



Number: **OI-K-BL-302/23**

Date: 27 April 2023

The Office of the High Commissioner for Human Rights
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Dear all,

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBiH) was requested to provide information on the implementation of resolution A/77/205 of the General Assembly – “*A global call for concrete action for the elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action*”. Precisely speaking, the information was requested concerning laws, regulations, policies and practices adopted in the course of 2022-2023 to eliminate racism, racial discrimination, xenophobia and related intolerance (gender-based discrimination), including national actions plans against racism, data collection, education and awareness-raising. In addition, information was requested regarding the perspectives of women, youth and children.

Within the given deadline, IHROBiH is providing information it has, as well as information on the phenomena it has observed through its work.

As a signatory state to the Framework Convention for the Protection of Rights of National Minorities of the Council of Europe, Bosnia and Herzegovina has committed to guarantee to persons belonging to national minorities the right of equality before the law and equal protection of the law. Bosnia and Herzegovina has confirmed its commitment and has continuously been taking activities aimed at integrating Roma, and in 2022, it issued the Decision on the Adoption of the **2021-2025 Action Plan for Social Inclusion of Roma Men and Women of BiH**¹. This document establishes a framework of action for all individuals and institutions that, in line with their respective competences, are directly involved in its application. The application of this Plan is monitored by the BiH Ministry for Human Rights and Refugees and the BiH Council of Minister’s Roma Council.

The adoption of the Gender Action Plan is an obligation of Bosnia and Herzegovina arising from domestic documents², as well as international obligations assumed by the ratification of gender equality conventions³. At the proposal made by the BiH Ministry for Human Rights, the BiH Council of Ministers issued the **Decision on the Adoption of the 2018-2022 Gender Action Plan of Bosnia and Herzegovina (GAP BiH)**. This is the third document in this field containing gender

¹ BiH OG, no 40/22

² BiH Gender Equality Act – consolidated text, BiH OG, no 32/10

³ UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) from 1979; Beijing Declaration and Platform for Action from 1995

equality strategic objectives, programmes and measures in all areas of social life and labour. The GAP BiH contains measures that will be carried out to implement three strategic objectives aimed at developing, implementing and monitoring the programme of measures for advancement of gender equality within the governmental institutions, as per priority areas; establishing and strengthening the system, mechanisms and instruments to achieve gender equality; as well as establishing and strengthening co-operation and partnership. Preventing and combating gender-based violence, including domestic violence and trafficking in human beings, labour, employment and access to economic resources, public life and decision making, and further strengthening of cooperation at international and regional levels⁴ are among priority areas.

The **2021-2025 Migration and Asylum Strategy**⁵ was adopted at the proposal of the BiH Ministry of Security. This Strategy defines seven strategic objectives, including: enhancing the system for comprehensive management of migration and asylum policies; increasing the efficiency of state border controls; more efficient management of illegal migration in the BiH territory; improving the asylum system; more efficient fight against migrant smuggling and trafficking in human beings; support to legal migration and integration of foreign nationals residing legally in BiH, and strengthening the coordination mechanisms in migration and asylum management.

IHROBiH recalls that in 2022, the BiH Council of Ministers also adopted the **2021-2024 Action Plan for the Advancement of Human Rights and Fundamental Freedoms of LGBT Persons in Bosnia and Herzegovina**⁶. The Action Plan focuses on achieving three general objectives: equal opportunities and prohibition of discrimination, equal rights in all areas of life and society of respect for diversity.

Likewise, IHROBiH representatives take regular activities in the fields of raising awareness, gathering data and delivering trainings in protection from all forms of discrimination. Thus, in cooperation with the Office of the UN High Commissioner for Human Rights in Geneva, the plan is to hold a workshop on *human rights approach to data and indicators and to measuring discrimination in Bosnia and Herzegovina*. Specifically, the plan is to hold a two-day workshop in the week of 23-26 May 2023.

