



Protocol No.: Oi - K - 18/19

Date: 31st January 2019

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Subject: Standards and public policies for an effective investigation of enforced disappearances, contribution of the Ombudsman of Bosnia and Herzegovina for the study of the Working Group on enforced or involuntary disappearances;

Dear Sir or Madam,

In reply to your call for contributions for the study of the Working Group on enforced or involuntary disappearances, Jasminka Džumhur, PhD, in capacity of one of Ombudspersons of Bosnia and Herzegovina is hereby submitting the following replies:

- **Legislation on enforced disappearances and its criminalization**

The Constitution of Bosnia and Herzegovina¹ provides that „ *Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.....*“, and that the „*The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law*“².

The Constitution of Bosnia and Herzegovina provides that „*The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*“.

It is not possible to initiate investigations and processing of those responsible for involuntary disappearances if it is not defined by law, that is, provided in relevant legal provisions. With the aim of processing of persons responsible in 2004 the *Law on Missing Persons of Bosnia and Herzegovina*³ was adopted. It is focused to the humanitarian aspect - search for missing persons, irrespective of their status at the moment of disappearance, because there are different ways of missing (those who have disappeared during armed conflicts (the military) or civilians who were taken out of their homes). The purpose of the law is to find every missing person. This Law governs the status of missing persons, and also the responsibility of relevant authorities and the rights of

¹ Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina signed on 14 December 1995

² Article II. 1. and 2. of the BiH Constitution – Human rights and international standards

³ “Official Gazette of BiH”, no.: 50/05

missing persons. A missing person for the purposes of this Law is considered to be *a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY*⁴. The law lays down the principles for improving the process of seeking missing persons. By adopting the said Law established is a legal framework which sets the obligations of the competent authorities to put in place the procedures that will facilitate the explanation of the circumstances of the disappearance and find the places of burial of the missing persons. On the other hand, this Law also provides for the legal possibility for the families of missing persons that, if the relevant institutions fail to comply with their legal obligations, initiate appeals and, in the event of preventing them from the exercise of their right „to know“⁵ to seek protection before the Constitutional court of Bosnia and Herzegovina.

*Criminal Code of Bosnia and Herzegovina*⁶ of 2003 did not include an enforced disappearance as an independent criminal offence, but it was incorporated in Chapter XVII titled Crimes against Humanity, whereby this offence is done as part of a wide and systematic attack directed against any civilian population⁷.

***Law on Amendments to the Criminal Code of Bosnia and Herzegovina*⁸ enforced disappearance is sanctioned/criminalized as a separate criminal offence, but it cannot be implemented retroactively.** Introduction of *Article 190a*⁹ into the criminal legislation of Bosnia and Herzegovina

⁴ Article 2 (definitions) of the Law on Missing Persons of Bosnia and Herzegovina

⁵the Law on Missing Persons of Bosnia and Herzegovina, Article 3 (The right to know): The right to know is the right of the families of missing persons have the right to know the fate of their missing family members and relatives, their place of (temporary) residence, or if dead, the circumstances and cause of death and location of burial, if such location is known, and to receive the mortal remains

⁶„Official Gazette of BiH“, nos. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/17, 08/10, 47/14, 22/15, 40/15, 35/18

⁷Criminal Code of Bosnia and Herzegovina, Article 172 (Crimes Against Humanity) paragraph 2. Item h): *Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time.*

⁸ „Official Gazette of BiH“, no. 40/15. Based on Article IV. 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina at the 11th session of its House of Representatives held on 13 May 2015 and 4th session of its House of Peoples held on 18 May 2015 adopted a Law on Amendments to the Criminal Code of Bosnia and Herzegovina based on which the criminal offence of enforced disappearance was defined in more detail.

