

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina



The Council of Europe and the European Network of National Human Rights Institutions (ENNHRI)

The High Level Seminar “Freedom of Expression – role and powers of National Human Rights Institutions (NHRIs) and other national mechanisms”

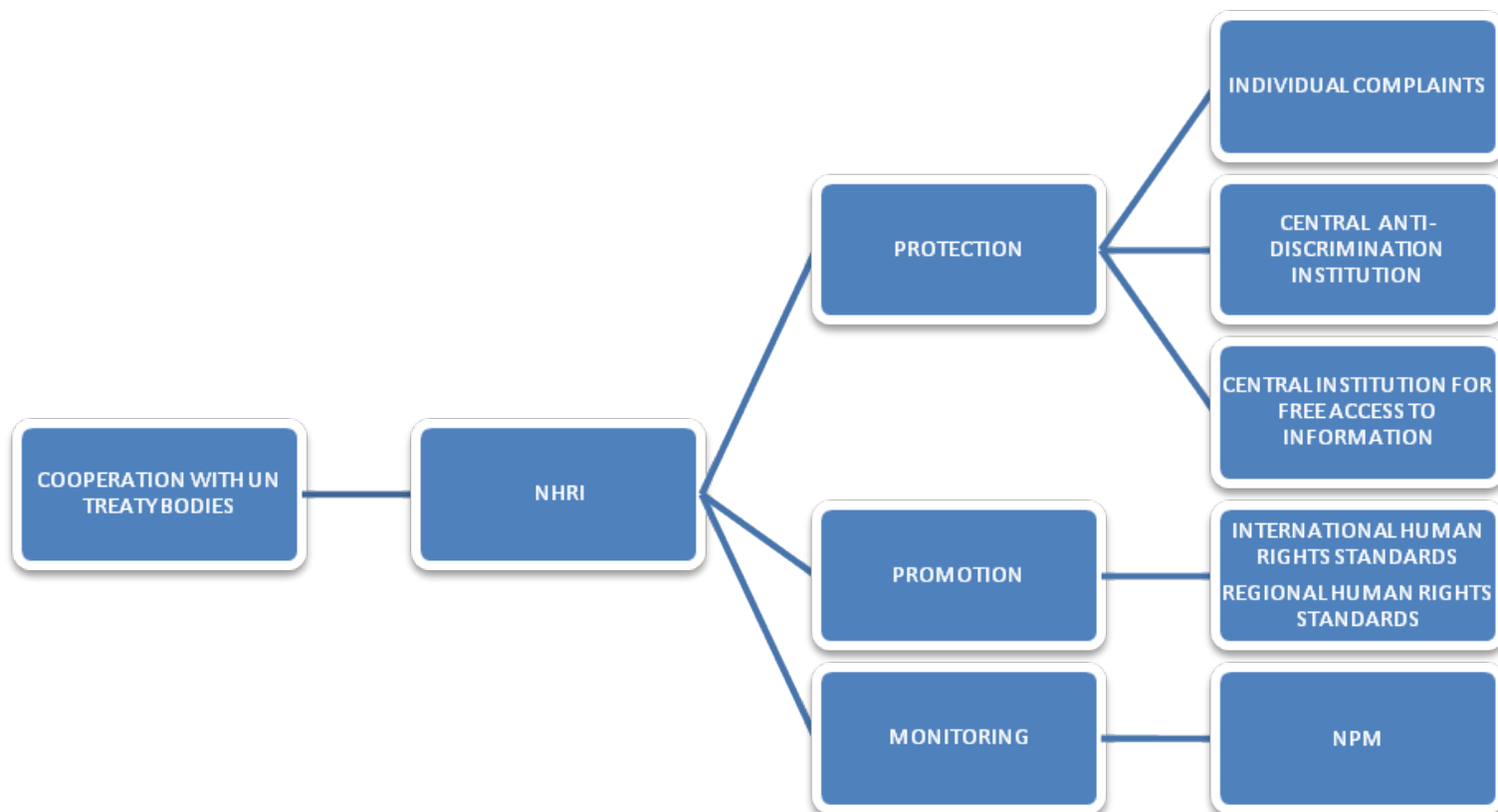
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Obligations



- State obligations related to free access to information
 - Article 10 of ECHR and Article 8
 - UN treaty
 - Consolidation of legal framework
 - reform of domestic legislation
 - adherence to international human rights treaties.
 - Support to initiatives which main aim is to enhance and promote free access to information
 - Mainstream human rights into other programme areas
- Mandate of NHRI
 - BiH Ombudsmen – central institution related to implementation of the legislation on free access to information
 - Situation related to media

