektor, 07 July 2021, available at: <https://detektor.ba/2021/07/07/strategija-za-tranzicijsku-pravdu-zaboravljena-skoro-deceniju/> and in Alternativni izvještaj o aplikaciji Bosne i Hercegovine za članstvo u Evropskoj uniji za 2019. – 2020. godinu: politički kriteriji (2019-2020 Alternative Report on the Application of Bosnia and Herzegovina for the European Union Membership: Political Criteria) at <https://eu-monitoring.ba/alternativni-izvjestaj-o-aplikaciji-bosne-i-hercegovine-za-clanstvo-u-evropskoj-uniji-za-2019-2020-godinu-politicki-kriteriji/>

82 BIRN Fact Check: Izvještaj o stradanjima u Srebrenici u suprotnosti sa sudski utvrđenim činjenicama (BIRN Fact Check: Report on the casualties in Srebrenica contradicts the court-established facts). Detektor, 29 July 2021, available at: <https://detektor.ba/2021/07/29/birn-fact-check-izvjestaj-o-stradanjima-u-srebrenici-u-suprotnosti-sa-sudski-utvrđenim-cinjenicama/>

83 Neometano širenje četničkih organizacija u BiH (Undisturbed expansion of Chetnik organizations in BiH). Radio Free Europe, 22 February 2021, available at: <https://www.slobodnaevropa.org/a/neometano-%C5%A1irenje-%C4%8Detni%C4%8Dkih-organizacija-u-bih/31116011.html>

84 Potvrđena presuda Ratku Mladiću, porodice žrtava zadovoljne (The conviction against Ratko Mladić confirmed, victims' families satisfied). DW, 08 June 2021, available at: <https://www.dw.com/bs/potrva-ratku-mladi%C4%91ena-presuda-ratku-mladi%C4%87u-u-porodice-%C5%Bertava-zadovoljne/a-57819534>

denial of genocide on social networks and media<sup>86</sup>, the BiH Prosecutor's Office, despite numerous complaints, has not filed a single indictment for denying genocide, it has rejected three out of several dozen complaints for denial of genocide or war crimes.

One example of positive practice after the amendment to the CC BiH is the decision of the BiH Football Federation to punish the clubs Široki Brijeg and Zrinjski for glorifying the convicted war criminal Slobodan Praljak at a match between the two clubs. Another example is the repainting of three graffiti dedicated to Ratko Mladić in Prijedor in November 2021. According to the police, all three graffiti were repainted by locals.

Conflicting narratives about war events are also transmitted to the memorialization. An example is the re-installation of the desecrated memorial plaque for Ratko Mladić, located on the Inter-Entity line between the municipalities of Novo Sarajevo (FBiH) and Istočno Novo Sarajevo (RS). Another example is the construction of a monument to the victims killed in the Kazani in November 2021. Although the construction of the monument was publicly welcomed, it does not contain the names of the culprits, although 14 members of the 10th Mountain Brigade of the RBiH Army under the command of Mušan Topalović Caco were convicted of the crimes in Kazani. Local authorities in Prijedor have not taken new steps when it comes to building a memorial for 102 children killed in the last war.

EU officials have repeatedly stated that there is no place in the Union for states that deny war crimes and that revisionism and denial of crimes are contrary to fundamental European values. Thus, after a visit to BiH, the UN expert for transitional justice, among other things, asked the Government to urgently adopt a legal framework and a national programme that would provide quick and efficient reparations to all victims of war crimes, warning that the transitional justice process has reached a deadlock in BiH<sup>87</sup>. The process of dealing with the past begins in the earliest age, and interethnic divisions and opposing narratives deepen through new generations, even if they are those born many years after the war. This is also contributed by a formal education system that is divided on ethnic grounds and where there are completely different curricula that cover the war in BiH, which is a worrying pledge for the future of society and the State.<sup>88</sup>

### Sexual Violence in War

Even three decades after the war, BiH has not established an adequate reparations system for survivors of wartime sexual violence.<sup>89</sup> In the absence of laws at the State level, the status and rights of victims of sexual violence in the war in BiH are regulated by various legal acts adopted at the level of the Entities<sup>90</sup> and the BD BiH<sup>91</sup>.

There are many obstacles and disadvantages of the current fragmented legal framework. The deadline for applying for the recognition of the status of a victim of torture in the RS

87 Ekspert UN-a za tranzicijsku pravdu: "O ljudskim pravima se ne može pregovarati" (UN Expert on Transitional Justice: "Human rights are non-negotiable"). Detektor, 10 December 2021, available at: <https://detektor.ba/2021/12/10/ekspert-un-a-za-tranzicijsku-pravdu-o-ljudskim-pravima-se-ne-moze-pregovarati/?fbclid=IwAR3iJSEGMUE8jRKu8e5jntLiRT4m8uU9KEG2ipmrgH6lVaT93ftMH1DAR4M> 88 More at: <https://www.goethe.de/ins/hr/prj/dpl/nhs/bos/hr/12279289.htm>

89 In March 2022, the Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina "We raise our voices", was presented, which indicates a number of shortcomings in reparations available to survivors of wartime sexual violence.

90 FBiH Law on Basic Social Protection, Protection of Civilian Victims of War and Families with Children ("Official Gazette of the Federation of BiH", no. 36/99, 54/04, 39/06, 14/09, 45/16, 19/17 and 40/18); Law on the Protection of Victims of War Torture ("Official Gazette of the RS", no. 90/18)

91 Decision on Protection of Civil Victims of War in BD BiH ("Official Gazette of the BD BiH", no. 33/12, 15/15)



is five years from the date on which the Law entered into force (and it expires in 2023), and there are no guarantees of identity protection under this Law for victims of sexual violence who have previously been granted the measures to protect identity in criminal proceedings.<sup>92</sup> The monthly allowances available to survivors are also not harmonised, and are different across three administrative units. Access to health services differs depending on the place of residence, whereby it is important to point out the fact that survivors from the BD BiH, according to the current Decision, do not have the right to access psychological support. In the FBiH and the BD BiH, survivors are not provided with free access to spa rehabilitation, a significant measure of rehabilitation recognized as such by both victims and experts of the medical and psychiatric professions. Children born as a result of rape in war are not a legally recognized category of war victims, such as civilian victims of war or children of disabled veterans of war. Only a small number of the estimated 1,000 survivors of wartime sexual violence receive some form of reparations due to a multitude of problems that discourage them from claiming their rights or hindering them from exercising their rights. The Decision from the BD BiH provides for a lower scope of rights compared to the Entity laws, and a significant step is the appointment of a working group for assessing the impact of regulations and preparing the draft Law on Civilian War Victims of the BD BiH. Although this was announced, the Law was not adopted until the end of 2021.

Survivors continue to try to obtain compensation through legal proceedings, encountering a number of difficulties. In 2015, the courts in BiH set a significant precedent in awarding property -legal claims to survivors in a number of criminal cases. However, only victims who have testified can exercise this right in criminal proceedings. Some prosecutors continue to avoid their duties, and survivors face complications in the enforcement of judgments due to the insolvency of the offenders. This, in addition to the fact that some prosecutors do not take an active role and do not conduct timely investigations into the offender's assets to facilitate the effective payment of compensation, ends up so that survivors do not receive the compensation that is due to them. Also, some courts continue to instruct survivors who have the status of damaged parties in criminal proceedings to seek damages in litigation.

BiH has taken some preparatory steps to implement the Decision<sup>93</sup> of the UN Committee against Torture (UNCAT) of 2019<sup>94</sup>, but the competent institutions have not achieved concrete results in the implementation of individual recommendations in 2021.

### Victims of War Torture in BiH

One of the continuing problems faced by victims in BiH is the imposition of the obligation to pay court costs of litigation proceedings brought against an Entity or the State to compensate for intangible damages suffered in the war, in which their claims are generally rejected by applying limitation periods in accordance with the 2013 position of the BiH Constitutional Court. Namely, without taking into account the relevant context, by automatically applying the general rule of litigation "loser pays", victims are forced to pay the costs of representing of public attorneys, which in some cases go up to several thousand convertible marks. It is important to emphasize that this is a particularly vulnerable category of population that is many times damaged and disenfranchised, of irreversibly and seriously impaired general health and mostly poor

92 Read more about this in Alternativni izvještaj o aplikaciji Bosne i Hercegovine za članstvo u Evropskoj uniji za 2019. – 2020. godinu: politički kriteriji (2019-2020 Alternative Report on the Application of Bosnia and Herzegovina for the European Union Membership: Political Criteria) at <https://eu-monitoring.ba/alternativni-izvjestaj-o-aplikaciji-bosne-i-hercegovine-za-clanstvo-u-evropskoj-uniji-za-2019-2020-godinu-politicki-kriteriji/>

93 See the Decision of the UN Committee Against Torture CAC/67/D/854/2017 of 22 September 2019 at: [https://trial.ba/wp-content/uploads/2020/06/Odluka-o-zasticenom-svjedoku-A\\_22.08.2019.-2-1.pdf](https://trial.ba/wp-content/uploads/2020/06/Odluka-o-zasticenom-svjedoku-A_22.08.2019.-2-1.pdf)

94 Read more about the Decision in Alternativni izvještaj o aplikaciji Bosne i Hercegovine za članstvo u Evropskoj uniji za 2019. – 2020. godinu: politički kriteriji (2019-2020 Alternative Report on the Application of Bosnia and Herzegovina for the European Union Membership: Political Criteria) at <https://eu-monitoring.ba/alternativni-izvjestaj-o-aplikaciji-bosne-i-hercegovine-za-clanstvo-u-evropskoj-uniji-za-2019-2020-godinu-politicki-kriteriji/>



financial condition, which is why this practice is imposed as an additional punishment for the victims. Thus, a large number of victims of war crimes, former detainees, victims of torture, sexual violence in war, as well as the families of missing and murdered persons, are threatened with confiscation of property if they do not have the means to pay these costs.

After the BiH Constitutional Court issued a decision in 2018 that found that the right to property, as well as the right to access the court of a victim of a war crime in this situation were violated, the Federal Attorney General's Office and the BiH Attorney General's Office have dropped their claims against victims. This practice has only been maintained in the RS Entity – only the RS Attorney General's Office has active executive cases in which they confiscate the movable property of war crimes victims by claiming these costs and deprive them of part of their already low pensions and other personal income on a monthly basis.

### Non-Discrimination Policy

In the second half of 2021, an intensive initiative of the international community (representatives of the EU institutions and the USA) was noticeable in the attempts to find a model of the Election Law that would eliminate the existing discrimination that has its roots in the BiH Constitution. The goal that domestic representatives of authorities and representatives of the international community have not been able to reach is to create such a model of Election Law that would implement the judgments of the BiH Constitutional Court<sup>95</sup> and of the ECtHR (Sejdić-Finci, Zornić, Šlaku, Pilav and Pudarić). The essence of eliminating this discrimination is in reconciling the concept of ethnic federalism and the civic principle of state regulation.

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According to the 2021 Report on the implementation of the action plan provided for in the annual work programme of the MHRR BiH, we note that a draft of the Medium-Term Programme for Combating Discrimination in BiH has been prepared with the Human Rights Protection Training Programme in BiH for the period 2021-2025. However, the draft was not sent to the CoM BiH for adoption.

In 2021, no judgments were issued in a total of 4 cases concerning the protection of LGBTI people from discrimination based on sexual orientation, gender identity and/or sexual characteristics.

### Gender Equality

In 2021, there have been no significant developments in the achievement of women's human rights in BiH.

