



# STRENGTHENING THE HUMAN RIGHTS OMBUDSMAN TO FIGHT DISCRIMINATION

## ASSESSMENT OF THE EFFICIENCY OF THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

**May 2018**

Horizontal Facility for Western Balkans and Turkey

Funded  
by the European Union  
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



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<http://horizontal-facility-eu.coe.int>

Human Rights National Implementation Division,  
Human Rights Policy and Development Department,  
Human Rights Directorate,  
Directorate General of Human Rights and Rule of Law

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This document has been produced using funds of a Joint Programme between the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

## **List of Abbreviations**

AD Department	Department for the Elimination of all forms of Discrimination
BiH	Bosnia and Herzegovina
CM	Committee of the Ministers of the Council of Europe
ECRI	European Commission against Racism and Intolerance
FOIA	Freedom of Information Act
IHRO	Institution of Human Rights Ombudsman
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MIA	Ministry of Internal Affairs
MOJ	Ministry of Justice
NHRI	National Human Rights Institution
NPM	National Prevention Mechanism
OPCAT	Optional Protocol to the Convention against Torture
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PSA	Public Service Announcement
SCA	Subcommittee for the Accreditation of the National Human Rights Institutions
SPT	UN Subcommittee for the Prevention of Torture
SSA	Short Term Service Agreement
The Centre	National Human Rights Centre
TNA	Training Needs Assessment
UN	United Nations
UNDP	United Nations Development Program
VC	Venice Commission of the Council of Europe

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## **Executive summary**

While the IHRO continues to operate in an extremely complex, political, and human rights environment, it is of increasingly important that the IHRO is able to fully achieve its potential in accordance with its remit. The legal framework of the Ombudsman Institution of Bosnia and Herzegovina, including the Law on the Prohibition of Discrimination, provides the institution with fundamental safeguards to ensure its independence and operation. The institution's mandate is rather broad, thereby enabling it to promote human rights and good governance throughout BiH. The IHRO has established itself as a solid State Institution, and the general public is aware of the work it does.

The IHRO has insufficient financial resources to retain its existing member of staff and would benefit from additional personnel to fill the vacant posts. However, the institution continues to operate with an outdated structure which requires substantive changes. Thus, in the short-term, the middle management of the IHRO should be reinforced. A new institutional structure and a different internal organization should enable the IHRO to improve its decision making process at all levels, including at the departmental level thereby enabling it to operate more efficiently and effectively.

In order to fully bring about such changes, it is advisable to conduct substantive institutional diagnostics with the assistance of a management consultancy firm and to implement the results thereof. These structural and organizational changes would increase the IHRO's output and improve the general climate within the institution.

Issuing recommendations in relation to individual human rights complaints constitutes one of the most recognizable and unique outputs of the IHRO's mandate. In this respect, the IHRO offers an accessible remedy for human rights violations, which is confirmed by the high number of applications lodged with the institution every year. Despite its limited resources, the IHRO processes numerous complaints and issues a significant number of recommendations.

Nonetheless, in addition to institutional and structural changes listed above that would take longer to implement, improvements to the complaints-handling process of the IHRO should be available in the near future. The IHRO's efficiency can be improved by adopting a set of practical and technical measures related to the complaints-handling process (including a strategy for resolving the case backlog). The IHRO would also largely benefit from changes to its practice on registering and allocating the cases to the relevant Departments.

Turning to the recommendations themselves, the IHRO should enhance its policy on publication. By increasing the publications of the outcome of the IHRO's investigations and findings, there would be a positive effect on the relatively low number of fully-implemented recommendations of the institution. In addition to

strengthening compliance, this would also improve the IHRO's institutional standing, transparency and promote and educate the public on human rights. However, in seeking to increase its publication input the IHRO will need to ensure consistency in the drafting of the recommendations and in particular, its reasoning and assessment of the complaints.

It is noteworthy that the IHRO is involved in monitoring activities and publishes an Annual Report and several Special Reports every year. Like every NHRI, the IHRO of BiH faces numerous challenges. However, the importance of Annual Reports and Special Reports as a tool should not be underestimated – indeed, they form the main working product of the IHRO and should be assessed as such.

The annual reports need to have a more user-friendly format and contain more precise, practical legislative and policy recommendations. The IHRO can introduce a more systemic approach with regard to Special Reports so that it is able to plan in advance, allocate sufficient in-house resources to produce such publications. When combined with the IHRO's improved relationship with the courts, these measures will greatly enhance the reputation of the institution.

The Department of the Elimination of all Forms of Discrimination operates in accordance with its own legal framework. Considering the available capacities and resources, the IHRO performs its functions rather well, although there is room for improvement. However the IHRO needs to reinforce this Department, adopt a more proactive role in the protection against all forms discrimination, improve the substance of the report on Anti-Discrimination activities and consider reinstating the previous practice, when the Department used to issue a separate annual report. Additionally, the IHRO should be more visible and invest more in awareness raising work on anti-discrimination.

Considering that the IHRO might be designated as the National Preventive Mechanism against Torture under the OPCAT, it is the right time to start preparing for the new role of the institution.

The IHRO has hardly has any budgetary means for the awareness raising activities as well as for the required training activities for its staff and could invest more in developing a proper training plan for the staff. It should also consider drafting a communication strategy based on the results of the public opinion survey to be commissioned by the IHRO and conducted by the professional polling company to address the gaps in communication and awareness with general public. The IHRO should attract donor funds for the purposes of carrying out these activities. Conducting proper training needs assessment ("TNA") can constitute a good basis for a proper training strategy to be shaped and tailored to the needs of particular staff members in different Departments. The plan should identify the main areas in which the staff requires training and development including both the requisite soft

and hard skills. A TNA will help the IHRO to develop the list of priority trainings to be planned in the course of the year.

## **Introduction**

This report is prepared within the framework of the Joint Project between the European Union and the Council of Europe entitled “**Strengthening the Human Rights Ombudsman to fight discrimination**”. As part of the Horizontal Facility for South East Europe and Turkey, the Project is aimed at supporting the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (“IHRO”) in order to strengthen its role in preventing and combating discrimination, in accordance with European standards.

The data which served as the basis for this Report was collected by the consultants during a mission to Sarajevo and Banja-Luka, BiH from 13 to 16 March 2018

The purpose of the mission was to prepare a report (“the Report”), assessing the role and efficiency of the IHRO in terms of the overall impact of its adopted recommendations, based either upon submitted individual complaints or investigations conducted *ex officio*. Furthermore, the Report will assess the status and the role of the IHRO in areas including: the relevant domestic legislation; the IHRO’s internal structure, including its decision-making process; the complaint handling process, with a special focus on the operation of the Department for the Elimination of all forms of Discrimination; and the IHRO’s published recommendations. The overall goal of the assessment is to assist the IHRO in measuring and improving its efficiency.

