



Submission to the United Nations Special Rapporteur on Freedom of Religion or Belief for his Report to the United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16)

30 May 2020

Introduction

This submission is prepared by the International Panel of Parliamentarians for Freedom of Religion or Belief Secretariat in collaboration with Dr Mine Yildirim.

IPPFORB is a network of parliamentarians and legislators from around the world committed to combating religious persecution and advancing Freedom of Religion or Belief (FoRB)¹.

This submission is based on the study conducted between October 2019 and May 2020 by Dr Mine Yildirim for IPPFoRB aimed at drafting a roadmap for parliamentarians on ways to promote freedom of religion or belief in their contexts. The study focused on 4 Western Balkan countries (Bosnia and Herzegovina, North Macedonia, Kosovo and Serbia), and combined desk research, physical meetings with main actors during country visits, and online interviews.

DISCRIMINATION IN LAW AND PRACTICE

Patterns and examples of discrimination against minority religious or belief communities, in the area of:

a) civil and political rights, including but not limited to participation and representation in the public life, access to justice and effective remedies, liberty and security, freedom of expression, assembly and association:

Equality and non-discrimination

The Bosnia and Herzegovina (BiH) Constitution distinguishes between “constituent peoples” and “others” and the posts in the tripartite Presidency of BiH and the House of Peoples are reserved for ethnic Bosniaks, Bosnian Serbs and Bosnian Croats only². This arrangement has a direct impact on participation and representation of “others” in public life.

This discriminatory provision has been the subject of review by international human rights compliance control mechanisms. In 2012, the UN Independent Expert on Minority Issues highlighted the fact that the use of the term “others” in the Constitution and electoral laws was inappropriate and implied a lower status given to minorities and persons who identified as Bosnian or not belonging to a constituent people.³ The 2009 judgment of the Grand Chamber of the European Court of Human Rights (ECtHR) in the case of *Sejdić and Finci v. Bosnia and Herzegovina* is a landmark decision for the rights of minorities and held that constitutional

¹ For more information please see: <https://www.ippforb.com/>.

² ECtHR (Grand Chamber), *Dervo Sejdić and Jakob Finci v. Bosnia and Herzegovina*, App No 27996/06 and 34836/06, 22 December 2009

³ Report of the Independent Expert on minority issues, Rita Izsak, 31 December 2012, A/HRC/22/49/Add.1, para. 26-27



reform was necessary to remove discriminatory provisions.⁴ The Grand Chamber of the ECtHR found that that applicants' ineligibility to stand for election to the House of Peoples violated the ban on discrimination (Article 14) taken in conjunction with the provision on free elections (Article 3 of Protocol No. 1) and that their ineligibility to stand for election to the Presidency violated the general ban of discrimination (Article 1 of Protocol No. 12).⁵

Despite declared commitments from the Bosnian government that it will take the necessary steps to implement the judgment,⁶ and repeated calls of the Council of Europe⁷ and the European Union⁸ to take such steps, Bosnia's political leaders are yet to reach a consensus and to amend the Constitution and election law to bring them in compliance with the judgment.

Observing equality in special agreements with religious communities

The principle of equality has not been fully observed in the arrangement of special agreements signed with the main religious communities in BiH. Special agreements have been signed with The Catholic Church (2006) and the Serbian Orthodox Church (2007). Islamic Community is expected to sign an agreement with the state of BiH which is expected to address, among other issues, dietary restrictions in public institutions, employer accommodations for daily prayer, and time off to attend Friday prayers as well as to take a one-time trip to Mecca for the Hajj. That this has not been accomplished despite efforts for a number of years appears to be a major concern for the Islamic community, particularly for practising members. According to local interlocutors, until such an agreement is signed, the right of the members of the Islamic community to practice their religion in the workplace is subject to the discretion of the employer. One of the interlocutors expressed concern that impossibility to sign an agreement may foment radical part as a result of nonbelieving in the possibility of liberal democracy.