The latest amendments to the FBiH Law on Protection from Domestic Violence of January 2021 introduced an institute of "trusted person" that will assist victims in court proceedings in such a way that they have support and encouragement during the testimony<sup>96</sup>. In order to provide additional protection for women who have survived violence, more regular and stable financing of safe houses from public budgets, as well as compliance with the Istanbul Convention, a draft of the new FBiH Law on Protection

<sup>95</sup> More at: [https://www.ustavisud.ba/uploads/odluke/\\_bs/U-23-14-1058444.pdf](https://www.ustavisud.ba/uploads/odluke/_bs/U-23-14-1058444.pdf)

<sup>96</sup> Predstavnički dom FBiH odobrio dopune Zakona o zaštiti od nasilja u porodici (The FBiH House of Representatives approved the amendments to the Law on Protection from Domestic Violence). Federalna (Federation TV), 26 January 2021, available at: <https://www.federalna.ba/predstavnicki-dom-fbih-odobrio-dopune-zakona-o-zastiti-od-nasilja-u-porodici-xxab>

from Domestic Violence was proposed in May 2021. The draft was withdrawn from the agenda, as it was not delivered in all three official languages.<sup>97</sup> The FBiH Gender Centre is in charge of creating the 2021-2027 Strategy for Prevention and Combat of Domestic Violence and an Executive Team has been established with partner and thematic groups for the creation of the strategy.<sup>98</sup>

In the RS, the amendments to the RS Criminal Code were adopted, which amended the definition of family members or family community in the context of domestic violence, thus extending protection to people who were or are still in an emotional or intimate relationship who did not necessarily share the household or were related<sup>99</sup>. Nothing has changed in the FBiH, compared to the previous reporting period, when it comes to harmonising the FBiH Criminal Code with the Istanbul Convention.<sup>100</sup>

Regardless of certain legal improvements, femicide, which is defined as the murder of women and girls because of their gender and represents the most serious form of gender-based violence, is still not recognized as a particular crime in criminal codes. According to data obtained by the BiH Gender Equality Agency, which collected data from judicial institutions and NGOs, 12 women were killed in BiH in 2019, and a total of 56 women were killed between 2015 and the end of 2020, but these murders are not treated as femicide<sup>101</sup>. What is of particular concern is the information showing that femicide is not an incident, but is a consequence of prolonged exposure to various forms of violence by the same perpetrator. This conclusion is indicated by the statements of persons from the environment, as well as subjects of protection, who often stated that they knew about the violence, but that they did nothing or did not adequately react to it<sup>102</sup>. There is a Committee for Monitoring Implementation and Reporting under the Istanbul Convention and Femicide in BiH and there is a decision to establish Femicide Watch, but it is not yet clear what the outlines of this instrument will be. The availability of femicide data is of great importance for the development of awareness, but also for monitoring the effectiveness of measures taken by the authorities<sup>103</sup>. During the global 16-day activism campaign, the CURE Foundation organized a street action called "Red Shoes for Women Victims of Femicide" with the desire to draw attention to this neglected problem and the fact that violence against women often ends in the murder of women.

One of the standards provided for in the Istanbul Convention is the opening of easily accessible crisis centres for victims of rape or sexual violence in order to provide medical and forensic examinations, support for the trauma experienced and counselling victims. The BiH Gender Equality Agency has signed agreements with three hospitals in the FBiH on cooperation in the establishment of crisis centres for victims of rape and sexual violence, while the RS refused to participate in a project through which funds for crisis centres will be provided<sup>104</sup>. Opening emergency relief centres for people who have experienced sexual violence was also one of the requests of the group "Nisam tražila" ("I did not ask for it"). The FB page of this group appeared in early 2021 and in just a

97 Parlament FBiH o nacrtu Zakona o zaštiti od nasilja u porodici 27. Jula (The FBiH Parliament on Draft Law on Protection from Domestic Violence on 27 July). Radio Free Europe, 05 July 2021, available at: <https://www.slobodnaevropa.org/a/fbih-zakon-nasilje-porodica/31342156.html>

98 FBiH Gender centre, link: <https://www.gcfbih.gov.ba/javne-rasprave-povodom-izrade-strategije-za-prevenciju-i-borbu-protiv-nasilja-u-porodici-2021-2027/>

99 More at: <https://www.narodnaskupstinar.net/?q=la/akti/usvojeni-zakoni/zakon-o-izmjenama-i-dopunama-krivichnog-zakonika-republike-srpske>, Law on Amendments to the Criminal Code of the Republika Srpska, March 2021.

100 In addition to receiving information that the working group has completed its work on drafting the Preliminary Draft of the Law on Amendments to the FBiH Criminal Code, and that in the coming period we can expect it to be available for public discussion.

101 More at: [https://soc.ba/site/wp-content/uploads/2021/07/Narandzasti\\_BHS-FINAL\\_za-web.pdf](https://soc.ba/site/wp-content/uploads/2021/07/Narandzasti_BHS-FINAL_za-web.pdf)

102 As an example, we can mention the murder of Alma Kadić in July 2021 in Sarajevo. She was killed by her husband, with whom she was in the process of divorcing and who perpetrated violence against her both during the marriage and after living together. Alma has contacted the police and the social work centre several times. Her ex-husband harassed her almost daily, texting, throwing various embarrassments through social media, making threats and showing unprecedented persistence in doing so. The police did not arrest him, and the Social Work Centre allowed him to see the child. More at: <https://atlantskainicijativa.org/wp-content/uploads/2022/03/Femicid-Web.pdf>

103 More at: <https://atlantskainicijativa.org/wp-content/uploads/2022/03/Femicid-Web.pdf>

104 The agreements have been signed with the General Hospital Prim Dr. Abdulah Nakoš Sarajevo, the University Clinical Hospital Mostar and the University Clinical Centre Tuzla. The Agreement provided initial funds for the adaptation of premises and the purchase of equipment for crisis centres in the total amount of KM 180,000. More at: <https://arsbih.gov.ba/potpisani-sporazumi-za-otvaranje-kriznih-centara-za-zrtve-silovanja-i-seksualnog-nasilja/>

few days received thousands of testimonies /confessions of women and girls about the traumatic experiences of sexual harassment or rape<sup>105</sup>. Complaints submitted to the BiH Prosecutor 's Office on the basis of these testimonies are still awaiting their epilogue<sup>106</sup>.

It is important to note that local authorities, especially in the SC, in the previous year have taken the first steps towards raising awareness of menstrual poverty, which is very present in BiH. Referring to the European Parliament's Resolution on gender equality and taxation policies in the EU, the Sarajevo Open Centre launched the initiative by sending amendments to the Law on Value Added Tax to exempt products for hygienic use (sanitary pads, tampons, children's diapers, adult diapers, etc.) from paying taxes.

The analysis of "Rights for All", done in 2021 on the representation of women in the management positions of public companies in BiH, confirmed earlier findings that speak of a small representation of women in these positions<sup>107</sup> – there are no women in the post of director in public companies at the State level; in the BD BiH, in four public companies, only one director is a woman; in the RS, in only one company the function of director is performed by a woman, while in the FBiH women are in the position of director in 16.6% of public companies<sup>108</sup>. Regarding the under-representation of women in legislative bodies at all levels of government, an initiative has been launched to amend the BiH Election Law, which should lead to a change in the current situation. The amendments prepared by the "Podijelimo odgovornost zajedno" initiative call for "each candidate list to have an equal number of male and female candidates who are positioned alternately on the list", as well as an amendment on the basis of which the missing number of elected women of at least 40% would be filled from the compensatory lists<sup>109</sup>.

Sexist comments and speech continue to be present in public space and media coverage. In January 2021, the Zenica portal 072info published an article about a female councillor in the Zenica City Council with the tendentious title "Pogledajte 'prljavi' ples vijećnice Tufekčić" ("Watch the 'dirty' dance of the Councillor Tufekčić"). It insinuates that it is a video of immoral content. The text itself did not include any critical reference to her political engagement, but stated that the councillor could do dance in the future if she quits politics. On the occasion of this article, a complaint was filed with the Press Council, but the complaint was rejected on the grounds that Mrs. Tufekčić is a public figure and therefore must be prepared for a greater public influx into her private life.

In May 2021, journalist Senad Hadžifejzović reacts to a critical article by journalist Ozren Kebo about an interview shown on FACE TV by pronouncing his name in the female gender. With this move, Hadžifejzović uses women as a comparative means of humiliation and says that it is actually shameful to be a woman.<sup>110</sup> In 2021, we also noted the illegal apprehension of human rights activist and defender Nidžara Ahmetašević in Sarajevo, after she warned police officers that they must have masks on

105 The page was started by four young actresses from Sarajevo, and after Serbian actress Milena Radulović accused the professor and director Miroslav Mika Aleksić of raping, triggering an avalanche of reactions on social media.

106 The Academy of Performing Arts (ASU) Sarajevo has submitted to the BiH Prosecutor's Office the collected documentation on two occasions (January and March 2021), in connection with complaints of sexual abuse. Until December 2021, the ASU Sarajevo was not contacted on this matter by the BiH Prosecutor's Office, said Srđan Vuletić, the Dean of the ASU: <http://sitanevz.mooshema.com/>

107 Dizdžar, Amina. Zastupljenost žena u upravljačkim strukturama javnih preduzeća u vlasništvu Bosne i Hercegovine, Federacije Bosne i Hercegovine, Republike Srpske i Brčko distrikta BiH (Representation of women in the management structures of public companies owned by Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of BiH) Sarajevo Open Centre. Sarajevo, November 2020 Available at: <https://soc.ba/site/wp-content/uploads/2020/11/paper-54-final2.pdf>

108 "Zastupljenost žena na rukovodećim pozicijama javnih preduzeća u Bosni i Hercegovini - Rodna analiza": (Women's representation in executive positions of public companies in Bosnia and Herzegovina – Gender analysis) <https://pravazasve.ba/bs/wp-content/uploads/sites/5/2022/03/Prava-za-sve-Rodna-analiza-N.pdf> The analysis also showed that women in management positions in most cases progress thanks to their knowledge and skills, while men are more likely to take a management position thanks to their political engagement.

109 Proposals of amendments to amend the BiH Election Law have been sent to the Committee on Gender Equality of the BiH Parliament and the Inter-Agency Working Group for Amendments to the BiH Election Law. The proposals that went to these addresses are aimed at ensuring equal participation of women and men in the legislative bodies at all levels in BiH. More at: <https://hcabl.org/amandmani-inicijative-podijelimo-odgovornost-zajedno/>

110 Orange Report - Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020, Misogynistic Violence

their faces due to corona<sup>111</sup>.

CSOs continued to advocate for the advancement of women's rights and status in smaller local communities. Thus, the CURE Foundation, with the Foundation for Women's Empowerment (FWE) in Sarajevo and local women's associations, creates advocacy plans for five local communities.

### Rights of the Child

There is no comprehensive national and Entity strategic and legislative framework in BiH that treats the issue of the rights of the child.

Unlike in the RS, criminal codes in the remainder of the State have not yet been harmonised with the Lanzarote Convention, although eight years have passed since its ratification. For years, the FBiH government has ignored the conclusion of the FBiH House of Representatives of February 2019 requiring it to submit the amendments to this law to the parliamentary procedure within 30 days, as well as the Recommendation of the IHRO BiH<sup>112</sup>. This stalemate makes criminal justice protection of children victims of crimes against sexual integrity in the FBiH less favourable compared to the RS. The protection relates to issues of limitation period for criminal prosecution, the impeded sentences, the age limit for engaging in sexual relations, and keeping records of perpetrators.

