



Sarajevo, March 15th 2014

**Joint Report of the Justice Network in Bosnia and Herzegovina
for the 2nd Universal Periodic Review on Human Rights Situation
in Bosnia and Herzegovina**

The Justice Network in BiH is an informal network of 64 non-governmental organizations¹ established in January 2010 to support development of efficient, independent, and accountable judiciary, in order to instigate more efficient protection of human rights and establishment the rule of law in Bosnia and Herzegovina (BiH). To this end, the Network launched monitoring of the implementation of UPR recommendations in BiH in the same year. During the last 4 years, i.e. in period from January 2010 to March 2014, based on the monitoring, evaluation and research activities conducted by the members of the Network gathered around the Working Group for monitoring the implementation of UPR recommendations², we have published 4 annual reports³ on implementation of UPR recommendations pertaining to the justice sector. The reports were submitted to an extensive number of the justice sector stakeholders and the international community. The process of monitoring and evaluation was based on the methodology which included the identification of measurable indicators for each UPR recommendation, data collection and processing in a period of 6 to 8 months, and drafting the report and additional recommendations for the local decision-makers to ensure that UPR recommendations are adequately and timely implemented. This summary, which

¹ The list of Network members is available here: <http://www.mrezapravde.ba/mpbh/english/txt.php?id=7>

² Organizations that participated in the activities in the aforementioned Working Group are the following: Association for Democratic Initiatives (ADI) Sarajevo, Information and Legal Aid Center Zvornik, Center for Investigative Reporting, Human Rights Center University of Sarajevo, Helsinki Committee for Human Rights in Bosnia and Herzegovina, Helsinki Committee for Human Rights in Republika Srpska, Youth Initiative for Human Rights BiH, Track Impunity Always (TRIAL), Association «Lawyer» Sarajevo, Association of Prosecutors FBiH, Association of Legal Associates and Advisors in Courts and Prosecutors' Offices in BiH, Association of Judges BiH, Association for International Law in BiH, Association of Women Judges in BiH, and Women to Women Association.

³ All reports and available on the Justice Network website www.mrezapravde.ba under the link Publications.

was the subject of extensive consultations within and outside the Network, was prepared on the basis of the aforementioned reports.⁴

Given that the Justice Network operates in the justice sector, only those UPR recommendations that pertain to this sector were monitored. The objective was to stress out the importance of the judiciary in the context of human rights protection: only the justice sector guarantees that citizens' rights will be protected from violations by public or private institutions, either before the court or through the other dispute settlement mechanisms. It is impossible to assess the level of respect of basic rights and freedoms of BiH citizens without an insight into the protection of human rights through the judiciary. Other non-governmental organizations (NGOs), such as an informal coalition of NGOs gathered around the Human Rights House in Sarajevo and coalition of associations gathered around the TRIAL (Track Impunity Always), were monitoring and reporting on implementation of other UPR recommendations. By using this approach, we focused on different areas within different networks of non-governmental organisations in order to avoid any overlaps.

This report, in general, concludes that very little or no progress has been made with regard to the implementation of UPR recommendations by the state and its bodies. A particular challenge when it comes to the protection of human rights, is the application of the legislation in practice and the lack of implementation of laws that protect human rights in accordance with international standards. The non-harmonised laws in various jurisdictions throughout Bosnia and Herzegovina (BiH) represent a serious source of discrimination, given that, through such approach, different territorial jurisdictions guarantee different rights to citizens, as well as the criteria and procedures in exercising their rights, depending on the place where they live or work. This endangers the right to equal access to justice and the access to rights and courts is largely determined by the social status of an individual due to the lack of harmonised and functional free legal aid system.

The failure to implement UPR recommendations in BiH is a direct result of a) the lack of political will of the elected officials to seriously commit to reform processes and b) poor coordination of the relevant institutions in preventing and sanctioning the frequent violations of the human rights in the country. Although two workshops were organised by the UNDP Mission to BiH and the Ministry for Human Rights and Refugees of BiH for the purpose of developing the methodology and mechanisms to monitor the implementation of UPR recommendations in BiH, this has not yielded the real impact in the field. The coordinating body for the monitoring of the implementation of UPR recommendations, which would enable the establishment of the formal cooperation between the state institutions in specific areas, was not established. Also, formal training or informative sessions were not provided for the representatives at the lower levels of government.