⁹Criminal Code of Bosnia and Herzegovina, Article 190a. (Forced Disappearance:

1. *An official in the institutions of Bosnia and Herzegovina or any other person acting in the capacity of an official in the institutions of Bosnia and Herzegovina who, acting upon the order, instigation or with the explicit or implicit consent of a official person in the institutions of Bosnia and Herzegovina, incarcerates another person, keeps him/her incarcerated or deprives him/her of freedom of movement and in the process refuses to admit that he deprived him/her of freedom or withholds information on destiny or location of such person thus putting him/her outside the protection of the law shall be punished by imprisonment for a term of not less than eight years*

2. *The punishment referred to in paragraph (1) of this Article shall also be pronounced against an official in the institutions of Bosnia and Herzegovina who ordered or instigated the perpetration of the criminal offense, or who gave his explicit consent or knew about and implicitly consented with the perpetration of the criminal offense referred to in paragraph (1) of this Article*

3. *Whoever, as a superior, knew about or consciously neglected an information that his subordinate perpetrator had perpetrated the criminal offense referred to in paragraph (1) of this Article or that he is about to perpetrate the criminal offense, and who was responsible and had the control over the actions related to perpetration of the criminal offense referred to in paragraph (1) of this Article, but did not take all required and reasonable measures within his power to prevent or disenable the perpetration of the criminal offense referred to in paragraph (1) of this Article, or to refer that issue to the state authorities for the investigation and criminal prosecution shall be punished by imprisonment for a term of not less than eight years*

constitute an act of honoring the obligation under Article 4. *International Convention for the Protection of All Persons from Enforced Disappearance* which foresees the obligation of taking all necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law, irrespective of the war circumstances. Mentioned article also includes the criminal sanctions for the officials for whom it is established that they had ordered, instigated or gave an explicit or tacit consent for the perpetration of this offence.

- **Obstacles and difficulties in the investigation of enforced disappearances**

Investigation and persecution of forced disappearances represents a challenge for all the authorities involved in this process. Ombudspersons of Bosnia and Herzegovina got acquainted with the difficulties in the investigation and prosecution of forced disappearances through the complaints lodged by the International Organization „Trial“, related to the implementation of the opinions of the UN Human Rights Committee directed to the authorities of Bosnia and Herzegovina.

- **Access to information in the context of enforced disappearances**

The right to information in the context of forced disappearances is the right of family members of missing persons to contact at any time the institutions of Bosnia and Herzegovina at all levels and to seek answers to all questions about the process of seeking and solving the cases of missing persons. Ombudspersons of Bosnia and Herzegovina point out the importance of the fact that the Law on Missing Persons of Bosnia and Herzegovina has incorporated the right of missing persons to the truth (the right to know) and that these are positive lessons learned from Bosnia and Herzegovina as a post-conflict state. Of course, it is important that the right to truth be integrated with the rights of the victims of enforced disappearances in accordance with international standards, which by all means imply the right to justice (processing of those responsible), the right to reparation (confession, compensation, memorizing etc.).

Having this in mind the Ombudsman of Bosnia and Herzegovina finds it important to point to the following: it is indisputable that information is public good, but it should be considered that it is a relative rather than an absolute right. In a concrete case, the issue of access to information should be pursued with due care because of the rights of the victims' family, and the provisions of the Personal Data Protection Act¹⁰ should be taken into account. The Agency for the Protection of Personal Data of Bosnia and Herzegovina is of the opinion that the processing of personal data of missing persons and members of their families must be carried out in accordance with the provisions of Article 4 of the *Personal Data Protection Act*¹¹ according to which the controller processes personal data *fairly and lawfully*.

4. *The fact that a person acted pursuant to an order of a Government or of a superior shall not relieve him of guilt, but may be considered in mitigation of punishment if the court determines that the interests of justice so require. Person who refuses to execute such order shall not be punished.*

¹⁰ „Official Gazette of BiH“, no. 49/06, 76/11 and 89/11

¹¹ Article 4 (Personal data processing principles) *The controller shall be required to: a) process personal data fairly and lawfully b) process personal data collected for special, explicit and lawful purposes in no manner contrary to the specified purpose; c) process personal data only to the extent and scope necessary for the fulfilment of the specified purpose; d) process only authentic and accurate personal data, and update such data when necessary; e) erase or correct personal data which are incorrect and incomplete, given the purpose for which the data are collected or further processed; f) process personal data only within the period of time necessary for the fulfilment of the purpose of their*

In the context of the above mentioned Ombudspersons of Bosnia and Herzegovina find it important to indicate to the method of keeping the electronic Central Records of Missing Persons in Bosnia and Herzegovina established by the Missing Persons Institute of Bosnia and Herzegovina. The Missing Persons Institute has adopted a regulation on the implementation of the provisions of *the Law on Protection of Personal Data*, No. 01 / 1-02-1-975 / 16 of 19 May 2016 along with the *Personal Data Protection Plan* No. 01 / 1-02-1-975-2 / 16 of 19 May 2016. The data contained in the Central Records of Missing Persons in Bosnia and Herzegovina can be furnished on request of the prosecutor's offices and the missing persons family members (once they are issued a certificate confirming the status of a missing person). Model of the establishment of the central records of missing persons is a key processing action in the search for the missing persons and it includes the obligation to ensure the personal data protection, in particular given its electronic processing.