Child trafficking in BiH is on the rise. In 2021, out of a total of 80 identified possible victims of human trafficking, more than half are children (45). The predominant form of child exploitation is forced begging, labour and sexual exploitation and arranged/forced marriage. Children at high risk of trafficking for labour exploitation or forced begging, often involving Roma children, regularly remain unidentified. Due to the present discrimination and prejudice against the Roma minority, the cases of begging to which children were forced and forced labour with Roma as the victims, were often justified by the police and social workers in social work centres as traditional cultural practices and customs of the Roma, and they returned children to their families even when the parents were involved in the exploitation of their children. Similar attitudes were noted among the judges. According to available information, only in one child trafficking case, the Banja Luka District Court brought the decision (which became final in 2021) by which the Court ordered the accused to compensate the minor victim for damages in the amount of BAM 7,500.00 for the emotional stress and physical damage suffered. Due to the fact that the accused does not have any property, the collection of the damages awarded has not occurred, and the State fund for compensation for victims of human trafficking and programs for social assistance and social integration of victims have not yet been established. Most victims are referred to long and uncertain civil litigation revealing the identity of the victims, which constitutes secondary victimization.

Due to the failure to adopt the State budget in 2021, the co-financing of the work of Safe Houses was absent, which made it difficult for them to function and accept victims.<sup>113</sup> No Safe House specializes only in children, and underage victims are mostly placed in special wards that are not physically sufficiently separated from the accommodation facilities for adult victims in certain safe houses. After leaving safe

111 The police officers involved in this case acted extremely unprofessionally and unlawfully and deprived Nidžara Ahmetašević of her liberty through inappropriate and illegitimate violence. In addition, they used derogatory terms and insulted her, and she suffered inhumane treatment in the police premises, without following proper legal procedures. More at: <http://hcnl.org/reakcija-organizacija-civilnog-drustva-iz-banje-luke-na-policijsku-represiju-u-sarajevu/>

112 Recommendation number: Ž-BR-01-176/18 of 19 April 2019.

113 State Department 2021 Trafficking in Persons Report, available at: <https://ba.usembassy.gov/wp-content/uploads/sites/270/Bosnia-and-Herzegovina-2021-TIP-Report-Country-Narrative-BOŠ.pdf>

houses, social work centres do not start the development of reintegration plans for children who are domestic victims of human trafficking. Social protection laws in the FBiH do not recognize children who are victims of human trafficking as beneficiaries of social protection rights.

The phenomenon of “two schools under one roof” is still present in the Herzegovina-Neretva Canton (HNC) and the Central Bosnia Canton (CBC). Although the competent courts have brought decisions confirming the existence of discrimination and ordering measures to be taken to remedy it, in practice the situation remains unchanged so that there are still schools organised on ethnic principle. In order to compel the execution of the judgment of the Municipal Court in Mostar ordering the elimination of discrimination in the HNC, the Cantonal Court in Mostar issued an Execution Order, but the competent authorities did not undertake any activities in order to enforce the judgment. As regards the CBC, on 15 July 2021, the BiH Constitutional Court, resolving the appeal of the “Your Rights BiH” Association, issued a decision establishing violations of the prohibition of discrimination in connection with the right to education, and thereby ordered the FBiH Supreme Court to bring a new decision as a matter of urgency.

Currently, according to Cantonal social protection laws, only children from birth to before school age can have the right to compulsory health insurance as an independent insured person, if they cannot exercise this right on another basis. According to the Opinion of the FBiH Constitutional Court<sup>114</sup>, presented in the 2019 Judgment, due to inadequate and inconsistent implementation regulations in the field of health in Cantons, Cantonal authorities deny children aged 6-15 years who do not have the status of a full-time student, the right to unconditional health care. The harmonisation of the provisions of Cantonal laws with the Constitutional Court Judgment has not yet occurred.

The adoption of the Law on Parents-Caregiver in FBiH in September 2021 made a positive step forward in the recognition of the status of “parent-caregiver” to the parent of children with 100 percent disability who cannot meet their basic life needs by themselves. According to the adopted Law, a parent who is unemployed and registered in the records of the competent employment service, until the age of 65, independently from the age of that child, as of 1 January 2022, is entitled to a monthly allowance in the amount of the lowest salary in FBiH (406 KM), with the corresponding contributions for pension-disability insurance, health insurance and insurance during unemployment. For the implementation of the Law, it is necessary to allocate 27,248,000 KM from the Federation budget on an annual basis.

Due to the fragmentation of the social and child protection system, discrimination against children in FBiH is still present in terms of the exercise of the right to child allowance. The amount of the child allowance varies from Canton to Canton ranging from 0<sup>115</sup> to 55<sup>116</sup> KM per child per month. Child allowance is awarded on the property census in relation to the income threshold set by the guardianship organ, which is also different by Cantons. The IHRO BiH believes that the amounts of benefits set aside for the child allowance cannot significantly contribute to reducing child poverty.<sup>117</sup>

The adoption of amendments to the Law on the Protection of Children in the Territory

114 The FBiH Constitutional Court, Judgment No: U-61/17 Sarajevo, 15 October 2019.

115 The child allowance in the West Herzegovina Canton is not paid.

116 Child allowance amount in the Posavina Canton

117 Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Special Report on the State of Realization of the Child's Right to Child Allowance in BiH; available at: [https://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2021090910252674bos.pdf](https://www.ombudsmen.gov.ba/documents/obudsmen_doc2021090910252674bos.pdf)

of the BD BiH derogated the rights of children to social security. The right to child allowance has been abolished for children who, for any reason, are not involved in the educational process or do not attend it regularly, or for children who commit a serious violation of school discipline. The legislator has justified these changes by the fact that an increasing number of Roma children are unjustifiably absent from classes and that this is a way of "disciplining" Roma parents and children. The IHRO BiH expressed its concern regarding the specific situation and pointed out to the BD BiH Assembly that the proposed legal solution raises a number of issues of violation and endangerment of the rights of the child in the territory of the BD BiH and treatment that are not in accordance with international standards.<sup>118</sup> The Ombudsman's recommendation addressed to the BD BiH Government to submit amendments to the Law on Child Protection in its capacity as a proposer of the law so that all children up to the age of 18 would exercise the right to child allowance, has not yet been implemented.

Progress has been made with regard to the alternative care of children without parental care. Following the adoption of the Federation Law on Foster Care, the number of children placed in foster families in the SC in 2020 was 300% higher than in the previous year. The Entity and Cantonal Ministries, which are responsible for social protection, have conducted training sessions on foster care, while several children's homes have begun a transformation process that also follows the establishment of services for the protection of children and families which should be a substitute for long-term institutional care (maternity home, day centre for children at risk of separation, mobile teams, etc.).

### Persons with Disabilities

There were no changes to the legislation aimed at bringing it into line with the Convention on the Rights of Persons with Disabilities (the Convention), which would contribute to removing obstacles and equalising the opportunities of persons with disabilities for equal participation in society and the exercise of their rights. There is still no systematic training of public servants on the human rights of persons with disabilities. Local authorities and the international community do not respond when foreign donors and domestic institutions<sup>119</sup> finance the services of numerous day centres that segregate children and young people with disabilities as solutions non-compliant with the Convention.

There has been no effort on the part of the authorities to implement strategies to equalize the position of persons with disabilities. Some progress has been made with regard to the accessibility of websites of institutions of legislative and executive power to persons with disabilities, but further efforts should be made to ensure that the contents on these pages meet all the prescribed accessibility standards and comply with the Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies<sup>120</sup>.

The Council for Persons with Disabilities of BiH established in accordance with Article

<sup>118</sup> The Institution of Human Rights Ombudsman of BiH, act number: IO-K-BL-360/21 of 14 July 2021.

<sup>119</sup> More detailed research would be needed to find out which of the domestic and foreign institutions finance the operation of the day centres.

<sup>120</sup> The basic package that implies the selection of letter size, page layout and contrast have been integrated in their web pages by: the BiH Presidency, the BiH Parliamentary Assembly, the BiH Council of Ministers, the National Assembly of the RS and the Government of the Federation of BiH. This was done at the initiative of non-governmental organizations, as part of the "Ravnopravno različiti" ("Equally Different") project: <https://ravnopravnorazliciti.org/2021/10/27/prirucnik-kratke-upute-za-poboljsanje-pristupacnosti-web-stranica-baziranih-na-wordpress-platforni/>

33 of the Convention with the aim of monitoring the application of the Convention in our society, is almost invisible and it is unknown whether this body even exists and what it does. Due to the lack of a definition of a person with disabilities, their number in BiH is not known. There are no systematized data on persons with disabilities, classified on various grounds such as gender, social status, housing conditions related to accessibility of space, needs of persons with disabilities for personal assistance or other support systems. Each institution monitors its own criteria and derives numbers from them.

Women and children with disabilities are a more vulnerable part of people with disabilities. Their living conditions, exposure to violence, need for assistance or professional support are unknown, because disability as a characteristic is not taken into account when collecting various information by social services, law enforcement bodies, health institutions, etc. Rare research that has dealt with violence against women with disabilities shows that women with intellectual disabilities are a particularly vulnerable category, and that violence against women with disabilities is manifested through various forms – from withholding assistance, starvation, threats of being left alone on the street without anyone's help, to withholding information concerning the body and sexual health, forced delivery of contraceptives and forced sterilization. Women with disabilities are taught to be obedient and not to question authority: parents, guardians, service providers, teachers, all the people in their lives<sup>121</sup>.

Discrimination against persons with disabilities by reason of disability persists in BiH. Thus, persons who acquired a disability during the war enjoy a much greater scope of rights than persons who acquired the same disability before or after the war. Apart from the cause of disability, there are also significant differences in the status and scope of rights that persons with disabilities enjoy at different levels of government. Community life, which would enable a more dignified and independent life for persons with disabilities, is still part of the activities carried out and financed by NGOs and domestic and foreign donors. Our authorities very rarely talk about deinstitutionalization in general, and certainly not in the context of independent living.

Less progress is seen in the area of accessibility, where authorities in larger cities are investing some resources to build accessible sidewalks, beeping traffic lights and affordable transport, but most public spaces remain unavailable for people with disabilities.

A certain shift in the inclusion of persons with disabilities in decision-making processes was made in Tuzla<sup>122</sup>, Trebinje and Sarajevo, where advisory bodies were formed (advisers were appointed) for disability issues at the level of local self-government units. On a smaller scale, personal assistance services are provided through the social protection system in the RS, while in the FBiH, personal assistance services exist only thanks to NGO projects.

The education system in regular primary, secondary and vocational schools is being adapted too little and too slowly to the different needs of students, especially students with disabilities. There is no obligation to reasonably adapt the teaching process to children and young people with disabilities in the regulations of the education system, nor are sufficient funds allocated in the budget to ensure inclusive education of children

<sup>121</sup> Presentation of the member of the Coordination Committee of the BiH Women's Network, Vera Zih, at the conference "Zero Tolerance to Violence against Women, Solidarity and Support", 7 March in Sarajevo. Zih pointed out that additional problems that accompany the reporting and prosecution of cases of violence against women with disabilities concern the stereotypes of officials about persons with disabilities, distrust in statements of women with disabilities as reporters of sexual violence, lack of empathy and lack of knowledge of communication techniques with women with disabilities.