⁴ The electronic consultations were held from 26th February to March 13th 2014 and all Network members received the draft version of this report to provide their comments. In addition, the Justice Network organized a Round Table on March 13th in order to review the submitted comments, hold external consultations and finalize the report.

Through this report, we urge the UN Human Rights Council and all member countries to exert a democratic pressure on local decision-makers through issuing their recommendations and activities in the embassies in BiH, and to support the efforts made by the citizens and civil society who expressed their dissatisfaction with the state of affairs in the country through mass protests and plenums in January and February 2014, indicating the necessity for establishment of the actual rule of law in Bosnia and Herzegovina.

1. ACCESS TO JUSTICE (recommendations 18, 19, 74 and 79 – *not implemented*)

1.1. Freedom of Access to Information Act (FAIA) which was enacted at the state and entity levels has proven to be an important mechanism for making more effective claims for access to public information and services and therefore provides a basis for better protection of individual and collective human rights. However, the implementation of this law is inconsistent: the implementation of FAIA was far more successful on the state level⁵ when compared to the implementation on the level of entities, cantons and local self-government units. The laws at different levels of government are not harmonised, which means that in order to exercise the right to free access to the information, one must know the administrative procedures that vary depending on the level of government and also vary from one institution to another⁶. At the same time, no sanctions are envisioned for institutions which fail to submit the requested information and the costs of seeking the information are very high⁷. Therefore, it is necessary to harmonise all laws on freedom of access to information in BiH and to introduce better safeguard mechanisms in the event of refusal to deliver the requested information.

1.2. Lengthy court proceedings – which implies failure to process the cases by the first instance courts and non-scheduling main trials at these courts, lengthy processes of ruling decisions upon appeal by second instance courts, and the duration of proceedings before the entity-level supreme courts – constitute serious impediments in the judiciary. The

⁵ In January 2014, the Parliamentary Assembly of BiH has amended the Freedom of Access to Information Act of BiH thus giving the competencies to the Administrative Inspectorate of the Ministry of Justice to impose fines in the case of failure to provide requested information. The inspectors have the authority to impose the fine up to 1.000 KM on the spot to the responsible person or relevant institution who/which fail to respond to the request within 15 days. If the case ends up before the court, the fine may reach up to 15.000 KM. However, the Administrative Inspectorate will investigate only those reports that pertain to the silence of administration, i.e. the situation when the institution is non-responsive to the request and when it fails to comply with the deadline for delivering the response. The Inspectorate is not authorised to examine the contents of the response. Pursuant to the new amendments, this will be performed by the „second-instance institution“, which means that, in majority of cases, the citizens will send their complaints to the complaints to the three-member Complaints Council within the Council of Ministers of BiH. In practice, it means that if the institution provides a partial response, or provides a response and fails to provide information, it does not imply the silence of administration and an individual is in for a lengthy process of obtaining the information, and is entitled to file a complaint and eventually, a lawsuit.

⁶ The laws are not harmonized and are left for an arbitrary interpretation by the officers in the institutions. For example, a certain institution will provide data on all its employees, whereas the other institution will state that these are personal data.

⁷ For example, the copy of tender documentation for procurement of vehicles for the Office of the Chairman of the Council of Ministers costs nearly 100,00 KM.

failure to comply with the court rules within the reasonable timeframe considerably restricts access to justice in BiH. Court delays takes place each time a new case is registered. Although the electronic case management system has been introduced in nearly all courts and prosecution offices, the courts continue to fall behind the case clearance rates with regard to a large number of cases. With regard to this, it appears that adequate solution would be to introduce and implement evaluation performance for all employees in judicial institutions, accompanied by the career advancement measures or sanctions.