- **The importance of specialized prosecutorial units and independent forensic institutions for an effective investigation of enforced disappearances**

At the level of Bosnia and Herzegovina functions the Missing Persons Institute¹² (hereinafter: the Institute) as an institution dealing with the issues of enforced disappearances and search for the missing persons in Bosnia and Herzegovina with its Management and Supervisory Board, by-laws and internal regulations guaranteeing the functioning of this institution, adopted Rulebook on Verification of the Missing Persons as a basis for the establishment of the Central Records of Missing Persons in Bosnia and Herzegovina. Central Records of Missing Persons are functional, kept in an electronic and a hard copy and it gathers all available data on missing persons. A file¹³ in its hard copy comprises the following elements:

- application for search,
- identity establishment records (Ministry of Interior or the prosecutor's offices),
- ICMP DNA report (case reference, location, pathologist, possible ID, name and surname of a missing person – Data on donors, name, father's name, surname, ID number, analysis results, kinship probability in percentages and remarks), some of DNA reports (depending on the year of its generation) e.g. „DNA Report“ originating from 2013 comprises a sample reference and tables with expressed values (numerical) of the comparison of the missing persons samples and their relatives,
- a Red Cross form,
- a missing person's card with their particulars,
- The IDDEEA data on a citizen – a missing person,
- a verification conclusion issued by the Commission.

processing. g) keep personal data in the format that allows identification of the data subject for not longer than required for the purpose for which the data are collected or further processed; h) ensure that personal data that were obtained for various purposes are not combined or merged.

¹²Official web site of the Missing Persons Institute of Bosnia and Herzegovina

http://www.ino.ba/Default.aspx?langTag=bs-BA&template_id=210&pageIndex=1

¹³ On 27 November 2017 the Personal Data Protection Agency carried out an inspection surveillance of the Missing Persons Institute of Bosnia and Herzegovina in order to determine the facts and circumstances under which personal data of missing persons and members of their families were processed, whereby it was found that the *Institute is keeping the Central Records of Missing Persons in Bosnia and Herzegovina in electronic form and a hard copy, that the Institute has adopted a regulation on the implementation of the Personal Data Protection Act, that the Institute has adopted the Rulebook on the Implementation of the Provisions of the Law on Protection of Personal Data, No. 01 / 1-02-1-975 / 16 of 19 May 2016 and that the Institute adopted a Personal Data Protection Plan No. 01 / 1-02-1-975-2 / 16 of 19 May 2016.*

Unfortunately, at the level of Bosnia and Herzegovina adequate forensic mechanism, that is, forensic institutions which would give significant contribution in the investigation of enforced disappearances. Prior to 2001 only classical identifications took place in Bosnia and Herzegovina and these were often conducted in an unprofessional/incorrect fashion. Since 2001 more intensive implementation of the identification by means of DNA has begun. It was organized by the International Commission on Missing Persons (ICMP) and at that time transitional models that would guarantee sustainability of the process of further seeking for missing persons have not yet been adequately ensured. This is important since the revision of the identification process done by classical methods revealed mistakes in the identification process. These are reasons calling for the intensification of the efforts to establish forensic institution/s which would be authorized of taking the samples for identification purposes, analyzing the DNA, exchanging the data through the DNA reports and safekeeping the DNA samples for the analysis. This would constitute a practical enhancement of the process of the search for the missing persons.

Back in 2011 in their Observation by the Institution of Human Rights Ombudsman of Bosnia and Herzegovina on the implementation of the *International Covenant on Civil and Political Rights in Bosnia and Herzegovina*¹⁴ Ombudspersons of Bosnia and Herzegovina have emphasized the important progress made in searching for the missing persons in Bosnia and Herzegovina, for instance the fact that the Chief Prosecutor in Bosnia and Herzegovina made a Decision that the Prosecutor's Office of Bosnia and Herzegovina as of 01 January 2011 takes over all exhumations and identification as investigative actions in the search for missing persons, which was a solution to the problems related to the jurisdiction of the Prosecutor, which in the earlier period had caused the postponement of exhumations.