For the purpose of the Report, the consultants carried out fact finding by visiting:

- the IHRO’s Headquarters in Banja Luka and the Office in Sarajevo,
- representatives of local civil society; and
- representatives of international organizations present in BiH and in particular the OSCE.

With regard to the sources and methodology, the consultants analysed the relevant laws and regulations, including the internal guidelines. Moreover, the consultants took into consideration all other relevant documents including reports published by international and non-governmental bodies, opinions of the Venice Commission, as well as the concluding observations of UN Treaty Bodies, and other monitoring and special mechanisms.



## **Background**

In its current form, the IHRO has been operating since 2008 as a result of the changes introduced by the “*Law on Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina*” of 2006.<sup>1</sup> This followed a difficult process involving the merger of three institutions – namely, the separate Ombudsman institutions that existed for the Federation of Bosnia and Herzegovina and Republika Srpska as well as the third separate office on a State level.

The main rationale behind the unification was to reduce costs and make the institution more efficient by, among others, eliminating duplication. In addition, it tackled the problem regarding the coordination between the three bodies and helped avoid confusion in the eyes of the general public.

According to Article 1 of the “*Law on the Human Rights Ombudsman of Bosnia and Herzegovina*” (“the Law on the Human Rights Ombudsman”):

“The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution established to promote good governance and the rule of law, the protection of freedom of natural and legal persons, as guaranteed by the Constitution and international treaties appended thereto, which will in that respect monitor the activities of the institutions of Bosnia and Herzegovina, its entities and the Brčko District, in accordance with the provisions of this law.”

Article 7(1) of the “*Law on the Prohibition of Discrimination*” also states that, “[The] central institution competent for protection from discrimination is the Human Rights Ombudsman of Bosnia and Herzegovina.”<sup>2</sup>

The Law on the Human Rights Ombudsman designates Banja Luka as the head office of the Ombudsman, with regional offices in Sarajevo, Mostar and Brčko. Recognizing the importance of their outreach presence, the Ombudsmen opened a Field Office in Livno. With the support of the local community, the IHRO has established office days in Tuzla, and with the support of the OSCE Mission to BiH, it maintained its presence in the following communities: Glamoč, Drvar and Grahovo. During 2016, with the support of the Mayor of Bijeljina and the OSCE, the office days were established and maintained in Bijeljina, Bihać and Doboј.

In the past decade, the IHRO’s mandate has been expanded and strengthened particularly as compared to that provided in the 2002 Law on the Ombudsman. Beyond its core functions and competences, the IHRO also promotes the

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<sup>1</sup> Published in Official Gazette of Bosnia and Herzegovina No. 32/06. See also “*The Law on the Human Rights Ombudsman of Bosnia and Herzegovina*” published in the Official Gazette Nos. 32/00, 19/02, 35/04, 38/06 (Corrections).

<sup>2</sup> Official Gazette of Bosnia and Herzegovina No. 59/09

implementation of the BiH Freedom of Information Act (FOIA), as well as the Law on Governmental and Ministerial Appointments. As of 2009, the IHRO has been designated as the main anti-discrimination body in BiH. Based on the recent draft amendments to be introduced to the Law on the Human Rights Ombudsman, the institution will also act as the National Preventive Mechanism for the Prevention of Torture (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT).

An exhaustive list of the IHRO's responsibilities, as based on the Law on the Human Rights Ombudsman, provides that it is responsible for:

- undertaking actions following the submission of complaints or *ex officio* in cases relating to poor functioning of or violation of human rights and liberties by any authority.
- undertaking general investigations, and issuing individual and/or general recommendations;
- conducting investigations following complaints regarding the poor functioning of the judicial system, or poor administration of an individual case, and providing general or individual measures;
- adopting specific procedures for receiving and addressing complaints of children, minorities and persons with disabilities;
- publishing information, opinions, recommendations, proposals and reports;
- initiating legislative and regulatory amendments and their adoption with a view to making domestic laws compatible with international human rights law standards in addition to, ensuring the enhancement of human rights and fundamental freedoms;
- preparing annual, periodic, special reports on the status of human rights and fundamental freedoms;
- cooperating with all national and international authorities and institutions involved in the protection of human rights and fundamental freedoms, in accordance with the Constitution and relevant legislation;
- ensuring the implementation of the domestic and international human rights framework;
- ensuring the equality of all citizens and the elimination of all forms of discrimination;
- monitoring the implementation of the FOIA;

- monitoring the implementation of the Law on Governmental and Ministerial Appointments; and
- informing the public about human rights through the media and education;

At the outset, it is worth emphasizing that the IHRO operates in an extremely complex political and human rights situation.<sup>3</sup> In this respect it should be recalled that the Sub-Committee on Accreditation (SCA) of the Secretariat of the Global Alliance of National Human Rights Institutions (GANHRI) recently recommended that the IHRO be re-accredited with **A** status.<sup>4</sup> However, in its recommendation to the IHRO, the SCA highlighted:

*“...its expectation that NHRIs who have been accredited with A status will take the necessary steps to pursue continuous efforts at improvement and to enhance their effectiveness and independence, in line with the Paris Principles and recommendations made by the SCA during the review.”*

It is also important to note that on 28 February 2017, the Council of Europe European Commission against Racism and Intolerance (ECRI) published a report on BiH<sup>5</sup> in which it issued two specific recommendations which required priority implementation and would be the subject of review in two years’ time. One of these recommendations specifically related to the IHRO and reads as follows:

*“ECRI recommends that the authorities strengthen the institutional capacity of the Ombudsman Institution in order to empower it to carry out its anti-discrimination mandate **effectively**. This should include, inter alia, streamlined decision-making processes and an adequate increase in funding to provide for sufficient human resources and awareness-raising campaigns. The authorities should also ensure that in the context of planned amendments to the Ombudsman Law, the Ombudsman Institution maintains its full financial independence from the government. **Furthermore, the authorities should intensify their efforts to promote compliance with the recommendations of the Ombudsman Institution.**”*

<sup>3</sup> European Commission, *Bosnia and Herzegovina 2018 Report – Communication on EU Enlargement Policy* (SWD, 17 April 2018, 155) p.3: “Some progress was achieved on **human rights** and minorities’ issues. However, the strategic, legal, institutional and policy frameworks for the observance of human rights are in need of substantial improvement.” Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf> (accessed 18 April 2018). See also Human Rights Watch, *World Report 2018: on Bosnia and Herzegovina* “There was little visible progress on human rights during 2017. Authorities failed yet again to end structural and political discrimination against Jews, Roma, and other minorities.” Available at: <https://www.hrw.org/world-report/2018/country-chapters/bosnia-and-herzegovina> (accessed 18 April 2018).