1.3. The Constitution of Bosnia and Herzegovina, i.e. Annex IV to the General Framework Agreement for Peace in BiH (the Dayton Peace Agreement) does not envisage creation of a state-level judicial authority, and therefore the establishment of a Supreme Court of Bosnia and Herzegovina was not defined. In 2002, the Court of Bosnia and Herzegovina was established at the state level, pursuant to the Law on Court of Bosnia and Herzegovina. However, due to its narrow jurisdictions and lack of hierarchical relations with courts in the entities, the Court of BiH is unable to compensate for the non-existence of a Supreme Court of Bosnia and Herzegovina. Due to such structural shortcomings of the judiciary in BiH, the Constitutional Court of Bosnia and Herzegovina, which is not a regular judicial body by its nature and competencies, exceeds its defined appellate jurisdiction in certain cases. In parallel, there are non-harmonised legal solutions at the levels of the entities and Brčko District of Bosnia and Herzegovina (BD BiH) which results in non-harmonised interpretation of the entity laws in practice. The consequence of such structural organization of judicial authorities in BiH is the inequality of citizens in accessing justice, particularly related to the entity and/or canton where citizens appear as parties in proceedings, or the laws that apply to them. Establishment of the Supreme Court would instigate the process of harmonization of the current non-harmonized jurisprudence, and the development of legal security in the country.

1.4. Exercising the right to free legal aid and access to court without discrimination remains to be only partially regulated throughout BiH. The Center and Office for Free Legal Aid were established in Republika Srpska (RS) and Brčko District, while the approach to free legal aid in Federation of BiH (FBiH) is decentralised, i.e. the cantons have taken the role of free legal aid providers. The state-level or the framework law on free legal aid in civil disputes is non-existent although the Ministry of Justice of BiH has on several occasions submitted the Draft law on free legal aid for adoption by the Parliamentary Assembly of BiH. The current system is complicated and reflects the existing political structure of the state which has proven to be non-functional in nearly all sectors. Also, the criteria and procedures for obtaining free legal aid vary, depending on the jurisdiction where the person resides. The lack of the state-level law and harmonisation of legislation in this area has resulted in situation where the citizens have been discriminated by the very legislation that regulates access to free legal aid. In addition, there is the issue of availability of free legal aid for citizens who do not live in the cities where the free legal aid centres/institutes were established. All entity and cantonal centres/institutes were established in the larger cities within these jurisdictions. The costs of the travel to the larger cities constitute a considerable expenditure for indigent citizens, whereas the remoteness of these institutions also indicates that rural

communities, very likely, lack information on the existence of such aid. In this way, it is necessary to adopt a state-level Law on Free Legal Aid that will initiate the process of harmonisation of the rights, criteria and procedures in this area, thus enabling the equal access to justice for all citizens of BiH.

1.5. Under the state and entity-level laws on criminal procedures, the defendant is entitled to ex-officio counsel appointed by the court when the defendant is not able, due to financial reasons, to cover the costs of the trial, when the possible prison sentence may exceed 3 years, or when it is in the interest of justice. However, it remains unclear what criteria are applied in the process of appointment of defendant's counsel and what are the criteria used to determine when the defendant is not able to bear the costs of defence. Various abuses of the mechanism of ex-officio counsel appointment have been reported⁸. On the other hand, neither the laws on criminal procedures nor the laws on free legal aid stipulate the right on free legal aid for the victims or aggrieved individuals. These shortcomings have resulted in various negative trends that became visible, in particular, in the processing of war crimes and domestic violence. Thus, the legislative solutions in BiH do not include the mechanism of providing the free legal aid to the victims and injured parties in criminal damage compensation cases. Therefore, the only possibility left for victims and injured parties is to initiate additional litigations in which the material and non-material damage should be subsequently determined. These proceedings are costly and lengthy, and this is something many victims cannot afford.⁹ A free legal aid in criminal matters should be the subject to thorough evaluation. It is necessary to introduce the mechanism that will enable a more transparent work of courts when appointing an ex officious counsels and also to introduce a service of providing a free legal aid for the victims and witnesses of criminal offenses.