- **Investigating and prosecuting enforced disappearances in transitional justice context**

Processing the criminal offences is complex where further steps of the Prosecutor's Office depend on the quality of collected evidence and establishment of grounds for the criminal prosecution. Authorities and powers in cases involving enforced disappearances are prescribed by the provisions of the *Criminal Procedure Code of Bosnia and Herzegovina* according to which jurisdiction for the processing of this criminal offence have the responsible judicial authorities¹⁵, and filing a report is governed by Article 215 of this Law¹⁶.

¹⁴ Adopted by Resolution 2200A (XXI) of the General Assembly on 16 December 1966, entered into force on 23 March 1976. According to the UN Commission on Human Rights, the rights specified in the Covenant cannot be limited to the nationals of a specific country, but must be accessible to all individuals, regardless of their nationality or absence of citizenship, such as asylum seekers and refugees.

¹⁵ Criminal Procedure Code of Bosnia and Herzegovina, Article 1 reads as follows: "*This Code shall set forth the rules of the criminal procedure that are mandatory for the proceedings of the Court of Bosnia and Herzegovina (hereinafter: the Court), the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Prosecutor) and other participants in the criminal proceedings provided by this Code, when acting in criminal matters* ".

¹⁶ Criminal Procedure Code of Bosnia and Herzegovina, Article 215 reads as follows: "*1. The report must be filed with the Prosecutor in writing or orally. 2. If a person files an oral report concerning a criminal offense, such person shall be warned of the consequences of providing a false report. The minutes shall be taken concerning oral report and if the report is communicated by telephone, an official note shall be made. 3. If the report is filed with the Court, authorized official or some other court or prosecutor in Bosnia and Herzegovina, they shall accept the report and shall immediately submit the report to the Prosecutor*".

Term transitional justice¹⁷ and it includes the elements/mechanisms through which an adequate system of protection/justice is established. The first and basic element/mechanism is reflected in the processing of cases before the competent authorities, so-called *criminal justice*. In the context of the transition of justice in Bosnia and Herzegovina, the judicial response should be insisted on, so that measures were taken to the capacity strengthening for the prosecution of criminal offenses before the competent authorities. The second element/mechanism refers to the *truth speech*, which implies the coping with the past and the struggle against its abuse. The *reparation* program is the third element/mechanism of transitional justice that includes various forms of overcoming the consequences of crimes and restoration of dignity of the victims¹⁸. For Bosnia and Herzegovina as a post-conflict country with a complex administrative structure, the issue of transitional justice is particularly reflected to *the institutional reform* as the fourth element/mechanism of justice, with primary objective to prevent violation of human rights violations and commitment of crimes in the future in addition to the establishment of the rule of law. Many activities in Bosnia and Herzegovina in this sense were carried out with the assistance of the international community.

In this context, particular emphasis should be placed on the positioning of victims in court proceedings, which, unfortunately, have only the role of witnesses, sources of information on certain facts, and can lodge their property claims, which is a "dead letter", because the parties during the course of the criminal procedure are advised to initiate a civil action lawsuit. The question of the position of victims as witnesses based on the experience of Bosnia and Herzegovina should be further examined.

In the opinion of the United Nations Human Rights Committee¹⁹, it is particularly emphasized that Bosnia and Herzegovina needs to ensure effective reparation, including adequate compensation and appropriate measures of satisfaction or compensation for the families of missing persons. The Ombudspersons of Bosnia and Herzegovina also emphasize that the issue of reparation is not adequately resolved in all segments of the rights exercise. Although the Law on Missing Persons of Bosnia and Herzegovina foresees the establishment of the Fund for the Support of Families of Missing Persons which would ensure reparation, the mentioned Fund has not yet been established. Ombudspersons of Bosnia and Herzegovina think that the establishment of this Fund is a matter of priority.

An additional problem is the fact that the BiH Constitutional Court, in its different decisions, rendered in different periods of time, on the appeals of the victims of war, took different stands in terms of compensation requests. In the first decision, it found that the compensation claim has grounds, while in the second decision it held that the statute of limitations had expired, although it is not clear how can expire the statutory limitation for damages which are the consequence of the perpetration of a war crime that do not have a statute of limitation. This question also deserves

¹⁷ Transitional justice is applied in societies that are burdened by the inheritance of a serious, massive and systematic violation of human rights and international humanitarian law and constitutes an answer to these violations in order to establish the rule of law and carry out activities to mitigate the consequences of crimes committed and in order to create conditions for the promotion of peace and democracy as well as reconciliation with the aim of preventing the reoccurrence of the past events.