<sup>4</sup> GANHRI, *Sub-Committee on Accreditation Report* (November 2017). Available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20November%202017%20-%20ENG.pdf> (accessed on 20 April 2018).

<sup>5</sup> ECRI Report on Bosnia and Herzegovina (fifth monitoring cycle) (adopted on 6 December 2016, published on 28 February 2017). Available at at: [https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bosnia\\_Herzegovina/BIH-CbC-V-2017-002-ENG.pdf](https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bosnia_Herzegovina/BIH-CbC-V-2017-002-ENG.pdf) (accessed on 30 April 2018) (emphasis added).

Finally, on 17 April 2018, the European Commission working document “Bosnia and Herzegovina Report 2018” was published, which also emphasised, among others that:<sup>6</sup>

*“The financial independence of the Ombudsman from the executive remains a concern and the implementation of its **recommendations remains low, thus affecting citizens’ right to good administration.** Draft amendments to the Ombudsman Law should be adopted as soon as possible so as to ensure compliance with the Paris Principles. Adequate resources also need to be allocated to ensure its proper functioning.”*

The uniformity of the recommendations and concerns expressed by both the Council of Europe and European Union bodies form the basis of this Report and indicate the importance of addressing these issues.

### **The IHRO’s Strategy on Efficiency and Effectiveness**

In February 2016, three months after their re-appointment<sup>7</sup>, the Ombudsmen adopted a document entitled “Operational Strategy of the Institution of the Human Rights Ombudsman for the period of 2016 to 2021” (“the Operational Strategy”)<sup>8</sup>. In the Operational Strategy, “Efficiency” was considered to be one of the five principles of their work. Furthermore, the IHRO also emphasises that one of the strategic objectives to fulfil its mission and vision is to “effectively protect and promote human rights”<sup>9</sup>. This Strategic Objective “2. Effective Protection and Promotion of Human Rights and Fundamental Freedoms” provides for detailed Strategic Sub-Goals.

This builds on the preceding IHRO Work Strategy which under “Strategic Objective 2: Efficient Protection and Promotion of Human Rights” indicates some of the following expected results, relevant for the purposes of this Report:<sup>10</sup>

- “attaining a high degree of professionalism in the protection of human rights;
- processing individual complaints as quickly as possible;
- achieving a high degree of professionalism when working with applicants;
- analysis of systematic human rights violations and their occurrence in higher numbers;

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<sup>6</sup> See footnote 4, European Commission, *Bosnia and Herzegovina 2018 Report* p.7 (emphasis added).

<sup>7</sup> On 17 November 2015, Ms Nives Jukić and Ms Jasminka Džumhur, PhD, were re-appointed as Ombudsmen, whereas Mr Ljubinko Mitrović, PhD, was appointed by the BiH Parliamentary Assembly for a six-year renewable mandate.

<sup>8</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Banja Luka, 2016) pgs.6-7 (under 2.3 Principles). Available at: [http://www.ombudsmen.gov.ba/documents/ombudsmen\\_doc2016041509303547eng.pdf](http://www.ombudsmen.gov.ba/documents/ombudsmen_doc2016041509303547eng.pdf) (accessed 20 April 2018).

<sup>9</sup> *ibid*, p.14

<sup>10</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Work Strategy of Human rights Ombudsman of Bosnia and Herzegovina for the period 2010-2014*, pgs.9-12 (under 5.2). Available at: [http://www.ombudsmen.gov.ba/documents/ombudsmen\\_doc2013041106512374eng.pdf](http://www.ombudsmen.gov.ba/documents/ombudsmen_doc2013041106512374eng.pdf) (accessed 20 April 2018).

- ensuring that the majority of the recommendations issued by the IHRO are complied with;
- preparing numerous specialized reports regarding the violation of certain human rights violations;
- publishing an Annual Report;
- informing the public about cases in which the recommendations of the Ombudsman have not been complied with,
- establishing a system of periodic meetings with the representatives of the relevant authorities established in order to promote human rights.”

Whilst the current Operational Strategy contains more detailed indicators that can assist in the measurement of efficiency and effectiveness, it remains unclear whether the IHRO has an internal mechanism to assess and review its own achievements. Therefore, it cannot be ascertained whether the IHRO is on track to achieve its Strategic Objectives.

By way of comparison, in its current Strategy, the European Ombudsman similarly specifies under “Objective 4 – Improve our efficiency” how it intends to use its resources to achieve the best possible results.<sup>11</sup> The EU Ombudsman adopted Key Performance Indicators (KPI) as a specific tool in order to assess whether it has attained Objective 4. With regard to assessing efficiency, the EU Ombudsman uses the following indicators:

Measurement	Targets for 2017
Handling of complaints and inquiries (composite indicator)	90% 50%
7a - Proportion of cases in which the admissibility decision is taken within one month	80%
7b - Proportion of inquiries closed within six months,	
7c - Proportion of inquiries closed within 18 months	

The IHRO’s indicators for measuring the effectiveness of the protection and promotion of human rights do not indicate any relevant percentages or timeframes for handling complaints.

Furthermore, the Operational Strategy does state that the resources provided to the IHRO by the Government are insufficient and some of the IHRO’s activities depend on donor support. According to the Strategy, until 2021, the institution aims to

<sup>11</sup> *Strategy of the European Ombudsman 'Towards 2019'* (adopted November 2014, reviewed September 2017). Available at: <https://www.ombudsman.europa.eu/en/resources/strategy/strategy.faces> (accessed 26 April 2018).

strengthen all its mechanisms so as to ensure better protection of human rights, as well as establish itself as visible, recognizable, respected and effective. Its activities are geared towards enhancing operational flexibility and accessibility, whilst ensuring that its work is focused on preventing discrimination, monitoring the places in which people are deprived of their liberty and other relevant areas. Consequently, this Report will assess the IHRO in accordance with its own guiding strategic principles.