<sup>122</sup> City of Tuzla: Council for persons with disabilities formed in the area of the city of Tuzla. Information centre for persons with disabilities "Lotos" Tuzla, 08 February 2021, available at: <https://www.ic-lotos.org.ba/index.php/9-uncategorised/684-grad-tuzla-formiran-savjet-za-osobe-sa-invaliditetom-na-podrucju-grada-tuzle>



and young people with disabilities in regular schools. At the same time, huge funds in the budgets are channelled for special schools and institutions as forms of education that clearly segregate children and young people with disabilities.

The quality of education affects the employment of persons with disabilities, however, there are no accurate data on the number of young people and other employed persons with disabilities. What further affects the reduced employment of young people with disabilities is the fact that young people with disabilities often lose their legal capacity in order to preserve the right to a family pension. In this way, parents provide some security for the future of their children, while denying them the opportunity to work and thus be included in society.

Access to health care for persons with disabilities, in particular women and children with disabilities, is hampered by the inaccessibility of facilities and equipment and the lack of education of health personnel about how to treat people with different disabilities. Ultimately, there is no responsibility on the part of health personnel towards patients in general, including persons with disabilities.

### LGBTIQ Rights

Bearing in mind the laws and bylaws, the legal position of LGBTIQ persons in BiH was generally not improved during 2021. The Action Plan for improving the state of Human Rights and fundamental freedoms of LGBTIQ persons in Bosnia and Herzegovina for the period 2021-2023, which was developed in 2020 by the MHRR BiH with the support of the Council of Europe and the EU, was not adopted. The Inter-Agency Government Working Group in charge of the analysis of regulations within which same-sex couples from the community of life can exercise their rights arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms, met 3 times in 2021. The result of this group's work is "Report on work with the draft regulations that need to be adopted in the FBiH area so that the same-sex couples in the community of life can exercise the rights arising from the European Convention on Human Rights and Fundamental Freedoms" of February 2021. The aforementioned report contains the Conclusion on the adoption of the "FBiH Law on Same-Sex Unions" which would represent *lex specialis* in relation to other regulations in force in BiH. After the analysis, the Inter-Agency Working Group proposed to the FBiH Government to adopt a conclusion that would:

1. Adopt the Report on the work of the Inter-Agency Working Group
2. Task the Federation Ministry of Justice to appoint an inter-agency working group for the drafting of the FBiH Law on Same-Sex Unions with the recommendation that the drafting of the law should take into account the model law drafted by the Sarajevo Open Centre
3. It instructed the FBiH Government Information Office to post the Report on the Work of the Inter-Agency Working Group on the FBiH Government website.

It is important to emphasize that by the time of writing this report, the FBiH Government



has not adopted the proposed conclusion.

During 2021, the contact prosecutors were established at the HNC Prosecutor's Office, TC<sup>123</sup>, for reporting hate crimes committed on the basis of sexual orientation or gender identity. In August 2021, the second Pride Parade was held, because in 2020, due to the epidemiological situation, a protest walk could not be held. For the third consecutive year, the SC Ministry of the Interior has ordered additional security measures, which have not been imposed on any other protest characterized as a high-risk meeting. In other cases, the costs were covered by the budget of the competent institutions. Placing these security measures at the expense of the organiser sends a message that the State does not have the capacity or does not want to provide full security protection to LGBTIQ persons and other participants in the pride parade. At the request of the Organising Committee of the BH Pride Parade, the SC Prime Minister Cabinet and the Mayor of the Municipality of Centar Sarajevo covered the costs of additional security measures.

In this regard, it is urgent to adopt amendments to the Law on Public Assembly in SC, in accordance with international standards, so that this support is not an exception, but the law would allow the enjoyment of freedom of assembly without placing any burden on the citizens. In addition to the requirements on the adoption of the law on same-sex partnership, the Organising Committee of the BH Pride Parade also requires adequate regulation of the issue of the transition of trans persons and the establishment of a medical team in BiH that would fully provide the transition process covered by the costs of the public budget.

### Respect and Protection of Minorities and Cultural Rights

#### Refugees and displaced persons

There has been no significant breakthrough in BiH when it comes to aligning domestic legislation with European standards related to the basic rights of refugees and displaced persons and national minorities. This means that there has been no progress in the implementation of priority number 13 relating to vulnerable groups.

There are still problems in realizing the access to the rights of refugees and displaced persons in the areas envisaged in the Revised Strategy of Annex 7 to the Dayton Peace Agreement<sup>124</sup>, which has not been fully implemented when it comes to the established strategic goals<sup>125</sup> from 1 to 4, in the areas of: reconstruction of housing units, closure of collective centres and addressing the issue of alternative accommodation and social housing with special emphasis on the problems of displaced persons and refugees and housing of vulnerable categories of returnees; completion of the process of return of property and tenancy rights; electrification of returnee settlements and individual returnee housing units; reconstruction of infrastructure in places of interest for return; health care; social protection; exercising the right to education; the right to work and employment; security and mine clearance of areas of return; the right to compensation of displaced persons, refugees and returnees.

The recommendation is to implement recommendations and proposals for measures to improve access to the rights of refugees, displaced persons and returnees in accordance

123 Imenovana kontakt osoba u Tužilaštvu Tuzlanskog kantona za slučajeve zločina iz mržnje prema LGBTIQ osobama (Contact person appointed in the Prosecutor's Office of the Tuzla Canton for cases of hate crimes against LGBTIQ persons). Sarajevo Open Centre, 23 July 2021, available at: <https://soc.ba/imenovana-kontakt-osoba-u-tuzilastvu-tuzlanskog-kantona-za-slucajeve-zločina-iz-mržnje-prema-lgbti-osobama/>

124 More at: <http://www.mhrr.gov.ba/pdf/tzbjeglice/revidirana%20strategija%20bih%20za%20provedbu%20aneksa%20vii%20dms.pdf>

125 The Strategy identified the following STRATEGY GOALS: 1. Completion of the return process of BiH refugees and displaced persons in BiH; 2. Implementation of repossession of property and occupancy rights; 3. Completion of reconstruction process of housing units for the return needs; 4. Ensuring conditions for sustainable return and reintegration processes in BiH

with Chapter III of the Revised Strategy of Annex 7 of the Dayton Peace Agreement<sup>126</sup>.

## National Minorities

Administrative obstacles to the exercising of the rights of the Roma population persist. The Law on Amendments to the Law on Permanent and Temporary Residence of BiH Citizens<sup>127</sup> of 2015 remains one of the biggest obstacles to the exercise of rights, since a large number of persons of Roma nationality do not own property or live in abandoned, improvised or non-legalized facilities, which is why they have been denied the possibility of registration of permanent residence and the possibility of obtaining identification documents, which are a prerequisite for the exercise of all other civil rights (health care, social protection, education, etc.). In 2021, the FBiH Government adopted the Decision<sup>128</sup> on the adoption of an expenditure programme with criteria for the distribution of funds, "Current transfer to other levels of government and funds – for health care of Roma in the FBiH"<sup>129</sup>, with the purpose to provide adequate health care to persons of Roma nationality who do not have permanent or temporary residence in the FBiH, under the same conditions as for other population groups that are at increased risk of morbidity. However, the problem of health care of persons of Roma nationality who have a duly registered permanent residence and are not covered by the FBiH Law on Health Insurance<sup>130</sup> has still not been solved.

In 2021, amendments were adopted to the Law<sup>131</sup>, which establish the procedure for determining the time and place of birth for persons who are not registered in the Birth Register, and cannot prove the time and place of their birth in the manner provided for by the regulations governing the keeping of birth registers. Although the law in principle allows persons at risk of statelessness who do not possess material evidence of their birth, predominantly persons of Roma nationality, to be registered in the civil registry and obtain a legal identity, it is deficient because it prescribes compulsory medical expertise and payment of the costs of the procedure which are borne by the applicants, mostly persons in need. The recommendation is to exclude the obligation of medical expertise in procedures, i.e., to exempt applicants from the costs of the procedure in registration procedures.

## Chapter 24: Justice, Freedom and Security

### Fight against Organised Crime

A complicated administrative structure, 13 administrative levels, the absence of a harmonised and uniform approach in BiH, is also evident in the institutional arrangements for the fight against organised crime. As also stated in the EC Progress Report on BiH for 2021, CSOs have found that there was no progress in the mutual harmonization of regulations concerning police at all levels, that the legal framework for the fight against organised crime is only partially aligned with the EU acquis, and that it is necessary to harmonize domestic regulations with the EU directives on Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT). In January 2020, BiH adopted the Strategy for Combating Trafficking in Human Beings for the period 2020-2023. There is still no strategic framework for tackling cybercrime, and the strategy exists only in the RS.

<sup>126</sup> Revised Strategy of Annex 7 of DPA, October 2008 (III, pp. 28-49)

<sup>127</sup> BiH Official Gazette, Nos. 32/01, 56/08 and 58/15

<sup>128</sup> Official Gazette of the Federation of BiH, number: 27/21

<sup>129</sup> With regard to the exercise of the right to health care, and in order to implement Article 12 of the FBiH Law on Health Care (Official Gazette of the Federation of BiH, Nos.: 46/10 and 75/13), which distinguishes persons of Roma nationality who do not have a permanent or temporary place of residence, as a special category of the population to which access to health care is granted, the Government of the Federation of BiH adopted a decision last year allocating certain funds from the FBiH Budget

<sup>130</sup> Official Gazette of the Federation of BiH, 30/97, 7/02, 70/08 and 48/11, 36/18

<sup>131</sup> Law on Non-Contentious Procedure of the Federation of BiH (Official Gazette of the Federation of BiH, No. 2/1998, 39/2004, 73/2005, 80/2014 and 11/2021)

The lack of harmonisation of criminal codes in the country severely undermines the capacity to effectively dismantle criminal organisations, compounded by weak institutional co-ordination. As a result, there is a systemic lack of operational cooperation and a very limited exchange of intelligence, which leaves more room for criminal organisations. There is no comprehensive policy for conducting financial investigations on a systemic and timely basis, and where they are conducted, the results were not significant.

Research by the Centre for Investigative Reporting shows that the current framework for controlling money flows within the country, and especially taking money to neighbouring countries, shows no results. From the beginning of 2018 to October 2020, at least 37.6 million KM in different currencies were taken out before the eyes of the customs officers.<sup>132</sup> Due to the lack of cooperation with colleagues from neighbouring countries who dispose of data, the Customs (under the BiH Indirect Taxation Administration) does not know about this money. The origin of the money is not checked even in cases of legal transfer, so the authorities do not know where the money goes or where it came from.