1.6. In addition, the role of the non-governmental organisations in providing the free legal aid services has not been recognised. Although the NGOs can provide free legal aid, the public funds allocated for their activities are scarce, notwithstanding the fact that non-governmental organisations represent the key free legal aid providers in BiH. Also, the legal imbalance was observed with regard to associations of citizens and other civil society organizations, in terms of their procedural position and possibility to participate in civil proceedings before the courts, with regard to protection from discrimination in BiH. The state level law on free legal aid, which needs to be adopted, should recognise the role of non-governmental organisations and all other potential actors play in providing free legal aid.

2. DISCRIMINATION PROHIBITION AND PROCESSING

2.1. Implementation of the Law on Prohibition of Discrimination (recommendations 32, 34, 45 – not implemented)

⁸ The research conducted by the Center for Investigative Reporting indicates that “interventions” have been observed when appointing the ex officio counsels, and even highly positioned political officials and owners of private companies responsible for the multi-million embezzlements and money laundering have received ex officio lawyers without having to pay for their services.

⁹ This problem is particularly noticeable when processing the war crimes cases and affects the exercising of the rights by the victims of war. See the report submitted by the coalition of organisations gathered around the TRIAL (Track Impunity Always).

2.1.1. Although the BiH Law on Prohibition of Discrimination was enacted in 2009, its implementation in practice has been insufficient. So far, the public is familiar with 3 positive adopted verdicts, which were result of the implementation of the Law. The number of complaints lodged on the grounds of discrimination increased by 33%, rising from 191 to 257, when compared to 2011. However, only few cases pertained to the gender discrimination, discrimination on the grounds of social class, race or disability, although it has been reported that these are the very common forms of discrimination in BiH. The rule of the urgency in processing cases is not respected, and the trainings for judicial community and public are far from being sufficient; whereas discrimination victims have been challenged by various obstacles in exercising their rights to court protection, including the financial obstacles, insufficient deadlines to exercise the right to court protection and fear of victimisation. The Rulebook on Methods of Collecting Data on Cases of Discrimination in BiH was adopted, however, the Ministry of Human Rights and Refugees of BiH has not yet started collecting data from courts, NGOs and the Institution of the Ombudsman, which resulted in failure to establish the system of collection of data from other institutions.

2.1.2. The deadlines for exercising the right to court protection against discrimination set out in the Law on Prohibition of Discrimination BiH are too short. Currently, the subjective deadline to bring an action and exercise the right to protection against discrimination is three months, whereas the objective deadline is one year. Although the time limitations for exercising the right to court protection are necessary to ensure the legal security, the deadlines for obtaining the court protection against discrimination appear to be considerably shorter than the timeframes envisaged in other, similar areas, such as labour relations and right of redress i.e. right to compensation. Given the existing problem of recognising a certain individual as a victim of discrimination, how much time it takes for the victims to muster the courage to bring an action and exercise their rights to court protection, and the obstacles they are challenged with in seeking and obtaining an adequate legal aid, the timeframes envisaged in BiH may constitute a considerable impediment to obtain the court protection against discrimination in practice.

2.1.3. In the forthcoming period, it is necessary a) to explicitly envisage disability as a ground for discrimination in the Law on Prohibition of Discrimination; b) to provide training on available protection mechanisms for potential victims of discrimination on the grounds of race, sex, sexual orientation, disability, and social status and their associations; c) to remove obstacles to access court protection, by providing victims with, *inter alia* legal aid and longer deadlines for exercising their right to court protection; d) to ensure adequate and continuous trainings for judicial community on the specificities of protection against discrimination, envisaged in the Law; e) to ensure urgent initiation of procedure by the judges in these cases; and f) to draft the Rulebook on Collection of Data on Cases of Discrimination.

2.2. Constitutional Reforms (recommendations 31, 98, 99, 100, 101, 102 – *not implemented*)

2.2.1. Discriminatory provisions in the Constitution of BiH have not been removed. The discussions on the implementation of the judgment of the European Court of Human Rights in the case of Sejdić – Finci v. Bosnia and Herzegovina have continued outside the

institutions of BiH, in non-formal meetings of leaders of the major political parties, instead of being held in the Parliamentary Assembly of BiH (PABiH), as envisaged in the Constitution. The "Others", the civil society and expert community are not being consulted during these negotiations. The special session of the House of Representatives of PABiH to review the set of proposed amendments to the Constitution of BiH has not yet been held, though it was announced.