## **1. Institutional Structure and Related Issues**

The current structure of the IHRO consists of one Head Office, three Regional Offices, one Field Office, the Office of the Chief of the Cabinet, Financial, Information Technologies and General Affairs Department, as well as the eight thematic Departments listed below. All 52 staff positions currently available in the institution are distributed between the offices and relevant departments. The vast majority of the staff works in the Sarajevo office. The IHRO consists of the following Departments:

- Protection of the Rights of the Child;
- Protection of the Rights of Persons with Disabilities;
- Protection of the Rights of National, Religious and Other Minorities;
- Protection of the Economic, Social and Cultural Rights;
- Protection of Political and Civil Rights;
- Elimination of all forms of Discrimination;
- Monitoring the Rights of Prisoners and Detainees;
- Protection of Human rights in the Field of the Judiciary;

The IHRO has the institutional capacity to employ 90 people in accordance with the number of approved positions. However only 52 positions are filled and the rest remains vacant, including 19 positions for the nine additional field/regional offices. The number of staff members in particular Departments varies from one to twelve. The Department of General Affairs is the biggest whereas the newly established Department for the Protection of the Human Rights in the Field of the Judiciary has just one staff member. The Heads of the Departments are also Assistant Ombudsmen. The remaining positions are occupied by Expert Advisors and Expert Associates in the thematic departments.

For the duration of the mission, the positions of the Heads of Departments were vacant for the following Departments:

- (i) General Affairs;
- (ii) Protection of National, Religious and Other Minorities;
- (iii) Protection of the Economic, Social and Cultural Rights; and

(iv) Protection of the Human Rights in the Area of the Judiciary.

Although the structure of the IHRO is rather well-developed and the competences are distributed amongst various Departments, the interviews and consultations, as well as a review of the working process and existing regulations, reveal both structural and operational deficiencies.

The amendments to the 2006 Law on the Human Rights Ombudsman required the institution to set up certain organizational units, which form part of the present-day structure. More specifically, the Departments on the Rights of the Child, Rights of Persons with Disabilities and the Rights of National, Religious and Other Minorities were established in accordance with Article 1(4) of the Law on the Human Rights Ombudsman. The Department for the Elimination of all Forms of Discrimination was established in accordance with Article 7(5) of the Law on the Prohibition of Discrimination.

The Department of the Rights of National, Religious and Other Minorities ( "Department for Minorities") hardly receives any complaints, and the lawyers employed in this Department mostly work on complaints which fall within the remit of other departments. However, as any complaint regarding the rights of minorities involves an element of discrimination, the institution should consider merging this department with the Department for the Elimination of all forms of Discrimination. The title of the Department can be also changed to the "Department for the Elimination of all Forms of Discrimination and Rights of National, Religious and Other Minorities".

Institutions are free to adopt different managerial approaches as well as different institutional structures. Some institutions opt for a less hierarchical structure, while completely abandoning thematic departments and creating a pool of legal advisors specialized in certain areas usually managed by the Head of Staff or Chief Advisor reporting directly to the Ombudsman. Most comparable institutions, especially those with more than 20-25 members of staff opt for a well-developed structure, divided into numerous thematic departments and sometimes sub-divided into smaller units.

There is no uniform model structure for Ombudsman Institutions, and each institution has to shape its structure in accordance with its own needs and priorities. In the case of the IHRO, as stated above, the domestic legislation requires the institution to establish certain organizational units. However, the IHRO has considerable discretion in way in which it organizes the rest of its structure. It is clear that considering the size of the institution, it will be difficult to avoid forming thematic departments and a solid layer of middle management.

One of the main deficiencies of the IHRO is a weak middle management considering that the Heads of Department lack managerial competences and the majority of the

staff members perceive them as case handling lawyers with higher salaries. In any institution, middle managers suffer the most from an ineffective organisational and institutional structure. They have to fulfil unclear tasks, face certain barriers in communication, suffer from a lack of information, and observe gaps in functions. All these issues damage the work product and efficiency.

Some institutions try to solve these problems by increasing their budget and hiring additional staff, but this approach might prove to be ineffective in this case. The management of the IHRO should respond to the main demand of the middle management, namely the clarification of their responsibilities and scope of activities so that they know exactly what the management expects from them.

If the demands of the middle management are adequately addressed and their duties are clarified, the following changes will take effect:

- Change in the Managers' attitude – they will fully acknowledge the importance of the duties of middle managers and identify the type of support they need in order to perform these duties.
- Improved communication – Middle managers will have more authority to request information or communicate with the colleagues handling those tasks. Staff members will better understand this and be prepared to support.
- Improved working conditions – The manager who clearly knows what his/her role is in the organization, the full nature of his duties and goals should have greater job satisfaction and be positively challenged and motivated. This is beneficial for the team as well as for the manager.
- Valuable initiatives – when the duties of an employee are not defined or unclear, his work output for the organization will not be of a high quality. When managers have clear tasks, they start thinking, generating ideas and initiating changes. This helps managers to develop personally and the institution will have opportunities for innovation.

According to the Rules on Internal Organization and Systematization,<sup>12</sup> the Head of Department is responsible for managing and coordinating the work of the Department. However, based on the interviews with the IHRO Staff, it would seem that the Heads of Department are also involved in the day-to-day handling of complaints like the rest of the lawyers working in the IHRO.

The Heads of the Departments are neither involved in the allocation of cases to their staff nor do they check the documents prepared by the staff members in each Department before sending them to the Ombudsmen. Staff members do not report to their respective Head of Department but instead, send their case analysis directly to the Ombudsman, who assigned the complaint to them. It is evident that this micro-management approach is prevalent and, as such, the duties of the Heads of

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<sup>12</sup> No. OI-K-296/11



Department are not carried in practice. In any case, their job description is inadequate and needs to be substantially amended.

The Heads of Department should not be involved in handling the complaints and amongst their other managerial competences should have the authority to allocate work among the members of their Department. This should include complaints-related work, as well as the quality-checking of the work output of their staff. The Heads of Department should have regular meetings to discuss all matters related to the operation of the IHRO, as well as inter-departmental coordination, efficiency and other relevant issues. Those meetings can be also initiated by the Ombudsmen at regular intervals.

In order to change the current practice within the institution, it would be advisable to establish a separate department in charge of registering filtering and allocating the complaints between the relevant units of the IHRO. Each department should have a Head, at least two lawyers and a consultant to provide the required information, consult with and assist the complainants both in the office and online. Taking into consideration the current setting of the institution, one of the possible transitional options to be considered is the expansion of the role of the Cabinet to take over the function of

- receiving all complaints;
- conducting the initial screening;
- deciding on the admissibility; and
- distributing admissible complaints to relevant Departments.