During 2021, a first-instance verdict was brought in one of the largest cases of organised crime in BiH, the Pandora case. The Court of BiH sentenced Kemal Čaušević, a former director of ITA BiH, to nine years' imprisonment in the first instance, and his assets worth BAM 1.72 million and BAM 575,239<sup>133</sup> will be confiscated. Anes Sadiković, a textile merchant indicted with Čaušević, was sentenced to two years in prison for giving gifts and other forms of benefit. The Court acquitted Čaušević of responsibility for abuse of office. According to the indictment, Čaušević favoured the companies of Sadiković and Sedinet Karić, also a textile merchant, who was sentenced to one year in prison four years ago, after a plea bargain, for giving gifts and other forms of benefit. As the CIN reports, their companies were charged lower prices on invoices and the goods they imported were not thoroughly inspected at customs. However, research shows that the practice of criminal action within the ITA institution continues. "Some inspectors of the BiH Indirect Taxation Authority racketeer traders, using the established method of work - they ask for money in order not to control their business. They illegally confiscate the goods of those who refuse to give bribes."<sup>134</sup>

The CIN research into cash flows that transferred money from Bosnalijek pharmaceutical company to the private accounts of the director and his related parties was taken over as part of the prosecutorial investigation into the Bosnalijek case. Nedim Uzunović, director of Bosnalijek, spent a month in the custody of the BiH Court due to the risk of escape, concealing evidence and obstructing the investigation into the misappropriation of just over 11 million KM of the largest domestic pharmaceuticals factory. He is suspected of: organised crime, abuse of office, concluding of harmful contracts, and money laundering. The court decisions were made on the basis of evidence from the BiH Prosecutor's Office indicating that Uzunović embezzled the company's money on two occasions: first as director of the representative office of "Bosnalijek" in Moscow from 2005 to 2012 when the company was majority-owned by the Federation Government, and then as general manager in Sarajevo in 2016 and 2017 while it was in the hands of Russian investors hidden behind the Luxembourg offshore fund "Haden".<sup>135</sup>

132 Keš curi kroz šuplje bh. Granice (Cash leaks through hollow BH borders). Centre for Investigative Reporting, 26 November 2021, available at: <https://cin.ba/kes-curi-kroz-suplje-bh-granice/>

133 Kemal Čaušević osuđen na devet godina zatvora (Kemal Čaušević sentenced to nine years in prison). Centre for Investigative Reporting, 27 May 2021, available at: <https://cin.ba/kemal-causevic-osuden-na-devet-godina-zatvora/>

134 Šefica i njeni "crnokošuljaši" za iznude (The boss lady and her "blackshirts" for extortion). Centre for Investigative Reporting, 27 June 2021, available at: <https://cin.ba/sefica-i-njeni-crnokošuljasi-za-iznude/>

135 Bosnalijekov novac od Malte do Rusije (Bosnalijek's money from Malta to Russia). Centre for Investigative Reporting, 10 December 2021, available at: <https://cin.ba/bosnalijekov-novac-od-malte-do-rusije/>

## Fight against Terrorism

The Strategy for Prevention and Fight against Terrorism expired in December 2020, and the lack of such a new strategy reduces the country's capacity to fight terrorism and prevent violent extremism. In April 2021, the CoM BiH appointed a working group for the development of the strategy, but it is not yet known when the strategy will be prepared and sent for further procedures.<sup>136</sup>

The recommendation that BiH "needs to continue its efforts in the fight against terrorism and increase its capacity to do so" also remained unfulfilled. The reasons for non-adoption, as investigated by BIRN BiH, are the inability of all actors to agree on the definition of right-wing extremism and the inclusion of this type of threat in the new strategic document<sup>137</sup>. In a previous EU opinion, this was cited as a key priority: "A follow-up strategy should be adopted in line with EU policy, especially on preventing and countering violent extremism, covering all forms of radicalisation and violent extremism (political, ethno-nationalist and religious) and addressing them also in field activities on preventing/countering violent extremism."

BiH has not yet built adequate capacity to work with prisoners in prisons and after getting out of prison. The previous report states: "There is very limited assistance available in prison even after release, to distance from violent extremism. Significant efforts are needed to prepare the prisoners for release, including former terrorist fighters from foreign battlefields." This issue was particularly in the public eye last year with the release from prison of Bilal Bosnić, one of the main organisers of sending people to foreign battlefields, who served his seven-year sentence and for whom the institutions stated that he would be a person of interest upon his release<sup>138</sup>.

In addition to the lack of work with persons leaving prison and the failure to adopt the Strategy, the lack of work with young people, lack of capacity in schools and mental health experts was particularly highlighted, which is why the radicalization of minors is becoming an increasingly challenging problem for the Bosnian Herzegovinian society with long-term consequences, while the fragmented structure of the State and the delayed and insufficiently defined measures to combat extreme impacts provide limited results<sup>139</sup>.

In July, BiH appointed a Coordination Team to ensure the conditions for the return of Bosnian Herzegovinian citizens from Syria and Iraq – where there are about a hundred of them – but this has not been done to date, despite family demands and poor conditions they are in.

The latest report also states that BiH should strengthen its capacity to prosecute terrorism and terrorist financing, as well as tighten penalties, and adopt a new law that will facilitate the prosecution of terrorist financing. In the past 12 months, only one indictment for terrorist financing has been filed, no improved legislation has been adopted, and the sentences imposed for warfare on foreign battlefields still amounted to under five years in prison<sup>140</sup>.

## Legal and Illegal Migrations

During 2021, the amendments to the BiH Law on Aliens were adopted in an urgent

<sup>136</sup> More at: <http://www.sluzbenilist.ba/page/akt/rRQ84rj6jX0=>

<sup>137</sup> Desničari usporili usvajanje strategije za borbu protiv terorizma (The right-wing slowed down the adoption of the counter-terrorism strategy).

Detektor, 27 January 2022, available at: <https://detektor.ba/2022/01/27/desnicari-usporili-usvajanje-strategije-za-borbu-protiv-terorizma/>

<sup>138</sup> Bilal Bosnić je na slobodi. U kakvo okruženje se vratio? (Bilal Bosnić set free. What environment did he return to?). Detektor, 10 September 2021, available at: <https://detektor.ba/2021/09/10/bilal-bosnic-je-na-slobodi-u-kakvo-okruzenje-se-vratio/>

<sup>139</sup> Znakovi radikalizacije u školskoj dobi enigma za bh. obrazovni sistem (Signs of radicalisation in school age is an enigma for the BiH education system). Detektor, 06 August 2021, available at: <https://detektor.ba/2021/08/06/znakovi-radikalizacije-u-skolskoj-dobi-enigma-za-bh-obrazovni-sistem/>

<sup>140</sup> BIRN objavio Bazu podataka o terorizmu i stranim borcima na Zapadnom Balkanu (BIRN published the Database on Terrorism and Foreign Fighters in the Western Balkans). Detektor, 19 March 2021, available at: <https://detektor.ba/2021/03/19/birn-objavio-bazu-podataka-o-terorizmu-i-stranim-borcima-na-zapadnom-balkanu/>

procedure with the explanation that they are based on the principles of legality, urgency, security and social responsibility. The amendments adopted broaden the grounds for expulsion from the territory of BiH and call into question the effective assessment of the principle of non-refoulement. The BiH Law on Aliens, although largely harmonised, nevertheless requires further harmonisation with the EU acquis. The Strategy and Action Plan on Migration and Asylum for the period 2021-2025, which is in the process of drafting, envisages further amendments to the BiH Law on Aliens, but also to the BiH Law on Asylum, in which the right to family reunification of persons under subsidiary protection, as well as the right to travel document of this category of persons are recognized as two key areas requiring additional harmonization.

During 2021, arrival of 15,740 foreigners was recorded, while a total of 85,153 foreigners in BiH have been identified since the beginning of 2018.<sup>141</sup> The International Organization for Migration (IOM), in coordination with the Service for Foreigners' Affairs, manages the available accommodation resources. The official IOM data shows that according to the countries of origin, the most people on the move come from Afghanistan, 28% from Pakistan 27%, followed by Iran with 7%, Bangladesh with 5% and Iraq with 2%. The evident lack of capacity of the competent institutions continues to slow down work and prevent timely action, which is why it is necessary for BiH to undertake all necessary activities in order to improve institutional and coordination difficulties. Migration and asylum management should be implemented with the State at the forefront, while the burden of migration flows should be evenly distributed. The Readmission Agreement between BiH and Pakistan entered into force in 2021, allowing the return of citizens of this country illegally staying in BiH.<sup>142</sup> The pandemic has generally slowed down the readmission procedures due to suspensions imposed by a number of countries.

## People on the Move

Due to the very restrictive policy of EU countries regarding the reception of persons on the move and the repressive measures they take at the borders, especially those by the police and the Croatian border service, the time spent by persons on the move in BiH has been extended. These are mainly those who have repeatedly failed to enter EU countries that represent their final destination. BiH has retained the character of a transit country that is increasingly facing the problem of organised human trafficking and sexual exploitation of members of this population. Especially vulnerable are unaccompanied children, who account for 7% of the total number of persons on the move, and women who are easy targets of both domestic criminals and organised groups consisting of members of persons on the move.

At the beginning of 2021, the total number of people on the move was between 4,500 and 6,000. Most of them were placed in unconditional camps, the worst of which was the Lipa Camp. After this camp was burned down in December 2020, about 500 people on the move found themselves in a very unenviable situation. During January 2021, at temperatures lower than 15 degrees, they were subjected to inhuman treatment in a completely destroyed area of the camp for 25 days. After days of protests by the citizens of the Una-Sana Canton (USC) and the refusal of the Cantonal authorities to move them to the former Bira Camp, the authorities did not propose an alternative solution

<sup>141</sup> More at: UNHCR BiH Operational update - December 2021.pdf

<sup>142</sup> More at: <http://www.msb.gov.ba/vijesti/saopstenja/default.aspx?id=20666&langTag=bs-BA>

for their accommodation. In addition, around 2,500 other people on the move met the winter in abandoned facilities and makeshift camps in Bihać and Velika Kladuša. Attempts to move part of them to a new location, the Bradina barracks, were rejected by local authorities, and protests were staged by locals. Negotiations where persons on the move would be relocated and relocation lasted for days, and finally an agreement was reached to transfer them to Ušivak and Blažuj Camps. At that time, the Blažuj Camp was completely filled, and additional capacities were improvised, which led to the disapproval of persons who were already placed in it.

In December 2021, the number of people on the move in BiH was estimated at about 3,500, of which about 1000 are in unregistered camps or pay for their own accommodation. Most of them remain in the USC because it is geographically closest to the EU border. At the end of the year, and due to the lower influx of people on the move, the existing accommodation capacities in five official camps were not fully filled. Due to its position and distance from the urban settlements, the Lipa Centre, which was renovated and opened in November 2021 after the fire in 2020, is still the least filled. There are still a number of illegal camps where those who want to be as close to the border as possible gather temporarily, and the conditions in which they live are catastrophic. However, their number decreases compared to the previous period, especially with the arrival of the winter months. It is estimated that about 250 people are still in one of these temporary transit camps.

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The care of unaccompanied children remains the biggest challenge for both international organisations and domestic institutions. Namely, in accordance with international standards for child protection, it is necessary to provide this category with legal protection, and with adequate accommodation, access to education, health care, and psychological assistance according to their needs and age. Compared to the previous period, better cooperation was established with social work centres that have the obligation to assign guardianship and care for children on the move, but there is still an evident shortage of social workers, i.e., too many children are assigned per one social worker. A particularly vulnerable group consists of LGBTIQ people on the move who, in addition to discrimination because of their migrant status, also suffer discrimination because of their sexual orientation and gender identity, and violence in many cases.

Access to health care is provided for those placed in camps, while still a very large number of adults and children are in a state of need. People with chronic diseases, pregnant women, children and the elderly are particularly vulnerable. The situation is further complicated due to the pandemic caused by the Covid-19 virus and it is again evident that it is precisely people in movement who, due to the conditions in which they live, were most at risk of infection. Access to food and toiletries depends on where people on the move are accommodated. There is a great role for humanitarian organizations and volunteers who have made sure that meals reach everyone, including those in illegal camps. However, due to their involvement, the work of volunteers was subject to criticism by local authorities, and many of them were exposed to hate speech and received threats to their security from various organised groups.

What remains a concern is that the transition of responsibilities and obligations related

to the care of persons on the move has not yet passed from international organizations to the State institutions. The safety and dignity of people on the move is nowhere near as guaranteed by international standards that BiH has accepted. A large number of services are still provided through international and domestic humanitarian organizations and groups of volunteers working directly on the ground with people on the move.