Role of Ombudsmen Institution



Responsibilities



State obligations related to free access to information

to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups

Parliament obligations based on IS, constitution, laws

1. Ratification of international standards
2. Adoption of laws harmonized with international standards
3. Following human rights situation in a country
4. ***Appointment of ombudsmen***

Ombudsmen obligations based on IS, Paris principles, Constitution, Law

1. Advocacy for the ratification of international standards
2. Monitoring of implementation international standards in practice
3. Direct implementation of international standards in protection of HR
4. Indicate human rights violation through recommendations and reports
5. ***Reporting to Parliament and treaty bodies***

Mandate of the BiH Ombudsmen



Prescribed in the ANNEX 6 of DPA - Agreement on Human Rights and the Law on Ombudsmen

- The Human Rights Ombudsman is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties all persons;
- The Parliamentary Assembly of BiH by majority votes appoint three Ombudsmen for a term of six years in accordance with the Rules of Procedure of each House.
- The Institution shall each year communicate the results of the its activities in a report to the Presidency of BiH, the BiH Parliamentarian Assembly, Parliament of FBiH and Parliament of RS.



Ombudsmen have a dual role, as follows:

- It is the competent public body that has the information on human rights violations, and so it has the control over the possibly requested information on human rights
- The Law on free access to information has defined competencies that include:
 - creating and disseminating information such as guidelines and general recommendations for facilitating the implementation of the Law;
 - annual reporting regarding the activities as defined by the Law and proposing the instructions on the implementation of the Law to all competent ministries in Bosnia and Herzegovina;
- A national institution ***shall be vested with competence to promote and protect human rights.***
- A national institution ***shall be given as broad a mandate as possible,*** which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

The Ombudsman institution as the public body:



- Ensuring the principle of transparency in relation to citizens and in relation to the media
- Transparency means availability of the information on the work to public,
- Different mechanisms for access to information on the Ombudsmen. Limits of website
- The existence of technical constraints related to the volume of leasing web space which is directly related to the financial constraints (eg. Web pages Ombudsman can't receive more than 100 recommendations)
- Printing documents exists in cases of presenting an annual and special reports, which nevertheless in some way give a comprehensive picture of the situation;
- Direct contact with citizens is the best mechanism, but the lack of financial resources – coordination and cooperation with civil society;

The institution of the ombudsman as a public body



- The relationship with media
- The submission of a written requests from media – statistic data base – analyzes on the media interests related to in human rights
- Free access to information and media

Freedom of access to information through the activities of Ombudsmen period 2015-2016

	2015	2016, ended 09 december	2015-2016
Total number of cases	2966	2714	5680
The number of requests relating to freedom of access to information	223	266	489
Number of recommendations	34	29	63

Problems detected in the area of implementation of the legislation on free access to information

On the **side of public bodies**

- The high level of the lack of education staff in public bodies
- Misunderstanding of the law
- Lack of understanding of the relationship between public authorities and citizens, and that the public authorities are service of citizens
- Failure to establish the structure of public authorities to implement the Law, there is no by-laws and other implementation documents, such as: index information, no appointed Information officers and media officers are so often officers for free access to information
- Lack of justification of decisions taken on the request for access to information
- Failing to ensure a balance between the public interest and to protect the interests relating to the privacy of individuals
- Failure to reach a decision within the time limits established by the Law

Problems detected in the area of implementation of the legislation on free access to information

- Failure to comply with legal provisions on the form of decision (written decision with all the elements in accordance with the provisions of the Law on administrative procedure);
- Decision does not contain provisions on the possibility to appeal and the name of the second instance body.
- Rejected requests for access to information often does not contain an explanation of reasons for refusal, nor explain the public interest test, but usually contain only conclusion that to protect the privacy of third persons refuses to give information.

Problems detected in the area of implementation of the legislation on free access to information



- Most of the public institutions don't keep separate statistics on requests that are exclusively related to the Law on free access to information
- the lack of distinction between spokespersons and professional officers for free access to information

Problems detected in the area of implementation of the legislation on free access to information



In the side of the applicant

- Imprecision of requests
- Lack of knowledge related to procedure
- Failure to use the instruments established by the law, particularly those related to legal remedies
- Media and the legislation on free access to information
- Search for personal information related to third persons

Problems detected in the area of implementation of the legislation on free access to information



- Detailed analysis of the collected data and recorded telephone call that public authorities made to Ombudsmen Institution of B&H, related to the legislation on free access to information, indicates that there is still a lack of knowledge of public authorities and officers for information on the importance to insure implementation of the Law on Free Access information.
- Free access to information v. Protection of personal data