Therefore, the Cabinet will have to be strengthened with at least two lawyers and certain amendments to be made to the Rules on Internal Organization and Systematization. If a complaint is rejected as inadmissible an Ombudsman should intervene, conduct a check and ultimately sign the decision communicated to the complainant.

It is evident that the issues related to the internal organization of the IHRO have to be the subject of serious discussion. The IHRO requires in-depth institutional diagnostics conducted by a company or an external expert specialised in this area. Based on the results of the diagnostics, certain changes will be introduced including the structural reform and redistribution of the workforce.

## **2. Human Resources, Staffing and Training Related Issues**

The quality of any institution's performance depends, to a great extent, on the professionalism of its staff. One of the strengths of the IHRO in BiH is the pool of its professional lawyers, some of whom have worked at the institution for a considerable amount of time. Experienced staff members are also an excellent

resource to provide in-house training to the newcomers. Accordingly, the institution faces a great risk caused by the departure of experienced staff members, resulting in loss of institutional memory.

The IHRO currently experiences difficulties in retaining trained lawyers, especially the Heads of Department. This is due to the fact that the status, salaries and positions in the judiciary, executive and private sector are far more attractive. According to the information received, in the last five to seven-year period several senior lawyers, including five Heads of Department, have left the IHRO to become judges.

The IHRO is not the only institution experiencing this problem, which has been exacerbated by a lack of sufficient internal financial motivation schemes, due to the

- unfavourable legal framework such as the that provided by the Law on Salaries and Compensations in the Institutions of BiH;
- strict budgets;
- fixed staff salaries; and
- almost no options for additional remuneration for outstanding work and over-time hours worked.

Another issue revealed during the interviews, relates to the fact that the lawyers who have passed the Bar (the Heads of Department), reportedly have significantly higher salaries than other lawyers without the Bar exam (expert advisors and expert associates). However, as already mentioned above, the Heads of Department and the staff of these Departments *de facto* perform the same duties. In addition to the fact that the managerial competences of the Heads of Departments are not implemented in practice, the big difference in salaries contributes to an unhealthy working environment.

The IHRO staff participates in different training activities organized by various institutions both locally and internationally. Nevertheless, the IHRO has no clear training plan and this is something that needs to be reviewed. Conducting a proper TNA can serve as a good basis for designing a proper training strategy tailored to the needs of particular staff members in different Departments. The plan should identify the main areas in which the staff requires training and development – including both the requisite soft and hard skills.

A TNA will help the IHRO to develop the list of priority trainings to be planned in the course of the year. This will also allow the IHRO to both plan certain resources and discuss training needs with the donors willing to assist in providing the institution with such training.

In some institutions, the staff member in charge of human resources is also responsible for training and carries out annual TNAs. The IHRO should consider

recruiting a professional human resources specialist. The provision of equal training opportunities to all staff members, based on their needs, should be the goal of every institution. Although the IHRO has a large number of employees, the attendance of lengthy training sessions, sometimes involving overseas travel can seriously hinder the operation of the IHRO. Therefore, the provision of in-house training could be a good alternative.

The Ombudsmen could also consider how they could provide trainings in the relevant state institutions, to familiarize civil servants with the mandate of the IHRO and work done by the institution. The staff members of the IHRO could also provide such trainings, but the shortage of resources remains one of the main obstacles to the expansion of these activities.

### **3. Complaints Handling Process**

Each year, the IHRO receives and processes a significant number of individual complaints. Complaints handling consumes a large part of the IHRO's resources and occupies the majority of the working capacity of the IHRO staff. The number of complaints received each year, particularly of an admissible and substantiated nature, is a good indicator that the public is reasonably aware of the IHRO, and its functions and competences. The IHRO should be commended for the large number of recommendations issued each year.

#### **3.1. Quantitative Analysis**

In assessing the IHRO's efficiency particularly in terms of complaints and recommendations, a quantitative assessment is the preferred method. This is also suggested in the indicators of the Operational Strategy. This assessment will only consider the relevant period of 2015-2017. This is due to the fact that on 17 November 2015, two Ombudsmen were re-appointed and one was appointed – thereby constituting the Ombudsmen of the IHRO. Although in recent years, the number of complaints filed has remained more or less stable, it is still worthwhile considering whether there are any identifiable trends.

Using the data provided in the IHRO's Annual Reports,<sup>13</sup> the following figures can be derived concerning the total number of complaints and the IHRO's management thereof:

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<sup>13</sup> The Annual Reports on the Results of the Activities of the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina of 2015 (Banja Luka, March 2016), 2016 (Banja Luka, March 2017) and 2017 (Banja Luka, March 2018). Available at (respectively):

[http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2016041515322172eng.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2016041515322172eng.pdf)

[http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2017032310003163eng.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2017032310003163eng.pdf)

[http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2018030810344228eng.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2018030810344228eng.pdf)

<b>Number of registered complaints</b>		<b>Backlog of complaints</b>	
2015	2,966	2015	1,526
2016	2,977	2016	1,634
2017	3,160	2017	1,803

<b>Total of completed cases</b>	
2015	2,866
2016	2,816
2017	2,908

With regard to the “theme” of complaints:

<b>Complaints related to civil and political rights</b>		<b>Complaints related to all forms of discrimination</b>	
2015	1,790	2015	159
2016	1,718	2016	152
2017	1,860	2017	178

And, finally, with regard to recommendations:

<b>Total number of recommendations</b>		
	<b>Issued</b>	<b>Fully Implemented</b>
2015	324	103
2016	267	84
2017	336	125

Therefore, the number of complaints dealt with by IHRO was on the rise in 2016 and 2017, as was the backlog. This is despite the fact that in 2017, the IHRO improved its number of completed cases. Thematically, the vast majority of complaints related to violations of civil and political rights, particularly as compared to complaints related to all forms of discrimination.

The number of issued recommendations has fluctuated; in 2016 it decreased and in 2017 it rose – compared to 2015. The total number of fully implemented recommendations follows a similar trend. However, the overall rate of fully implemented recommendations as compared to the approximate numbers of issued recommendations is relatively low.

Overall, it may be concluded from the analysed data of individual complaints that the efficiency of the IHRO has improved in 2017 as compared to 2016. In 2017, the IHRO received a total of 3,160 complaints, 183 more than in the preceding year. Moreover, the IHRO interacted with 13,968 citizens (direct contacts, telephone calls, e-mail and written complaints). Together with the cases transferred from previous years, a total of 4,963 complaints were processed. In 2017, the institution managed to complete work on a total of 2,908 cases.