### Asylum

BiH has been facing the phenomenon of mixed migration for several years, with most migrants and refugees using the country's territory for transit purposes, while fewer are showing interest in staying and joining the asylum procedure. In this regard, the enormous disproportionality between the number of expressed intentions to apply for asylum and the number of formally submitted applications for asylum is the result of a number of factors and specificities. Some of them relate to the personalities of migrants and refugees, but on the other hand there are serious shortcomings and obstacles that persist in practice in accessing the asylum procedure in BiH. Due to the large number of foreigners in the territory of BiH, numerous difficulties in managing migration flows were recorded, including a lack of personnel capacity in the relevant institutions, as well as unharmonized treatment and application of the applicable regulations in the field of asylum.

The complex State structure should certainly be added to the large number of challenges, as well as the fact that some Cantons felt the entire burden of migratory pressure, although the area of migration and asylum is the responsibility of the State. The BiH Ministry of Security claims that it has mastered the so-called "migrant crisis in BiH", but the largest number of refugees and migrants is still concentrated in the SC and the USC, so it can reasonably be said that at the same time the pressure of requests for services and assistance is higher than in other parts of the country. All currently existing reception centres are located in the FBiH area, and the asylum procedure takes place before the Asylum Sector of the BiH Ministry of Security, based in Sarajevo. The RS authorities continue to deny migrants access to this Entity's territory.

The Service issues certificates of expressed intention to seek asylum, i.e., it enables the demonstration of intention without first verifying whether the alien really wants to apply for asylum and without adequately informing about the purpose of the issued document. Therefore, a large number of aliens have no clear idea of the document being issued to them, which creates confusion for them when it comes to legal stay in BiH.

The length of waiting time for asylum applications and registration procedure vary from location to location<sup>143</sup>, except for the persons who receive accommodation in TRC Blažuj and who still do not have the right to access the asylum procedure. This results in the uncertain status of numerous aliens who, without their own choice, are put in a position to wait for the exercise of guaranteed rights and the resolution of status issues since December 2019, as the moment of the opening of the centre. Only adult male persons are accommodated at TRC Blažuj.

A complex State structure and a huge burden of migratory movements on insufficient State capacity, as well as an uneven division of responsibilities within the State territory

<sup>143</sup> Accommodation units and facilities for asylum seekers and migrants: Centre for Reception and Accommodation of Asylum Seekers (Delijaš Asylum Centre), established within the Ministry of Security as a specialized institution intended for reception and accommodation of asylum seekers in BiH); Salakovac Refugee-Reception Centre (RRC Salakovac) established within the MHRR BiH as an institution for the reception of persons under international protection. After the increased number of aliens entering BiH, the agreement between the MHRR and the Ministry of Security defined mechanisms for the reception of asylum seekers; In the area of the SC, two temporary reception centres Ušivak and Blažuj (hereinafter: TRC Ušivak and TRC Blažuj) were established, both in the jurisdiction of the Service for Foreigners' Affairs; in the area of the USC, TRC Borići, TRC Miral and TRC Lipa, the Emergency Tent Centre Lipa was established under the authority of the Service for Foreigners' Affairs. In addition to these centres, accommodation services are provided by the organization "Women from Una"; in the area of TC, accommodation services are provided by the "Puž" Community Service Centre", while accommodation services in the International Solidarity Forum MFS EMMAUS, within which the Duje Reception Centre operates, are currently suspended.



are significant factors that slow down or, in certain cases, prevent access to the asylum procedure. The fact is that the largest number of migrants and refugees use BiH as a transit territory towards EU countries, but those who choose to seek asylum in BiH must have access to the procedure without reservations or restrictions.

In order to ensure the application of both the domestic and international legal framework and in this regard unhindered access to the asylum procedure and the associated rights, it is necessary that BiH and its competent authorities in the field of migration and asylum ensure the issuance of a certificate of expressed intention to seek asylum in BiH in accordance with the Law on Asylum, ensure the uniform application of legal provisions regarding access to the asylum procedure regardless of the accommodation location of persons interested in the procedure, and ensure sufficient capacities of acting officials in order to ensure unhindered work and access to the asylum procedure without delay, as well as provide effective information to persons who express their intention to seek asylum, and improve the exchange of information in the field of migration and asylum.

## Chapter 5: Public Procurement

During 2021, the Proposal of the Law on Amendments to the Public Procurement Law (unchanged since 2014) was sent to parliamentary procedure, and its adoption would take a step towards compliance with the 2014 EU Directive. In addition, it is still necessary to strengthen the capacity of competent institutions for application of the law in the field of public procurement, which is one of the conditions for meeting key priorities.

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In February 2021, the CoM BiH adopted the Proposal of Amendments to the Public Procurement Law (PAPPL), which was prepared in 2018 by the Working Group for the Drafting of the PAPPL. After the adoption, it was sent to the PA BiH, and in order for it to enter into force, its adoption is awaited at the second reading of the House of Peoples of the PA BiH. The current Proposal of the PAPPL implies certain improvements, but it does not contain certain anti-corruption provisions that existed in the original Draft, which included an additional set of sanctions and stronger supervision of application of the law.

Based on several years of monitoring of the functioning of the public procurement system and practices in BiH, civil society has submitted its proposals to the PAPPL, which primarily refer to improving the transparency of public procurement procedures that take place under expedited procedures, strengthening mechanisms for prevention of corruption and prevention of conflicts of interest, strengthening the mechanism of monitoring and supervision of the entire process, and tightening sanctions for violations of the law in order to dissuade actors from illegal activities.

With the adoption of the aforementioned Proposal, gradual harmonization with EU directives in this area will be carried out, and as well as getting closer to fulfilling one of the 14 priorities set out in the EC Opinion. The decision on the mandatory application of preferential treatment for domestic bidders, by which BiH was violating the Stabilisation and Association Agreement, was not extended after 1 June 2021.



During the reporting period, no new Strategy for Development of Public Procurement was adopted, and the previous one was adopted for the period 2016-2020. Therefore, it is necessary to adopt a new Strategy of Public Procurement and the accompanying Action Plan to support the implementation of the Strategy, as well as to provide regular information on the progress in the implementation of the Action Plan and the Strategy. The positive trend in the development of the electronic Public Procurement Portal continued, which is an extremely strong element of transparency of the public procurement system.

When it comes to capacities for the implementation and application of the law, it is certainly important to note the under-capacity of the Public Procurement Agency (PPA), especially in the part of monitoring and advisory functions. This was also confirmed in the SIGMA Report 2021<sup>144</sup>, which states the lack of staff and insufficient technical capacity in the Procurement Review Body, which is the primary reason for the poor functioning of the Procurement Review Body. Therefore, it is necessary to strengthen the personnel and technical capacities of the PPA and the Procurement Review Body, to enable them to exercise the competences established by the Public Procurement Law.

Based on the requests for monitoring of stakeholders (CSOs, bidders, citizens), the PPA monitored 697 individual public procurement procedures during 2021. Based on the monitoring, 41 requests for initiation of misdemeanour proceedings were sent to the competent courts against the contracting authorities and responsible persons in the same, and 12 complaints to the competent prosecutor's offices due to a possible violation of the Public Procurement Law and the existence of elements of a criminal offense.

The PPA began the practice of publishing information on bad practices in the conduct of public procurement procedures in BiH, and warned of the possibility of initiating proceedings before the competent authorities. Thus, it warned about the obligation to publish public procurement plans on the websites of contracting authorities, the improper use of the accounting abbreviation "KUF" instead of the name of the subject of procurement, then about the practice of individual contracting authorities that make deliberate and conscious errors in the project documentation/technical specification, which are then subsequently "repaired" or "paid" by conducting non-transparent negotiation procedures without publishing a notice for additional or unforeseen works.

At the beginning of January 2021, the SC Anti-Corruption and Quality Control Office began implementing the Decree on the Control of Public Procurement in all institutions founded by the SC. The Office is hereby designated as the competent authority for the established control system of public procurement in all contracting authorities of the SC. The Office has established a Register of Public Procurement Data in the SC, which is publicly available on the Office's website ([www.anticorruptiks.com](http://www.anticorruptiks.com)). In addition to the public component of this register, there is an internal component visible only to the employees of the Office, with an analytical and statistical package of software tools and an implemented red flag system for possible irregularities.

### Effective system of remedies

The number of complaints received at the Procurement Review Body continues to

144 More at: <https://www.sigmaweb.org/publications/Monitoring-Report-2021-Bosnia-and-Herzegovina.pdf>

increase, and further inconsistency in the decisions taken between the three branches of the Office is also of concern, which is confirmed in the SIGMA Report 2021. In addition, some decisions conflict with the opinions of the PPA, which is why the Procurement Review Body, together with the PPA, should find modalities for establishing a coordination mechanism for the interpretation of the procurement law.

At the beginning of 2021, the trial for the biggest affair in 2020 in BiH began, the "Respirators" affair, while in September 2021, the Banja Luka District Court arrested and ordered the detention of Branislav Zeljković, director of the RS Public Health Institute and other suspects for abuse of office in the procurement of medical equipment at the beginning of the coronavirus pandemic in the RS. Apart from Zeljković, detention was also imposed on Dragan Dubravac, director of "Promeding" company, Slavko Bojić, director of "Procontrol", and Saša Marković, owner of the "Travel for fun" travel agency.

Just a few days after the arrest of the director of the Public Health Institute, one of the biggest affairs in 2021 occurred, the "Oxygen" affair, which was initiated after Transparency International in BiH (TI BiH) contacted the Agency for Medicinal Products and Medical Devices of BiH in order to initiate inspection at the Trebinje hospital, because it concluded a contract on public procurement of gases with a company that is not in the Agency's published register as authorized for the sale of medical devices and medicines. The inspection found that technical gas was used for medical purposes, thus endangering patients' health. After this case, it was found that at least five other suppliers were supplying unauthorized medical oxygen to public health institutions. After the affair, the RS government sent the Law on Medicinal products and Medical Devices in the RS for the urgent adoption. However, the Government has not given justifiable reasons for its urgent adoption, as there is already a law regulating this area at the BiH level. Applicable regulations allow public health institutions to directly procure medicines through procedures in situations where the reasons of urgency and protection of the health of the population so require.

## CLUSTER 3: COMPETITIVENESS AND INCLUSIVE GROWTH

### Chapter 19: Social Policy and Employment

#### Women's Participation in the Labour Market – Employment and Gender Equality

2021 was marked by an unstable situation in public health and employment and labour market, which particularly affected sectors in which women are predominantly represented.

According to the Labour Force Survey in 2021, out of the total number of persons who make up the labour force, 846000 (60.7%) are men and 547000 (39.3%) are women. In the total number of persons outside the labour force 571000 (37.8%) are men and 940000 (62.2%) are women. Out of the total number of employed persons, 724000 (62.9%) are men and 427000 (37.1%) are women, while out of the total number of unemployed persons, 122000 (50.3%) are men and 120000 (49.7%) are women.

Statistics of the Agency for Statistics of BiH show that in 2021, the gender gap in employment was 25.8%. Most women were employed in services, significantly more than men. The data of the RS Employment Service indicate that the loss of jobs particularly affected activities in which women are more represented, such as trade, catering, financial operations, public administration and defence, education, health and social protection.

In addition to domestic legal acts that guarantee gender equality and point to the importance and necessity of women's economic empowerment, BiH, the Entities and Cantons are signatories to several international documents in this field.<sup>145</sup> The FBiH and the Cantons are obliged to implement these documents, and the documents also oblige to the implementation of measures of economic empowerment of women survivors of domestic violence so that they would have the courage to leave violent communities.