b) economic, social and cultural rights, including but not limited to the rights to adequate food and housing, education, employment and healthcare:

Diversity in Education

Religious education

The right to religious education is regulated by the Law on Freedom of Religion and Legal Position of Churches and Religious Communities (2004), but only persons who are appointed by representatives of churches or religious communities can provide religious education.⁹ The state-level Ministry of Education has almost no influence on the school curricula which is under

⁴ ECtHR (Grand Chamber), *Dervo Sejdić and Jakob Finci v. Bosnia and Herzegovina*, App No. 27996/06 and 34836/06, 22 December 2009.

⁵ Ibid.

⁶ For instance, political leaders and institutions undertook this commitment in the June 2012 Roadmap for BiH's EU membership application, and most recently in the declaration signed by the political leaders on 1 October 2013.

⁷ See for example decisions of Ministers Deputies at the 1164th, 1170th, 1172th, 1179th 1186th meeting (CM/Del/Dec(2013)1164/6; CM/Del/Dec(2013)1170; CM/Del/OJ/DH(2013)1172/6; CM/Del/OJ/DH(2013)1179/4; CM/Del/OJ/DH(2013)1186/6).

⁸ See for example Joint statement by High Representative/Vice President Catherine Ashton and Commissioner for Enlargement Štefan Füle at <http://www.europa.ba/News.aspx?newsid=5781> (=EN; Statement of Commissioner for Enlargement Štefan Füle http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2013/04/20130411_2_en.htm; Council conclusions on Bosnia and Herzegovina, adopted on 21 October 2013, European Parliament resolution of 23 May 2013 on the 2012 Progress Report on Bosnia and Herzegovina (P7_TA(2013)0225).

⁹ Law On Freedom Of Religion And Legal Position Of Churches And Religious Communities In Bosnia And Herzegovina, Art. 4(1)



the jurisdiction of single cantons.¹⁰ The absence of religious education for confessions other than the three largest ones, Orthodox, Catholic and Muslim, is justified by the small number of pupils. Some atheist or agnostic families have expressed concern that their children may stand out or may be stigmatized for not participating in these classes and therefore may feel the pressure to attend classes.

In Republika Srpska, textbooks for religious classes are published by the Catechetical Committee of The Serbian Orthodox Church and by Rijaset of The Islamic Community in BiH.¹¹

Law on Secondary Education guarantees to those students who do not wish to attend classes of religious education the possibility to attend the subject of the history of religions.¹² Reportedly, many schools offer a class in ethics as an alternative.¹³

Two schools under one roof

There are 56 schools in 28 locations of BiH, in which students of different ethnicities are separated within the same school building, studying on different floors or in different parts of the building, in some cases using separate entrances.¹⁴ “Two schools under one roof” was “a temporary solution to encourage the return of refugees and internally displaced persons following the 1990s conflict¹⁵ which, however, has become a part of “normality”. As a result, when parents enrol children in schools which cater to their particular ethnic group, this lends itself to distrust and ignorance for the child vis-à-vis other ethnic groups and beliefs.¹⁶

On the other hand, those who attend unified schools often find that they cannot learn their own minority language or be taught based on a curriculum that also promotes the knowledge of their culture, history and religion.

Laws and policies restricting the right to manifest freedom of religion or belief of minority religious communities, including blasphemy, national security and counter-terrorism laws; laws and policies with regard to the registration of faith-based organizations and associations; and those pertaining to religious property, religious educational institutions and places of worship and of burial:

Religious Symbols in the Public Sphere

Restriction on the manifestation of religion or belief in the public sphere is a concern for members of the Islamic community.