¹⁸ Reparation forms are: material and non-material reparation, reparation that involves compensation, restitution, rehabilitation, various forms of satisfaction and guarantee that such acts will not be repeated.

¹⁹ Available at:

http://www.mhrr.gov.ba/ljudska_prava/Gradanska_i_politicka_prava/default.aspx?id=3362&langTag=bs-BA

further observation in order to prevent such situations in other areas where enforced disappearances occur.

- **Effective investigation and the right to truth/Experiences on the protection of victims, witnesses, human rights defenders, lawyers, judges, prosecutors and other persons involved in the investigations**

In respect of the effective investigation Ombudspersons of Bosnia and Herzegovina can only talk from the aspect of their mandate in the framework of Article (the right to fair trial)²⁰ in conjunction to Article 13 (the right to efficient remedy)²¹ of the European Convention on Human Rights and Fundamental Freedoms²². The Ombudsman is an independent institution that advocates and promotes good governance and the rule of law, and protects and promotes fundamental human rights and freedoms. In this connection, we would like to point out that Bosnia and Herzegovina, by ratifying the International Covenant on Civil and Political Rights has taken over the rights and obligations that should be met with a view to protecting and safeguarding the fundamental human rights and freedoms. Ratification of the Optional Protocol to the Covenant gave to the citizens of Bosnia and Herzegovina the opportunity to file their complaints called communications to the Committee if they are prevented from the enjoyment of the rights guaranteed under the Covenant. The Committee gives opinions regarding the submitted complaints. In response to the submitted complaints from Bosnia and Herzegovina, the United Nations Human Rights Committee adopted several opinions. In the proceedings before the United Nations Human Rights Committee, the complainants were represented by Track Impunity Always (TRIAL), which, after the Committee's issuance of the Opinion, lodge complaints within the Ombudsman in order to ensure the faster and more efficient implementation of these opinions²³. Among other things, in all opinions issued, the UN Committee recommended to Bosnia and Herzegovina to abolish the obligation of the families

²⁰ Article 6 (the right to fair trial) : "1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3) Everyone charged with a criminal offence has the following minimum rights: a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b to have adequate time and facilities for the preparation of his defense; c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; e to have the free assistance of an interpreter if he cannot understand or speak the language used in court".

²¹ Article 13. (the right to efficient remedy): "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

²² Since 22 April 2002 Bosnia and Herzegovina became 44th member-state of the Council of Europe and accepted in writing to honor the obligations contained in the Opinion of the Parliamentary Assembly of the Council of Europe, which include, among other things, the commitment to sign and ratify European Convention on Human Rights and Fundamental Freedoms which was done on 12 July 2002

²³ Ž-SA-05-993/13- Prutina, Zlatarac, Kozica and Čekić v. BiH, Ž-SA-05-563/14- Rizvanović v. BiH, Ž-SA-05-92/15- Hero v. BiH, Ž-SA-05-1037/15- Ičić v. BiH, Ž-SA-05-1051/15- Dovađžija v. BiH, Ž-SA-05-1052/15- Hamulić and al v. BiH, Ž-SA-05-1103/15- Kožljak v. BiH, Ž-SA-05-1104/15- Selimović and al v. BiH, Ž-SA-05-1230/15- Kadirić v. BiH, Ž-SA-05-1090/16- TRAIL- Implementation of the adopted opinions of the UN Human Rights Committee (UN HRC) in cases of enforced disappearances;

of the missing persons to proclaim their missing relatives dead in order to exercise the rights in the area of social protection or other forms of indemnity or compensation.

The Ombudsman continuously follows up the implementation of the opinions and based on the information available, and the documentation attached to the lodged complaints it can draw the conclusion that the competent authorities make certain efforts to implement the opinions of the Committee. However, at the same time, the question arises as to whether the adequate measures have been taken that would contribute to the realization of the rights of victims' families. In the documents referred to the Council of Ministers of Bosnia and Herzegovina, the Ombudsman pointed to the importance of determination of powers and establishment of adequate/efficient mechanism for coordinating the implementation of the adopted opinions.