2.2.2. In parallel to the amendments to the State Constitution, it is necessary to amend the entity constitutions, which also incorporate discriminatory provisions, like the State Constitution.

2.3. Protection of the Rights of Sexual Minorities (recommendations 48, 49, 50 – *not implemented*)

2.3.1. Although the BiH Law on Prohibition of Discrimination prohibits the discrimination on the grounds of sex, sexual expression or sexual orientation, it comprises erroneous definition of the term "sexual orientation" and "gender expression", which results in discrimination on the grounds of sexual orientation not being adequately recognized. It has not been known that any court process were initiated to provide protection against discrimination on these grounds.¹⁰

2.3.2. Given the wide-spread anti-LGBT hate speeches in BiH – which is noticeable in media in the form of sensationalisation or stigmatisation of homosexuality by associating it with the negative social practices, and even with violence or crime - it is required to amend the criminal codes in BiH and qualify stirring up hatred on the grounds of sexual orientation as a criminal offense, in order to provide equal protection of the rights of all BiH citizens.

2.3.3. Taking into account the aforementioned information, it is necessary to define the terms “sexual orientation” and “gender expression” in the Law on Prohibition of Discrimination, in compliance with the international standards; to timely prosecute the cases related to discrimination on the grounds of sexual orientation and sexual identity; and to educate the public on the mechanisms of protection against discrimination, and on this particular form of discrimination.

3. INDEPENDENCE OF JUDICIARY (recommendations 76 and 81 – *not implemented*)

3.1. Independence of Judicial Institutions

3.1.1. The provisions which explicitly pertain to the independence of the courts are not comprised in the Constitution of BiH, which was adopted within the Annex IV to the General Framework Agreement for Peace in BiH. This requires amendments to the Constitution so it will stipulate clear guarantees with regard to the independence of judiciary, both of courts and prosecution offices.

¹⁰ None of the persons responsible for the attacks during the opening of the Queer Festival in 2008 in Sarajevo was criminally prosecuted. It remains to be seen what will be the response of the authorities regarding the attacks on the participants of Merlinka Festival in 2014.

3.1.2. The problem which in particular plagues the BiH judiciary is the failure to enforce the court decisions by the executive and legislative powers. The Institution of Ombudsman for Human Rights BiH received a large number of complaints made by citizens on the grounds of non-enforcement of court decisions, where the judgment debtor is municipality, canton or entity. The lack of execution of court decision is legally based as under the provisions of the Civil Procedure Act, enforcement is possible only in the case the funds have been designated for that purpose. Taking into account often budget restrictions, allocations for this purpose are continuously reduced, which presents a risk for legal security of citizens. The failure to enforce decisions of the Constitutional Court of BiH constitutes a particular problem. The prosecution offices of BiH should build capacities to initiate investigations and raise charges, and to hold criminally accountable institutions and elected government officials who fail to enforce court decisions.

3.1.3. Interference in the work of judicial institutions by the executive and legislative bodies as well as by elected politicians has been a significant problem that challenges the BiH judiciary for a considerable time now, especially the state-level institutions. Several such cases were reported during the monitoring period. The political influence exerted on the courts and prosecution offices when prosecuting current or former highly positioned political, state or entity officials, is a particular problem. The courts and prosecution offices have been dealing with hundreds of such cases and indictments cover offenses such as abuse of authority, embezzlement, misuse of funds, and other irregularities. Nearly all cases result in acquittal, provided that prosecution office has initiated proceedings in the first place.