IHROBiH hereby reminds that by monitoring, follow-up and media reporting, holding meetings with the relevant bodies and by analysing international and domestic legal frameworks it drafted special reports as reference documents in these fields, and these are as follows:

- Special Report on Roma Rights⁷ (2014, follow-up 2017);
- Special Report on Migration Situation in Bosnia and Herzegovina⁸ (2018);
- Special Report on Hate Speech⁹ (2021).

The prohibition of discrimination based on sex is defined in two pieces of legislation in BiH: BiH Gender Equality Act¹⁰ and BiH Prohibition of Discrimination Act¹¹. IHROBiH applies the BiH

⁴ <https://www.gcfbih.gov.ba/project/gap-bih-za-period-2018-2022/>

⁵ <https://msb.gov.ba/vijesti/saopstenja/default.aspx?id=22557&langTag=bs-BA>

⁶ https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=38291&langTag=bs-BA

⁷ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013121011144464bos.pdf

⁸ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017070515172836bos.pdf

⁹ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979bos.pdf

¹⁰ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2021111511252845bos.pdf

Prohibition of Discrimination Act in keeping with the enhanced 2016 legal framework for the protection against discrimination, which includes an expanded scope of IHROBiH competence. This is particularly reflected in expanding the list of prohibited grounds of discrimination. Through these amendments to the PDA, sexual orientation and gender identity are terminologically correctly named as prohibited grounds of discrimination. In addition, sex characteristics, age and disability are listed as prohibited grounds of discrimination. The improved legal framework is still reflected in prescribing serious forms of discrimination,¹² improving procedural aspects of the PDA¹³ and defining the legal force of IHROBiH recommendations in evidentiary procedures before courts.¹⁴ In addition, a considerably bigger role is envisaged in promotional activities for protection against discrimination, which is reflected in public information, awareness raising, conducting campaigns and other forms of discrimination prevention.

In the process of protection against gender-based discrimination, the BiH Gender Equality Act forms the mechanisms used in cases of this type, which includes criminal and legal protection, while IHROBiH takes measures on complaints from citizens, in accordance with the Prohibition of Discrimination Act.

In 2022, IHROBiH acted on three cases where the allegations from the complaints pointed to the violation of gender equality, and more specifically, to the fact that women who became pregnant faced violations of employment rights, as well as to the fact that a common-law marriage does not *de facto* enjoy the same level of protection as a legal marriage in terms of exercising certain property rights, such as the right to maintenance or the right to inherit joint assets.

For example, the complainant was left without the right to family pension, with the explanation that she, as a common-law wife, did not meet the requirements to exercise the right to pension as she failed to submit the final and binding judgement establishing the right to maintenance. In the second case, the Director demoted the complainant following her return from maternity leave, without issuing any written document, with the explanation that he noted a number of irregularities in her work when he took office. Respecting the right of the employer to organise the work process in the best possible way, IHROBiH sent a recommendation requesting that labour rights be respected and the Prohibition of Discrimination Act be upheld as they did not find the allegations on the need to degrade the complainant by demoting her sufficiently justified or explained, due to mistakes which objectively could exist but which primarily include the responsibility of the management of the public institution.

THE HUMAN RIGHTS OMBUDSPERSON INSTITUTION OF BOSNAI AND HERZEGOVINA

¹⁰ *BiH OG*, no 16/03, 102/09 and 32/10

¹¹ *BiH OG*, no 59/2009 and 66/2016;

¹² Multiple discrimination (Article 4, paragraph (4)), repeated discrimination (Article 4, paragraph (5)) and prolonged discrimination (Article 4, paragraph (6)).

¹³ Regarding the provisions on the urgency of the procedure (Article 11), special lawsuits (Article 12), court competences and deadlines (Article 13), prescribing security measures (Article 14), shifting the burden of proof (Article 15), participation of third parties (Article 16), possibility to file class-action lawsuits (Article 17).

¹⁴ Article 15, paragraph (9);