Pursuant to the *Law on Human Rights Ombudsman of Bosnia and Herzegovina*²⁴ the Ombudsman has not a direct mandate to implement the opinions of the UN Human Rights Committee, but keeping in mind the importance of the implementation of the Committee's opinions, with the aim of achieving all the rights of the families of forcibly disappeared persons, the Ombudsman will continue to monitor the activities undertaken by the competent authorities in Bosnia and Herzegovina and continue regular reporting to the Committee on the International Covenant on Civil and Political Rights.

- **Cooperation between states on the investigation of enforced disappearance**

Co-operation between Bosnia and Herzegovina and the Republic of Serbia was established by ratification of the „Protocol on Co-operation in Search for the Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of Republic of Serbia“ of 24 March 2016²⁵. The mentioned Protocol²⁶ foresees the cooperation between the state-parties for the purpose of exchanging information and documentation on missing persons, identifying grave sites, assisting in the process of exhumation and identification, accelerating the process of handing over the remains to their families, transporting remains and assisting families of missing persons.

The last meeting between the delegation of Bosnia and Herzegovina for negotiations leading to the conclusion of the Protocol on cooperation in the search for the missing persons, the process of exhumation and identification of missing persons of Bosnia and Herzegovina and the Republic of Croatia was held on 10 March 2015 when the members of the delegations worked on harmonization of their positions in order to bring the procedure for concluding this Protocol to the end²⁷.

²⁴ „Official Gazette of BiH“ no. 19/02, 35/04, 32/06

²⁵ „Official Gazette of BiH“ no: 2/16

²⁶ On 04 November 2015 in Sarajevo the Chairman of the Council of Ministers of Bosnia and Herzegovina Denis Zvizdić, PhD and the Prime Minister of Serbia Aleksandar Vučić signed the “Protocol on Co-operation in Search for the Missing Persons between the Council of Ministers of Bosnia and Herzegovina and the Government of Republic of Serbia“.

²⁷ Activities on missing persons:

http://www.mhrr.gov.ba/ljudska_prava/aktivnosti_o_nestalim_osobama/default.aspx?id=12&langTag=bs-BA

- **Participation of victims in the investigation of enforced disappearances and the importance of their testimony**

Ombudspersons of Bosnia and Herzegovina think that the participation of victims in the investigation of enforced disappearances is crucial, because the testimonies of witnesses are the most important evidence. Although the witnesses are legally bound to testify in criminal proceedings²⁸, Ombudspersons of Bosnia and Herzegovina particularly emphasize that the procedure of investigation and giving testimony should be organized in a way to prevent the putting of victims and witnesses in jeopardy and violation of their rights.

Cases of intimidation of witnesses often take place due to the social circumstances, which is why the judicial authorities must be particularly prepared to process those responsible or prosecute those who influence the course of criminal proceedings. Ombudspersons of Bosnia and Herzegovina emphasize that the protection of witnesses must be a primary concern in the entire course of criminal proceedings and must be coordinated and implemented from the earliest stages of participation of witnesses in criminal proceedings. *Law on Protection of Witnesses under Threat and Vulnerable Witnesses*²⁹ regulates the measures to ensure the protection of witnesses under threat and vulnerable witnesses in criminal proceedings conducted by the Court of Bosnia and Herzegovina or the Chief Prosecutor of Bosnia and Herzegovina for criminal offences over which the Court has jurisdiction.³⁰ The Law provides that the said measures can be applied only with the consent of the witness³¹.

- **Standards of proof to be met in criminal cases of enforced disappearances**

Issues involving the evidence collection, conducting an investigation and processing the committed criminal offences fall within the jurisdiction of the processing authorities/the prosecutor's offices of Bosnia and Herzegovina. From the aspect of its mandate, Ombudspersons of Bosnia and Herzegovina emphasize that it is necessary to establish the truth in every specific case, which in context of enforced disappearances requires the efficient action of the competent authorities. In this context is particularly important to ensure the access to the archives.



Human Rights Ombudsman of
Bosnia and Herzegovina:

PhD. Jasminka Džumhur

²⁸ Article 81 of the Criminal Procedure Code of Bosnia and Herzegovina

²⁹ "Official Gazette of BiH" no. 3/03, 21/03, 61/04, 55/05

³⁰ Article 1 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of Bosnia and Herzegovina

³¹ Article 5.a) Ibidem