3.1.4. There are 4 legal systems and 14 sources of financing of judicial institutions in BiH. The judiciary in BiH is financed from ten cantonal and two entity budgets, state budget, and the budget of Brčko District of BiH. The relevant ministries of justice and authorities responsible for approval of the budgets have an option to amend the budgets of judicial institutions. Prior to this, they are obliged to inform and consult with the High Judicial and Prosecutorial Council of BiH - the institution that approves the budget. Due to such structure of competencies, we are often the witnesses of direct and, in practice, very common influence of executive power on the judiciary. Different levels of government have different financing priorities. For example, some cantons allocate larger portion of its total annual budget to finance judiciary, while other have different priorities (e.g. capital investments, higher education, police forces, public health etc.). Judicial institutions at all levels should have equal scope of financing. This would prevent differences resulting in uneven efficiency and access to justice, which primarily place the citizens on unequal footing in the place where they exercise their rights.

3.1.5. A large number of UPR recommendations are directly related to the implementation of Justice Sector Reform Strategy in BiH (BiH JSRS) which was adopted in 2008. Due to increased lack of political support, the envisioned reforms continue to be implemented, almost exclusively, at operational and technical levels, i.e. the efforts are made to implement those programmes and activities which are deemed to be less “politically sensitive”, which inevitably results in a very limited overall progress. In

2013, the process was launched to draft a new JSRS document which does not include all activities not implemented in 2008 – 2013 period. By doing so, the establishment of the Supreme Court of BiH and single system of financing the judiciary in BiH have been omitted. Due to neglect of these key activities, the efficiency and independence of judicial institutions is challenged. The implementation of all measures envisioned under the Justice Sector Reform Strategy in BiH (BiH JSRS) represents an essential step towards development of efficient judicial system which will guarantee protection of human rights of all the citizens in BiH.

3.2. Independence of Judges and Prosecutors

3.2.1. The High Judicial and Prosecutorial Council of BiH demonstrated a certain progress in solving the complaints on inappropriate influences on the work of judges and prosecutors. Although the number of complaints has significantly increased compared to the previous years, the capacities of the HJPC Office of Disciplinary Prosecutor remain to be limited with regard to efficient prosecution and sanctioning. In the previous year, in average 240 days were required to resolve the complaint. It is necessary to build the capacities of the HJPC to become more efficient in prosecution and implementation of sanctions with regard to complaints on the work of judges and prosecutors.

3.2.2. Appointments of judges to the state and entity level constitutional courts continue to be shaped by political influences. Many judges have severed their political parties prior to being appointed to judicial institutions, thus undermining reputation of courts as unbiased institutions. In addition, the RS Constitutional Court adopted the Rules of Procedure which is in contradiction with provisions of the Constitution, while the constitution of the FBiH Constitutional Court has been incomplete for several years due to political pressures with regards to appointment of judges. Notwithstanding the fact that there are no generally accepted standards against which constitution of courts and appointments of judges to constitutional courts would be conducted, as well as the fact that in the absence of such standards each country defines its own rules, Bosnia and Herzegovina should ensure legitimacy of appointments of judges to constitutional courts and should make sure that such appointments are made based on professional and ethical merits.

3.2.3. Appointment procedures for judges and prosecutors remain untransparent, since the decisions of appointment continue to be issued in the form of standard decision rather than a substantiated decision, thus rendering it impossible to file a complaint against the decision of an appointment. Therefore, HJPC needs to modify the forms of decisions on appointment of judges, prosecutors and expert associates so that decision includes more detailed justification and explanation. It also needs to introduce the right to complain against an appointment decision and to establish a second instance committee which will make decisions with regard to complaints against such decisions.

4. FREEDOM OF RELIGION, EXPRESSION AND SPEECH (recommendation 33, 85, 86, and 87 – *not implemented*)

4.1. Last year the Secretariat of the Interreligious Council in BiH received 27 reports of attacks on religious buildings, as well as attacks on religious officials, with 9 attacks

occurring at the territory of RS, and 18 at the territory of FBiH. The existing legislation allows for the acts to be described as hate crimes, or crimes aimed at enticing religious hatred; however, the majority of police reports describe the acts as “criminal offence of damage of property”. It is necessary to provide training for officers in police forces and prosecution offices regarding this type of crimes.