However, it may be of concern that:

- more than 50% of the cases that the IHRO dealt with were from previous years (2015: 51%, 2016: 54%, 2017: 57%).
- More than 57% of the total number of IHRO cases is completed each year (2015: 63%, 2016: 61%, 2017: 58%).
- complaints related to civil and political rights represented more than 57% of cases in each year (2015: 60%, 2016: 57.7%, 2017: 58%).
- the number of complaints related to all forms of discrimination represented only 5% of cases in each year (2015: 5.3%, 2016: 5.1%, 2017: 5.6%).
- in 2017, the total number of complaints rose in relation to economic, social and cultural rights (755), all forms of discrimination (178), violations of children's rights (172), rights of detainees and prisoners (135), violation of the rights of persons with disabilities (51) and violations of the rights of national and religious minorities (8).
- The full implementation of the recommendations was not higher than 35% of the recommendations issued in each year (2015: 31.79%, 2016: 31.40%, 2017: 35,2%).

Therefore, in order to further improve the IHRO's efficiency, it will be important that in addition to the structural changes mentioned above, the IHRO considers adopting policies/guidelines that would address the:

- (1) backlog of the cases from the previous years;
- (2) relatively low number of completed cases;
- (3) low number of cases related to all forms of discrimination;<sup>14</sup> and
- (4) low number of fully implemented recommendations.

### **3.2. Distribution of Complaints**

As indicated in the data presented above, most of the complaints registered by the Ombudsman concern violations of civil and political rights, as well as of social, economic and cultural rights. Therefore these two Departments should be allocated most of the complaints. Data on the allocation of cases amongst the 24 Lawyers,

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<sup>14</sup> See also Section 4 - "Department for the Elimination of all forms of Discrimination"

including the Heads of Departments and their staff, as well as the Cabinet of the Ombudsman – shows that each employee usually works on 100 to 200 cases per year.

The way in which complaints are allocated in the IHRO raises some concerns. It transpires that lawyers who are not specialized in a particular field or perhaps even lack sufficient experience and expertise in a given area, can be assigned to handle the complaint even if it is outside the scope and remit of their Department. For example, the complaints related to discrimination will always be allocated to the Department for the Elimination of all Forms of Discrimination together with other cases unrelated to discrimination.

The same situation applies to other Departments, particularly those receiving far fewer complaints than the Department for the Civil and Political Rights and the Department on Economic, social and Cultural Rights. Most of the Departments handle just 40% of cases falling within their mandate; the rest of the casework comes from other thematic areas. Accordingly, the existing approach – its practice, rationale and distribution – needs to be reconsidered.

The number of lawyers in each Department, with minor exceptions, varies from two to four. The IHRO should, as a matter of priority, strengthen those Departments which handle the majority of the complaints. The allocation of cases to the unrelated thematic departments should be the exception rather than the rule. For example, the Department on Civil and Political Rights should have ten lawyers and the Department on Economic Social and Cultural Rights at least six. This will allow the IHRO to change its existing practice of allocating complaints and, therefore, focus more on the quality of the case handling rather than the “fair” distribution of the workload.

A change in this practice should also have a positive impact on the backlog (see below). As a rule, any lawyer not specialized in a given area requires more time to process each new, unfamiliar complaint than the lawyer specialized in the thematic field and with experience of dealing with similar cases in the past.

### **3.3. Ways Forward – Addressing the Backlog and Improving the Number of Completed Cases**

Many NHRIs face the problem of backlog of complaints. Clearly, if the time taken by the relevant institution to process a complaint is excessively or unjustifiably extended, then this can have a direct impact on the efficiency and effectiveness of human rights protection, as well as adversely affecting the institution’s reputation and credibility. It is worth recalling that the proceedings before Ombudsman Institutions are less formalistic than domestic court proceedings. As such, many persons usually approach the Ombudsmen so as to avoid the long and expensive court proceedings.

In countries, like BiH, where there is a systematic problem with time delays during court proceedings, the need for alternative dispute mechanism bodies, such as the Ombudsmen is even greater. The importance of all of the above-mentioned factors is even more pronounced in complaints regarding discrimination. According to the European Commission's 2018 Report on BiH: *"The overall backlog for pending court cases by the end of 2017 amounted to 2.1 million cases. The bulk of the backlog was made up of 1.7 million of unpaid utility cases, without any significant reduction since the last reporting period."*<sup>15</sup>

Therefore, there is an urgent need for other institutions such as the IHRO to provide an alternative avenue, with a more robust and efficient protection of human rights – with the added benefit of alleviating the workload and pressure on the domestic courts. Therefore, the protection of human rights in BiH depends on the effective operation of the IHRO and its ability to manage its case-load, whilst decreasing the backlog from previous years.

There are different ways in which to address this issue, but the development of a specific strategy or policy focused on the backlog of the complaints would be good starting point for the IHRO. It is worth noting that some NHRIs have developed specific guidelines on the procedure for handling complaints, which explain how to handle the case-load whilst addressing the backlog.

In this respect there are many reference materials that can be used, such as for example the UNDP's *"Guide for Ombudsman Institutions – How to Handle Complaints"*.<sup>16</sup> The IHRO's own recently-developed Guidelines for *"Filling in the complaints – Discrimination"*<sup>17</sup> show that the IHRO is on the right track with regard to this matter. Such guidelines can greatly inform the public, enhance access to the IHRO's complaint mechanism and be beneficial to the case lawyer as well as the complainant, by reducing the review time of a received complaint since it already complies with the requisite form.

### **3.4. Electronic Database, Case Management System (CMS)**

The institution has an online case management system (CMS), which represents a good example of an electronic database for an Ombudsman Institution greatly assisting in organizing the work related to processing the complaints. All complaints are processed in the system which helps to produce various statistical data and connects all the offices of the institution.

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<sup>15</sup> See footnote 4, p.12

<sup>16</sup> UNDP (2006). Available at: [http://www.eurasia.undp.org/content/rbec/en/home/library/democratic\\_governance/guide-for-ombudsman-institutions--how-to-handle-complaints-.html](http://www.eurasia.undp.org/content/rbec/en/home/library/democratic_governance/guide-for-ombudsman-institutions--how-to-handle-complaints-.html) (accessed 30 April 2018).

<sup>17</sup> Available at: [http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2016101709461593eng.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101709461593eng.pdf) (in Bosnian, accessed on 30 April 2018).