The public servants' right to manifest religion or belief is restricted in BiH and the restrictions are found in various laws. The Law on Police Officers of BiH stipulates that it is the duty of the police officers to be “impartial and to refrain from publicly expressing religious beliefs while on

¹⁰ US Department of State, Bosnia and Herzegovina 2018 International Religious Freedom Report

¹¹ From the Catalog of textbooks for primary school for school year 2019/2020, available at https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpk/Documents/plakat_osnovna_2019_STAMPA.pdf

¹² The Law on Secondary Education (“Official Gazette of Tuzla Canton”, No. 17/2011, 9/2015, 6/2016, 14/2018, 14/2019 and 6/2020), Art. 9 (4)

¹³ US Department of State, Bosnia and Herzegovina 2018 International Religious Freedom Report

¹⁴ “Two Schools Under One Roof” - The Most Visible Example of Discrimination in Education in Bosnia and Herzegovina, OSCE, 3 December 2018

¹⁵ Ibid.

¹⁶ Ibid.



duty”¹⁷. The ban on the public manifestation of religion is also found in the laws on courts in the Federation of BiH, Republika Srpska and the Brčko District to the effect prohibiting judges and officials of the court expressing any religious, political, national or other affiliation.

In legislation related to civil service only the Law on Civil Service of the Federation of BiH establishes explicit religious restrictions. The Law on Civil Service in the Federation of BiH in Art. 17 paragraph 3 states a) that the civil servant is impartial and in particular “refrains from publicly expressing political beliefs and does not abuse religious beliefs.”

Gender-based discrimination: the multiple and intersecting forms of discrimination faced by minority women and girls who are members of minority religions or belief-based communities.

Restrictions on the manifestation of religion or belief in the public sphere impact men and women differently. As a most obvious public expression of religious beliefs is by wearing “religious symbols”, the women wearing the *hijab* are disproportionately affected, compared to men or to members of other religious communities whose religious symbols can be removed or concealed. Representatives of the Islamic community raised the issue of women who wear the headscarf being discriminated against, especially in various stages of employment both in the public and private spheres. Muslim men, on the other, have expressed concern over restrictions on participating in Friday prayers at a mosque as well as not being allowed to have a beard, especially as public servants in certain segments of public sector.

THE EFFECTS OF DISCRIMINATION

Hate speech, hate incidents and hate crimes based on religion or belief

Numerous interlocutors expressed concern over religion or belief-based hate crimes. Concern over continuous public manifestations of hate speech and intolerance, *especially by politicians*, was expressed by the UN CERD.¹⁸ The UN Human Rights Committee recommended that a law prohibiting associations founded on the promotion and dissemination of hate speech and racist propaganda be enacted.¹⁹

The Commission of Religious Freedom of the Islamic community reported numerous incidents of desecration of religiously important places for the Muslim community and threats and attacks.²⁰ While prosecution and sanctions are rare, in Kiseljak, a person, who had attacked a woman and her under-age daughter, received a sentence that was increased from 6 months to 10 months imprisonment by the Cantonal Court in Sarajevo. This was important as the first judgment in the Federation related to a criminal act committed from hate according to the definition of the FBiH Criminal Code.

¹⁷ Article 36(3). An identical formulation is found in the Law on Police Officers of Federation of BiH 2 in Art.36(3); Law on Police Officers of Republika Srpska3 in Art.39(3) and the Law on Police Officers of Brčko District of Bosnia and Herzegovina in Art . 48(3)

¹⁸ CERD/C/BIH/CO/7-8, para. 10

¹⁹ CCPR/C/BIH/CO/2, para. 20

²⁰ Commission for Freedom of Religion of the Riyasat of the Islamic Community in Bosnia and Herzegovina, *Report on Registered Cases of Violation of the Right to Freedom of Religion of Muslims in Bosnia and Herzegovina for 2018*, March 2019



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IPPFoRB is concerned that existing regulatory provisions and practices, that have a discriminatory effect on members of different religious and belief groups, may contribute to division and polarization in society. IPPFoRB, therefore, urges legislators to take measures promoting a more integrated and inclusive society based on the principles of equality and non-discrimination.