4.2. Criminal codes in the two entities and Brčko District govern the hate crimes. However, it is necessary to harmonise the criminal codes across BiH, so that the provisions of the Criminal Code of BiH and the Criminal Code of FBiH include the notion of hate as motive to commit crime, which is already included in the provisions of the criminal codes of RS and Brčko District. In addition, BiH, as the member state of the Council of Europe, should take urgent measures in order to harmonise criminal codes with the conventions included in the Annex 1 of the Constitution of BiH, particularly with the International Convention on Elimination of All Forms of Racial Discrimination (1965) and the Convention on Elimination of All Forms of Discrimination against Women (1979), and to respect the decisions of the European Court of Human Rights pertaining to inadequate regulation and processing of hate crimes.

4.3. Public broadcasters’ programming, in each respective entity in BiH, is neither opened to nor is it actively aimed at achieving greater participation of representatives of religious minorities. The media broadcasts or prints unconfirmed reports which spread intolerance against members of specific religious communities. Print articles often establish unjustified links between acts of crime and ethnic or religious affiliation of perpetrators or victims, thus fuelling spread of ethnic intolerance. Similar instances may be observed in war crimes reporting in which the emphasis is placed on religious or ethnic affiliation of persons convicted of war crimes or persons alleged to have committed war crimes. Religious minorities’ associations are faced with limited freedom of expression and gathering. In conjunction with this, there have been numerous incidents preventing events on important remembrance days commemorating victims or other events and gatherings related to issues of war crimes or discrimination in local communities. While celebration of religious holidays of constituent peoples in BiH warrants special dedicated programmes in the media, the holidays of minorities are granted not more than a mention in a short feature or they go without a mention.

4.4. It is necessary to facilitate access of hate speech victims to information regarding violation of their human rights and fundamental freedoms. It is necessary to build capacities of the Institution of Human Rights Ombudsmen in BiH to conduct investigations in this area, as well as to strengthen the role of the Communications Regulatory Agency (RAK) and to ensure that relevant authorities and civil society organizations conduct continuous monitoring of their activities. It is necessary to strengthen the role of the BiH Press Council with regards to the recommendations made and implementation of the recommendations. It is necessary for the Institution of Ombudsman and the BiH Ministry of Human Rights to take an active stance and issue recommendations and warnings to BiH online/print/radio/TV media upon instances of hate speech or in cases when hate speech evolves into the accepted behaviour due to inadequate control over comments’ sections or citizens’ direct addresses through the media.

5. PROTECTION OF HUMAN RIGHTS DEFENDERS (recommendations 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 – not implemented)

5.1. In spite of special emphasis which is placed on the freedom of expression and information in the media, civil society organizations, and journalist organizations in particular, suggest that freedom of expression in the public arena is subject to abuse and that hate speech is on the rise, particularly in the case of online media. It is rather apparent that there are media that join in the direct attacks on defenders of human rights, while the other media either defend them or remain silent. The state does not provide adequate protection to journalists, associations of journalists or to the media, thus impeding, encumbering and hindering them in the efforts to be efficient and unbiased. Journalists are subject to direct threats coming from political leaders as well as to various forms of indirect pressure which is embodied in the control over the media and marketing space as well as in the fact that the media are being funded by state owned companies and companies in which the state holds substantial shares. Institutions have achieved only partial progress with regards to implementation of obligations pertaining to freedom of access to information - in cases of formal compliance with the obligations, the adequate information and specific answers to journalists'/researchers' questions are not being provided. A range of video evidence has been published online illustrating attempts of political leaders to exert pressure on journalists and editors. Political affiliation or partiality of individual editors and journalists is clearly perceived in the public, and this undermines public confidence in the media.

5.2. Attacks on activists by judicial authorities in the RS have been reported¹¹. RS Prosecution Office is conducting a number of preliminary investigations, in which the suspected persons are the activists involved in the initiative, serving the purpose of further intimidation of the activists. In addition, some of the activists have filed charges against the RS authorities to the BiH Prosecution Office, and all the investigations remain underway. It is disconcerting that the public is not informed about the details of these