An analysis of Federation and Cantonal legal regulations and existing public policies, strategies and plans in the field of gender equality, women's economic empowerment and development, current during 2020-2021, shows that there is no sufficiently developed sensitivity to the needs of vulnerable groups of women, including those who have survived domestic violence.

The RS adopted the Employment Strategy for the period 2021-2027<sup>146</sup>. Although the Strategy provides for Roma employment, the empowerment of other marginalised groups, such as women victims of violence, is not recognized by this document. The FBiH does not yet have an adopted Employment Strategy for the period 2021-2027.<sup>147</sup> Although the Draft Strategy recognises employment as a pressing challenge "especially when it comes to specific population groups such as young people, the low-skilled persons, women and Roma"<sup>148</sup>, it does not specify support for the most vulnerable categories<sup>149</sup> such as women victims of domestic violence who face multiple challenges when recruiting on the labour market. There is still no single employment strategy at the BiH level.

145 Please find an overview of the legislation in the publication: Kroz ekonomsku stabilnost do slobode: analiza aktualnih propisa i praksi u FBiH u vezi s ekonomskim osnaživanjem žena koje su preživjele porodično nasilje i preporuke za njihovo poboljšanje (Through economic stability to freedom: An analysis of current regulations and practices in the FBiH in relation to economic empowerment of women survivors of domestic violence and recommendations for their improvement) by Jasmina Čaušević and Maida Zagorac: <https://www.worldcat.org/title/kroz-ekonomsku-stabilnost-do-slobode-analiza-aktuelnih-propisa-i-praksi-u-fbih-u-vezi-s-ekonomskim-osnazivanjem-zena-koje-su-prezivjele-porodicno-nasilje-i-preporuke-za-njihovo-poboljsanje/oclc/1230256268>.

146 The Draft Strategy available at: [https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpb/Documents/Стратегија\\_запошљавања\\_PC\\_-\\_НАЦРТ.docx](https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpb/Documents/Стратегија_запошљавања_PC_-_НАЦРТ.docx)

147 After adoption at the session of the PFBiH House of Representatives, the Strategy was not adopted at the session of the PFBiH House of Peoples

148 Decision to adopt the Employment Strategy of the Federation of BiH: <https://drive.google.com/file/d/1xaJctQ5AKu0tLFCks-5wat5UBoH3Qcuj/view>, accessed 11 October 2021.

149 This document also recognized "the most vulnerable in the labour market", not defining who are the most vulnerable, thus leaving room for different interpretations and discretionary assessment of whether someone is "the most vulnerable", which is unacceptable.

The FBiH Government has adopted the FBiH Action Plan for Innovations in Small and Medium Enterprises for the period 2021-2023<sup>150</sup>, which, in part through EU support for private sector development, places special emphasis on support for women and young people. In the RS, the Strategy for the Development of Women's Entrepreneurship in the RS for the period 2019–2023 was developed.<sup>151</sup> Expected results of the strategy include: improved access to finance for women entrepreneurs; increased use of capital resources; increased innovation; support for women entrepreneurs at the local level; strengthening of existing women's associations and support for women entrepreneurs at the local level; strengthening of existing women's associations and support for the formation of new associations; and the establishment of an e-platform for women entrepreneurs.

Men in BiH earn on average 12.7% more than women.<sup>152</sup> Gender segregation based on profession contributes greatly to this situation – most women work in the service sector and gender stereotyped professions such as education and health care, while more men work in managerial and better paid positions.<sup>153</sup> Also, the unpaid domestic care work, performed by women, is an additional challenge. This is recognized as a starting point in gender inequality and is directly related to wage inequalities, lower incomes, level of education, and stress factors affecting women's physical and mental health. According to the Agency for Statistics, nearly 2.5% of the population in BiH are unpaid persons who take care of family members, and most of them are women. In most cases, because of domestic work and the care of family members (mainly children and the elderly), women had to leave school and professional development, which limits their presence in the labour market.

## Labour and Occupational Health and Safety Laws

There are laws on occupational health and safety in the Entities and the BD BiH. During 2021, amendments were adopted to the Law on Occupational Safety and Health of the BD BiH in the field of professional examination and licensing for performing work in this field.<sup>154</sup> These laws pay special attention to the preservation of the physical and mental health of young people, persons with disabilities, women in terms of maternity protection, persons with occupational disease, elderly workers within the limits appropriate to their age. No by-laws have yet been adopted that would regulate certain aspects of occupational safety in more detail.

The measures that followed the outbreak of the COVID-19 pandemic were almost completely gender neutral. The principles of proportionality and constitutionality were lacking, while many measures had a disproportionately negative effect on vulnerable groups.<sup>155</sup> For example, women from marginalized groups (Roma women, single parents, LBTQI+, women with disabilities, women victims of sexual violence, war torture and gender-based violence) faced multiple challenges and impaired living conditions during the COVID-19 pandemic.<sup>156</sup>

150 More at: [https://www.fmrpo.gov.ba/wp-content/uploads/2015/07/Akcijski-Plan-Inovacija\\_FBiH.docx](https://www.fmrpo.gov.ba/wp-content/uploads/2015/07/Akcijski-Plan-Inovacija_FBiH.docx), accessed 11 March 2022.

151 The Republika Srpska Government, Strategy for the Development of Women's Entrepreneurship in the Republika Srpska for the period 2019–2023,

Available in BHS languages at: <https://www.vladars.net/en-SP-Cyrl/Vlada/Ministarstva/mpp/stratdok/Documents/Strategy%20development%20entrepreneurship%20zena%20Republics%20Serbian%20for%20period%202019-2023.pdf>, accessed 10 March 2022.

152 Marković, S., (2022), Rodno zasnovana diskriminacija u oblasti rada u BiH (Gender-based discrimination in the employment field in BiH), Banja Luka: Helsinki Citizens' Assembly Banja Luka, Available at: <http://hcaabl.org/rodno-zasnovana-diskriminacija-u-oblasti-rada-u-bih-2018-2020/>

153 Ibid.

154 More at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20sigurnosti%20i%20zas--titi%20zdravlja%20radnika%20na%20radu/001B07-21%20Zakon%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20sigurnosti%20i%20zas--titi%20zdravlja%20radnika%20na%20radu.pdf>

155 Marković, S., (2022), Rodno zasnovana diskriminacija u oblasti rada u BiH (Gender-based discrimination in the employment field in BiH), Banja Luka: Helsinki Citizens' Assembly Banja Luka, Available at: <http://hcaabl.org/rodno-zasnovana-diskriminacija-u-oblasti-rada-u-bih-2018-2020/>

156 Ibid.

## Social Inclusion

The right to maternity leave is established in the RS by the Labour Law, while there is no law in the FBiH that standardises maternity pay, and it varies from Canton to Canton. Also, the Labour Laws regulate the right to maternity leave in case of loss of a child; the rights of parents of a child with disabilities; and the rights of the adoptive parent and the person entrusted with child care. These provisions prevent the mobility of women/parents and may constitute discrimination; if a woman decides to move for work to other Entity or Canton, she may not have any parental leave allowance. At the same time, fathers' right to use parental leave in both Entities is not regulated as a non-transferable right. In terms of aligning legislation with the Work-life Balance Directive (2019/1158)<sup>157</sup>, labour legislation should provide for adequate provisions on non-transferable and compensated parental leave (for fathers as well as for equivalent parents).

Also, BiH has started the process of considering ratification of the ILO Violence and Harassment Convention (No. 190)<sup>158</sup>, however, this process has not been completed until the end of this analysis. At the end of September 2021, the Law on Prohibition of Harassment at Work was adopted in the RS.<sup>159</sup> The law itself, notwithstanding the fact that it defines harassment at work which may cause harm of physical, psychological and sexual nature, does not recognize specific forms of gender-based harassment and violence in the workforce.

<sup>157</sup> Available at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32019L1158#PP4Contents>.

<sup>158</sup> International Labour Organization. Violence and Harassment Convention 2019 (No. 190). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:C190:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C190:NO)

<sup>159</sup> "Official Gazette of the Republika Srpska", No 90/21

## CLUSTER 4: GREEN AGENDA AND SUSTAINABLE CONNECTIVITY

### Chapter 27: Environment and Climate Change

The European Green Agenda (Green Deal) is a 2019 strategy that should make Europe the first “climate-neutral” continent by 2050.<sup>160</sup> In order to achieve this goal, signatory states must gradually work on introducing clean energy to initiate all economic processes. This would reduce the negative impact of the use of fossil fuels throughout the economy; production and consumption, taxation and social charges. BiH, along with five other Western Balkan countries, adopted the Green Agenda for the Western Balkans at the Western Balkans Summit in Sofia in November 2020. The Sofia Declaration<sup>161</sup> outlines the main guidelines for the implementation of the Green Agenda through activities in five areas: Climate change (decarbonisation, energy, mobility), Circular economy (waste, recycling, sustainable production, resource efficiency), Biodiversity (protection and restoration of ecosystems), Depollution of air, water and soil, and Sustainability of rural areas.

BiH has not made a significant step forward in terms of green transition, energy efficiency and the transition to sustainable energy sources. The State continues to rely on the production of energy in thermal power plants. About 68% of the total energy produced relates to energy produced in thermal power plants, with fossil fuels being used for energy production.<sup>162</sup> What is also worrying is the significant participation of lignite as an energy source with a high CO<sub>2</sub> content in the electricity production process. The construction of Unit 7 of the Tuzla Thermal Power Plant is a process that is still current, and the construction of the said Unit 7 does not represent the energy transition of BiH.

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The Action Plan<sup>163</sup> 2021-2030 for the implementation of the Green Agenda was adopted in October 2021 by the heads of states and governments of the Western Balkan countries. Its most important parts indicate the gradual cessation of coal use, the charging for greenhouse gas emissions, and the control of environmental pollution. Part of the nine billion-euro funds set out in the Instrument for Pre-Accession Assistance (IPA III) to help align the Western Balkan countries' economic growth with the EU, will be used to implement the Green Agenda. It is necessary for BiH to adopt regulations on renewable energy sources, energy efficiency and climate change in accordance with the obligations related to the Green Agenda.

#### Environmental Protection

In 2021, some progress was made in the field of environmental protection in BiH thanks to the activities of CSOs and the work of competent institutions stimulated by pressure and activities of CSOs. The most important results concern the adoption of the new FBiH Law on Environmental Protection with amendments prepared and advocated by CSOs, then the adoption of the Declaration on the Protection of Rivers in the RS by the NARS in February 2021, presenting to the public the Draft Law on Air Protection of the FBiH, the adoption of 6 new regulations in relation to waste management in FBiH<sup>164</sup>, the adoption of new regulations related to plants and facilities that must have an environmental permit and Rulebook on the content of the environmental impact study of the FBiH.