The system maintained and supported by the IT Department of the IHRO is extremely useful and functional and is praised by the staff. It provides access to the information on each individual complaint before the IHRO and its field offices. The staff members have full access to the complaints they are handling, but not to the rest of the case-load handled by their colleagues. This may result in difficulties in relation to consistency, cooperation and knowledge management.

One of the key problems reported in this area, is the lack of an easily accessible and searchable centralized archive of information and documentation on specific topics. The current CMS does not allow for this possibility. The conducted interviews revealed that there is an on-going discussion on the steps to be taken to further upgrade the CMS, as this activity is also envisaged in the Operational Strategy.<sup>18</sup>

Furthermore, in the future, the IHRO's case files should also be monitored carefully, ideally through an electronic tracking system. Therefore, the introduction of strict timeframes and deadlines for dealing with the complaints would be welcome in order to introduce a measure of formalism and consistency. The deadlines prescribed in the Administrative Codes can be used as reference points.

#### **4. Assessment of the IHRO's Output**

##### **4.1. Recommendations**

With regard to the IHRO's recommendations, Articles 32 and 33 of the Law on the Human Rights Ombudsman are relevant.

According to these provisions the following steps and/or checklist, regarding the adoption and implementation of the IHRO's recommendations, should be followed:

- i. IHRO makes recommendations to the relevant authorities;
- ii. The authorities reply in writing within the time limit given by the IHRO;
- iii. If the competent authority does not comply or does not give reasons for doing so, the IHRO will draw this to the attention of the minister responsible for the authority or of the highest authority of the government body;
- iv. If the IHRO is not satisfied with the response, this issue will be included in an annual or special report, "naming and shaming" the responsible authorities.
- v. IHRO can then make all of its recommendations accessible to the public.

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<sup>18</sup> See footnote 10. Chapter VII, Development of Information and Communication Technologies, p.30 on the "maintenance and improvement of web applications and OWIS case database through addition of new functionalities and services deemed necessary".



Whilst the IHRO's recommendations are not binding, the force of their argument and authoritative value should not be ignored. As stated by the Venice Commission:<sup>19</sup>

The key to the success of the Ombudsman institution among the nations lies in his/her **power to convince by reasoning on the basis of law and equity**, rather than a power to hand down orders or issue directives. In the course of such reasoning, the Ombudsman will be able to express opinions as to the meaning of legislative provisions and the proper interpretation of ratified treaties, whether in connection with the handling of complaints brought before the institution or with matters which **the Ombudsman may be able to take up on his/her own motion**. On balance, the preferable view is that the ability **to state such opinions is appropriate and sufficient to the general purposes of the Ombudsman**, and that endowing them with binding authenticity would go beyond the scope of the ideal role for the institution.

The practice of the IHRO regarding the adoption of recommendations to the competent authorities is summarized in the IHRO's 2016 Annual Report which states that:<sup>20</sup>

Statistics show that there still exist cases of lack of co-operation of the competent authorities with the Ombudsman, even in the investigation stage, and in such cases the Ombudspersons issue a recommendation that the authority establishes cooperation and if it fails to do so, the Ombudspersons will inform the higher authority on non-cooperation. [...] Another form of non-cooperation takes place when Ombudspersons establish the violation of rights and recommend the competent authority to take action in order to eliminate the violation of law and the authority fails to redress it.

#### **4.1.1. Publication**

Neither the Annual Report nor the IHRO website provides clear data and information on the recommendations that have not yet been implemented. In the Annual Report for 2017, data on the non-implemented recommendations is combined with the data on implemented recommendations in the "Table of Recommendations" at the end of the Report.<sup>21</sup> Providing combined data in this way is difficult to understand, particularly since it is not prepared in a user-friendly format.

Furthermore, the IHRO only publishes a few, selected Recommendations on its website. Under the heading "Recommendations" on the website,<sup>22</sup> only 9 out of the

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<sup>19</sup> Venice Commission, *Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session* CDL-AD(2007)020 (Venice, 1-2 June 2007) paras.12, 14 and 20. Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)020-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)020-e) (accessed on 20 April 2018).

<sup>20</sup> See footnote 15, 2016 Annual Report, p.12

<sup>21</sup> *ibid*, 2017 Annual Report, pgs.121-150

<sup>22</sup> The Institution of Human Rights Ombudsman in BiH, Official Website. Available at: <http://www.ombudsmen.gov.ba/Default.aspx?id=0&lang=EN>

355 recommendations issued in 2017, are published.<sup>23</sup> There is no clear rationale for the selection of these nine cases. Moreover, one would assume that publication was used as a tool to highlight the non-implemented recommendations, and apply pressure. However, this was not the case since only two out of the nine published cases have not been implemented. Those two cases are:

1. P 7/17 Equal opportunities and equal treatment based on gender.
2. P 68/17 Act in the best interest of the child

Therefore, the steps taken by the IHRO to comply with the Law on the Human Rights Ombudsman and make its recommendations accessible to the public are currently insufficient. By failing to publish its recommendations, the IHRO deprives itself of the most important and valuable tool that it has at its disposal – the power to publicize the outcome of investigations and their recommendations.

As aptly pointed out by the Irish Ombudsman, openness and transparency (together with independence, fairness, effectiveness, accountability and excellent complaint handling and good governance) are at the heart of an effective Ombudsman's office.<sup>24</sup> **It is, therefore, proposed that the IHRO reconsider its policy regarding the publication of the cases, particularly those in which its recommendations have not been implemented. Experience shows that the publication of the outcome of investigations will increase the compliance and have a deterrent effect – in addition to a wide variety of other benefits, such as public pressure for the implementation of the IHRO's recommendations and heightened transparency, promotion and educational value.**

#### 4.1.2. Quality Assessment

As the IHRO has published on its website only two cases that have not been implemented, they are the only ones available to assess for the purpose of this Report.

1. **Recommendation No: P-7/17 regarding the Complaint of “Ženski nogometni klub Neretva” Jablanica**<sup>25</sup>

#### Summary of the Facts

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<sup>23</sup> *ibid*, see Recommendations nos. P 290/17, P 220/17, P 131/17, P 128/17, P 68/17, P 79/17, P 51/17, P 240/15 and P 7/17 (accessed 30 April 2018).

<sup>24</sup> Peter Tyndall, Ombudsman and Information Commissioner of Ireland (Speech), *Promoting Good Governance in the public interest* (Governance Forum IPA, 27 March 2014). Available at: <https://www.ombudsman.ie/en/News/Speeches-Articles/2014/Promoting-good-governance.html> (accessed on 28 April 2018).