¹¹ The first case is reported in Srebrenica municipality and it pertains to the I will vote for Srebrenica (Glasaču za Srebrenicu) initiative aimed at registering and mobilizing citizens from Srebrenica municipality to vote and to participate in the 2012 local elections. The initiative was actively implemented in the period between early May and middle of October 2012; however, in practice, the activities have extended beyond the original time frame and into 2013 for the purpose of addressing problems citizens face due to unequal treatment and procedures on the part of Ministry of Internal Affairs of RS regarding the registration itself and well as registration of residence in Srebrenica. The second case pertains to Prijedor municipality and the initiative of several associations of civilian victims of war to hold peaceful remembrance walk across Zoran Karlica Square, commemorating the war crimes which occurred 20 years ago. The walk was banned, and the ban was also imposed on the peaceful walk commemorating the Human Rights Day, on December 10th 2012. Defying the ban, seven citizens organized a protest commemorating the Human Rights Day, under the slogan When human right are violated; civil disobedience becomes our duty (Gdje se krše ljudska prava, građanska neposlušnost postaje dužnost). The effect of the ban has not waned until the present day. It has been twofold – on one hand, the effect has proven positive and this is reflected in the spread of messages and increased determination of various associations and individuals to preserve the memory of the crimes committed in Prijedor, in particular thorough the Because it does concern me (Jer me se tiče) initiative; while, on the other hand, the negative effects reflect in the fact that even the reactions and pressure coming from the international community have not resulted in changing the attitudes of the local authorities and Ministry of Internal Affairs of the RS with regards to the right to freedom of public gathering of citizens in Prijedor.

investigations, particularly whether the investigations may be terminated due to the order of unenforceability. The status of charges filed against Republic Srpska in the case of violation of human rights of activists involved in the *I Will Vote for Srebrenica* (Glasaču za Srebrenicu) initiative is not known.

6. INSTITUTION OF THE OMBUDSMAN (recommendations 9, 10, 11, 12, and 13 – *partially implemented*)

6.1. Due to the complicated decision-making system, which requires involvement of three ombudsmen, the Institution of the Ombudsman for Human Rights in BiH has not been able to timely react to the violations of human rights. Due to the procedure of making decisions and reaching consensus, it is questionable whether the Institution has carried out all necessary measures with regard to evidence collection. The existing recommendations of the Institution have not been implemented in many cases, though the cooperation with the relevant authorities during the investigation is relatively satisfactory. In practice, the prosecution offices practically make requirements for the victims and local human right defenders to submit evidences, in order for the prosecutors to commence investigations. In this process, they neither take an active response, nor consider that the civil society doesn't have access to the institutions in local communities. It is required to continue the reform of the Institution of the Ombudsman for Human Rights in compliance with the opinion of the Venice Commission dating from 2004 (one Ombudsman and his/her deputies) to improve the efficiency of the institution and enhance the decision-making system, which for now, implies that consensus of three ombudsmen has to be reached.

7. FIGHT AGAINST CORRUPTION (recommendation 84 – *not implemented*)

7.1. Corruption is one of the most serious problems in BiH affecting implementation of laws in the country. Citizens often find themselves pressed to participate in the corruption and to “purchase” public services. Widespread corruption is related with the complexity of structure and lack of harmonization between the activities carried out by different judicial institutions in the country. Although the prosecution offices receive a large number of criminal complaints from the citizens, they fail to conduct investigations promptly. The ex officio investigations are not initiated.

7.2. Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption has not become operational as of yet. In practice, the coordinating role, which is conditional on political will to create adequate and operational state level agency, hinders any efficient activities in terms of dealing with corruption issue at the state level. This is amplified by the fact that the RS institutions undertake parallel activities to combat corruption, which serves to confirm the asymmetry in dealing with the problem, as well as the general inefficiency in the fight against corruption. The general approach to the issue and hindrances encountered in practice result in lack of citizens' confidence in the state institutions, since adequate activities, which would raise awareness of anti-corruption mechanisms, are not being implemented. Public is not informed about the number of cases in the competent courts, or with the legally binding judgments (reporting, when existing, is neither systematically nor strategically processed), thus the purpose of punishments is not achieved.

7.3. It is necessary to set the foundations for the Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption to become operational, being the newly established agency under the existing regulations. It is also necessary to make the Agency more functional to be able to adequately coordinate the activities of entity and local bodies.