161 More at: <https://www.fmoit.gov.ba/bs/okolis/zasita-okolisa>

162 More at: [https://bhas.gov.ba/data/Publikacije/Saopštenja/2021/ENE\\_01\\_2021\\_08\\_1\\_BS.pdf](https://bhas.gov.ba/data/Publikacije/Saopštenja/2021/ENE_01_2021_08_1_BS.pdf)

163 More at: <https://www.fmoit.gov.ba/bs/novosti/priopcenja/akcioni-plan-za-provedbu-sofijske-deklaracije-o-zelenom-programu-za-zapadni-balkan-za-period-2021-2030-godine>

164 FMET, available at: <https://www.fmoit.gov.ba/bs/zakoni/zakoni-na-razini-fbih>

The Protocol on Pollutant Release and Transfer Registers (PRTR) is still pending ratification. The “polluter pays” system is still not adequately applied, which indirectly encourages large polluters to pollute the environment even more. The largest number of CSOs’ complaints is focused on the inadequate and biased work of the competent inspectorates. During 2021, the Proposal of the Law on Electricity of the FBiH<sup>165</sup>, which suspends the issuance of energy permits for small hydroelectric power plants (SHPPs), was adopted in the first reading by both chambers of the FBiH Parliament. This effectively prohibits the construction of new SHPPs, because without an energy permit, a building permit cannot be issued. During 2021, the CSOs, gathered in the Coalition for the Protection of Rivers in BiH, have launched and implemented 7 citizens’ initiatives to protect rivers from SHPPs. Therefore, the still strong environmental message of CSOs and citizens during 2021 is that the protection of rivers and public resources in both Entities should be harmonized and placed under unambiguous legal protection, which necessarily includes the abolition of incentives for all SHPPs in BiH.

It is crucial to protect the right to access drinking water as one of the fundamental human rights, while ensuring a more adequate response from inspection authorities in both Entities. Certainly, BiH must reduce coal subsidies through gradual decarbonisation, but also consider introducing a carbon dioxide tax or EU ETS. It is necessary to initiate the amendment of the law on concessions at all levels of government, because the core of inadequate harmonization of energy and environmental policies is in the problem of irrational spatial planning and issuing concessions, initiated through own-initiative bids from investors. In cases where non-compliance with environmental laws has been proven, such as the construction of the SHPP “Zlata” on the Doljanka River, it is necessary to provide the final judicial epilogue, in order to adequately punish investors whose illegal activities have been proven<sup>166</sup>. It is also necessary to improve the faster acting of courts competent for administrative disputes against unlawful acts of the public authorities, i.e., criminal prosecution bodies in cases of investigation of criminal offences against the environment/environmental protection. Adequate water supply to local communities and municipal waste disposal, as well as systemic waste water management, is still an unresolved issue for many municipalities in BiH. Investing in environmental protection in BiH will be counterproductive without investing in the expansion of protected areas, since BiH is on the lower list of the European scale of protected areas with only 2.28% of protected areas<sup>167</sup>. In 2021, the BiH capital again topped the list of the most polluted cities in the world in relation to air quality<sup>168</sup>.

## Waters

BiH has 244 rivers and they are all threatened by the construction of SHPPs. More than 500 SHPPs are planned in BiH. 69 SHPPs have been built in the FBiH so far.<sup>169</sup> They produce small amounts of electricity, cost a lot of money through subsidies, do damage to the environment<sup>170</sup>. Citizens are regularly denied adequate participation in administrative procedures concerning the construction of SHPPs, which constitutes prima facie a violation of the Aarhus Convention. During 2021, members of the Coalition for the Protection of Rivers of BiH continued advocacy activities for changes to the legal framework in order to protect rivers more adequately, while certain members of the Eko BiH network were also part of the working groups “Vode” (“Waters”) at the Entity and State level within the ESAP 2030+<sup>171</sup> project regarding the preparation of Environmental

165 Proposal of the Law on Electricity of the FBiH, available at: <https://parlamentfbih.gov.ba/v2/bs/propis.php?id=655>

166 “Za Doljanku”: Sud poništio okolišnu dozvolu, hidroelektrana još radi (“For Doljanka”: Court annuls environmental permit, hydroelectric power plant still working), available at: <https://energetika.ba/za-doljanku-sud-ponistio-okolisnu-dozvolu-hidroelektrana-jos-radi/>

167 (Ne)zaštićena prirodna bogatstva BiH ((Non-)protected natural resources of BiH), available at: <https://www.slobodnaevropa.org/a/nve-nezasticena-prirodna-bogatstva-bih/29934880.html>

168 Povratak Balkana u vrh regija sa najzagadenijim zrakom (Return of the Balkans to the top of the regions with the most polluted air), available at: <https://balkans.aljazeera.net teme/2021/11/13/povratak-regije-u-vrh-regija-sa-najzagadenijim-zrakom>

169 Inventory of construction of small hydropower plants in BiH at [voda.ekoakcija.org](http://voda.ekoakcija.org)

170 Koalicija za zaštitu rijeka polala poruku delegatima Doma naroda Parlamenta FBiH (The Coalition for the Protection of Rivers sends a message to the delegates of the House of Peoples of the FBiH Parliament), available at:

<https://radiosarajevo.ba/metromahala teme/koalicija-za-zastitu-rijeka-bih-polala-poruku-delegatima-doma-naroda-parlamenta-fbih/439549>

171 ESAP BiH 2030+, available at: [BIH ESAP 2030+ – Environmental Strategy and Action Plan 2030+](https://www.esap.gov.ba/)

Strategies for the Entities, the State level and the BD BiH, where the impact of CSOs was again crucial for identifying SHPPs as one of the burning problems.

At the beginning of 2021, the FBiH Law on Environmental Protection entered into force<sup>172</sup>, while the NARS adopted the Declaration on River Protection in that Entity<sup>173</sup>. The Declaration adopted by the NARS orders the RS Government to immediately abolish all types of public incentives for the production of energy from SHPPs. During 2021, a set of public debates was held in relation to the FBiH Rulebook on Environmentally Acceptable Flow, where numerous comments of CSOs were taken into account. This Rulebook has not yet been sent to the Official Gazette for unknown reasons. In the RS, such a rulebook was not adopted, although during 2021 the competent institutions mentioned that it would be prepared and harmonized with the one in the FBiH. A new Decree on projects for which an environmental impact assessment is mandatory and projects for which a decision on the need for an environmental impact assessment is made<sup>174</sup>, as well as a new Decree determining plants and facilities that are subject to environmental permits<sup>175</sup>, were adopted, according to which an environmental permit will no longer be issued for any hydropower facility in the FBiH. During 2021, the CSO also raised the issue of amendments to the Law on Concessions in the FBiH. Across BiH, 10 municipalities and cities signed the Declaration "Municipalities without dams", which expressed the intention that such facilities would no longer be built in these municipalities and cities.

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## Waste

In the reporting period, 6 new regulations on waste management were adopted in the FBiH. However, improperly disposed waste remains a very visible problem on the streets of cities, on green spaces and inside riverbeds. For this reason, some ecological associations and movements, such as the "The Rivers of Bosnia and Herzegovina – Be the change" group<sup>176</sup> use an activist approach and organize riverbed cleaning activities, in cooperation with many members of the Coalition for the Protection of Rivers in BiH<sup>177</sup>. The occurrence of illegal landfills is particularly present along riverbeds in less urban areas poorly connected to utility companies. The problem of unregulated legal landfills is also present throughout BiH, since the current landfills cannot accept new waste due to fullness. In the TC, municipalities or cities are in the phase of ceasing or have completely interrupted the process of waste disposal on the existing landfills due to their fullness.<sup>178</sup>

Regarding CSO campaigns and cooperation with competent institutions, it is important to highlight the continuous activity of the "Green Team" Association<sup>179</sup> from Novi Grad, which, with the help of other members of the Eko BiH network<sup>180</sup>, managed to make pressure at the State level to initiate the activities of the formed State Expert and Legal Team on the issues of the possibility of constructing a nuclear waste landfill along the border with BiH in the past year. However, the work of the Legal Team is very slowed down.<sup>181</sup>

172 FBiH Law on Environmental Protection ("Official Gazette of FBiH", No. 15/2021)

173 Declaration on River Protection in the RS, available at: <https://www.narodnaskupstinarnet/?q=la/akti/ostali-akti/d-e-k-l-r-c-i-j-o-za%C5%A1iti-rijeka-u-republici-srpskoj>

174 Decree on projects for which an environmental impact assessment is mandatory and projects for which a decision on the need for an environmental impact assessment is made "Official gazette of the Federation of BiH", number: 51/21

175 Decree determining plants and facilities that are subject to environmental permits "Official gazette of the Federation of BiH", number: 51/21

176 "The Rivers of Bosnia and Herzegovina – Be the change", available at: <https://www.facebook.com/groups/531920737451586/>

177 Coalition for the Protection of Rivers in BiH, available at: <https://rijekebih.org/>

178 Odlaganje smeća veliki tuzlanski problem: Legalne deponije pune, ilegalne ekološka katastrofa (Waste disposal is a major Tuzla problem: Legal landfills full; illegal landfills ecological disaster), available at:

<https://www.klix.ba/vijesti/bih/odlaganje-smeca-veliki-tuzlanski-problem-legalne-deponije-pune-ilegalne-ekoloska-katastrofa/210508067>

179 Green Team, Novi Grad, available at: <https://www.facebook.com/greenteam.ng/>

180 Eko BiH Network, available at: <https://ekobih.net/>

181 Trgovska gora: Zašto je zatajio Pravni tim? (Trgovska Gora: Why did the Legal Team fail?), available at: <https://www.rtvbn.com/4010769/trgovska-gora-zasto-je-zatajio-pravni-tim>





## Climate change

BiH has not made progress in complying with the EU Regulation on monitoring and reporting, fuel quality directives, ozone-depleting substances, fluorinated gases, carbon capture and storage, and other relevant regulations. The institutions are currently working on a National Adaptation Plan (NAP), with a view to moving forward towards the goals set out in the Paris Agreement and the 2030 Sustainable Development Goals. BiH plans to reduce greenhouse gas emissions just over one third by 2030, and two thirds (about 66%) by 2050.

The country is currently in the process of revising the 2030 Climate Change Adaptation and Low Emission Development Strategy. It is important to emphasize that the implementation of this Strategy should be priority and that it must be in line with the EU 2030 framework for climate and energy policies.

## ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of civil society organisations that contributes to the monitoring of reforms and oversees the application of European Union policies, laws and standards, focusing on the issues of democratisation, the rule of law, and human and minority rights. Find out more about the Initiative at: <http://eu-monitoring.ba/o-inicijativi/>.

Active members of the Initiative are:

Aarhus Centre in BiH, Sarajevo  
Association for Democratic Initiatives, Sarajevo  
BH novinari, Sarajevo  
Balkan Investigative Reporting Network in Bosnia and Herzegovina, Sarajevo  
Centre for Investigative Reporting, Sarajevo  
Youth Centre KVART, Prijedor  
Centre for Civil Society Promotion, Sarajevo  
CURE Foundation, Sarajevo  
Foundation 787, Sarajevo  
Forum Civil Peace Service, Sarajevo  
Helsinki Citizens' Assembly, Banja Luka  
Youth Initiative for Human Rights in BiH, Sarajevo  
Association Kali Sara, Sarajevo  
Association Network for Building Peace, Sarajevo  
MyRight – Empowers People with Disabilities, Sarajevo  
Oštra Nula, Banja Luka  
Transparency International u BiH, Banja Luka/Sarajevo  
Transitional justice, responsibility and memory, Sarajevo  
TRIAL International, Sarajevo  
Sarajevo Open Centre, Sarajevo  
Vaša prava BiH, Sarajevo  
Citizens' Association "Zašto ne", Sarajevo  
Association "Land of Children", Tuzla

Initiative coordinated by:

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Initiative supported by:

Centre for Socio-Ecological Development, Banja Luka; Human Rights Centre of the University of Sarajevo; Crvena, Sarajevo; ELSA, Sarajevo; Green Council, Sarajevo; Infohouse, Sarajevo; OKC Abrašević, Mostar; Perpetuum mobile, Banja Luka; Association PEKS, Tuzla; Vesta, Tuzla; Foreign Policy Initiative BH, Sarajevo; Green Neretva, Konjic.

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