<sup>25</sup> Available at (in Bosnian) (accessed 2 May 2018): [http://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2017020313411193eng.pdf](http://www.ombudsmen.gov.ba/documents/obudsmen_doc2017020313411193eng.pdf)

On 20 June 2016, the applicants (the women's football club called Neretva) submitted a request addressed to the Mayor of Jablanica and the Jablanica Municipal Council seeking permission to use the city stadium "Salem Halimhodžić" for their training and matches. The applicants alleged that there was a difference in treatment between their club and that of its male counterpart F.K. Tribina.

### Analysing IHRO's Assessment

In this case, the IHRO gave a comprehensive and detailed overview of the applicable international and national law. However, the IHRO failed to conduct any legal assessment with regard to the admissibility or merits of the complaint. For example, having cited the "Relevant law", the next section in the IHRO's recommendation is a one-paragraph "Conclusion". Accordingly, "the Ombudsmen conclude[s] that there is an indifferent attitude of the Jablanica Municipality vis-à-vis [the Applicants'] request".

In this case, the IHRO does not set out any legal test nor does it seem to apply one in order to reach the conclusion that there has been discrimination or difference of treatment. Presumably, the IHRO's Recommendations will vary, as will the legal reasoning applied particularly since the IHRO's Manual for handling discrimination cases provides for that

"Ombudsmen [...] assesses all facts established during the investigation by applying the **tests** for the concrete form of discrimination."

Furthermore, according to the same Manual, the IHRO specifies that in accordance with the relevant law, it may issue four types of recommendations:

- (1) Declarative - a recommendation by which it is established whether discrimination has happened
- (2) Constitutive - a recommendation by which it is recommended how to eliminate the established discrimination
- (3) With guarantees of non-repetition – the responsible party is given the recommendation on how to establish an effective remedy against future discrimination and
- (4) With a request for compensation of damages – the responsible party is given the recommendation for compensation of pecuniary and non-pecuniary damage

The declarative recommendation according to which the IHRO establishes the existence of discrimination is the most important one, since this recommendation is a precondition for issuing any of the other three types of recommendations. However, in this case, although this may have been intended, the declarative recommendation was not issued in a clear and precise manner.

## **2. Recommendation No: P-68/17 regarding the Complaint of A.J.<sup>26</sup>**

### Summary of the facts

On 16 September 2016, the IHRO received an appeal from A.J. against a decision of the Department of Education of the Government of Brčko district. The substance of the applicant's complaint relates to his dissatisfaction with a decision of an expert team of the "Third Elementary School". According to this decision, the applicant's son – who suffers from Down syndrome – was excluded from mainstream classes with other children and transferred to the special educational department. The applicant submitted that the decision had a detrimental effect on his son and that should be re-examined.

### Analysing IHRO's Assessment

In its Recommendation, the IHRO also gave a comprehensive and accurate overview of the applicable international and national law. Moreover, the IHRO gave a comprehensive and detailed legal assessment of the facts of the case under special heading "Findings and Opinion of the BiH Ombudsmen". This legal assessment contained clear reasoning and the recommendation as a whole is well-written, and presented in a highly professional manner.

In conclusion, following the assessment of the two above-mentioned non-implemented recommendations, it appears that the IHRO does not have a uniform model and approach to drafting its recommendations. A brief overview of the publicly accessible recommendations that were successfully implemented also displays some lack of consistency. Whilst the facts of each complaint vary, a certain level of uniformity in the drafting of recommendations would be beneficial, even if the decisions of Ombudsman institutions are typically less formalistic than those of the judiciary.

Uniformity could be achieved as follows:

- (i) each recommendation should have a section on reasoning that properly informs the respondent party about its wrongdoing;
- (ii) the section on international law could be shortened;
- (iii) there ought to be uniform citation of international and national law;

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<sup>26</sup> Available at (in Bosnian) (accessed on 2 May 2018):

[http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017053014064506eng.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017053014064506eng.pdf)

(iv) there should be a “Manual on the Drafting of Recommendations” in individual cases.

#### **4.2. Special Reports**

Three separate provisions in the Law on the Human Rights Ombudsman entitles the IHRO to issue Special Reports.

- If a hostile attitude or an attitude impeding the investigation of an Ombudsman is maintained by a government body or its officials. The Special Report must be mentioned in the corresponding part of the Annual Report.”(Article 31.1)
- In the event of non-compliance with their recommendations. (Article 32.2)
- When required by the public prominence or urgency of the facts (Article 34.2).

It is in this above context that the IHRO issued the following Special Reports in 2016, regarding:

1. accessibility of workplaces of the legislative bodies in Bosnia and Herzegovina for persons with disabilities;
2. the (non) respect for human rights and labour rights in the company “Boksit” Milići;
3. court fees in Bosnia and Herzegovina;
4. the rights of LGBT persons in Bosnia and Herzegovina;
5. the violation of the human rights of convicted person in KPZ Zenica; and
6. discrimination of children who suffer from diabetes in BiH (Special Report/Recommendation).

In 2017, only two Special Reports were published on the:

1. status and incidences of threats against journalists in Bosnia and Herzegovina;
2. use of official languages and scripts in Bosnia and Herzegovina.

It is unclear why the number of Special Reports issued in 2017 significantly decreased as compared to 2016 – especially considering the added value of such reports to the activities and overall performance of the IHRO.

In any event, the power of the IHRO to address human rights issues “ex officio” is indispensable and should be used more proactively. The adoption of special reports “ex officio” empowers the IHRO to bring matters of significant public interest to the

public attention and is a means by which the institution can more effectively raise awareness about its work over and above the publication of the Annual Report.

Importantly, unlike the Recommendations in individual complaints, systemic remedies are usually more elaborated in the Special Reports.<sup>27</sup> This is also an important distinguishing factor between the role and mandate of IHRO and the courts. It is recommended, therefore, that IHRO strengthen its mandate by adopting and publishing Special Reports, which will improve the confidence of the general public in and the reputation of IHRO.

Each of the Special Reports adopted in 2016 and 2017 has more than 60 pages and refers to a wide range of international law standards. Overall, they are well-drafted and of a good quality. It is clear that the preparation of these Special Reports, particularly in this detailed fashion, must be time-consuming and requires a high level of expertise.

However, considering that only two Special Reports were issued in 2017 the IHRO could explore other avenues to make this exercise less burdensome such as better planning and mobilization of sufficient internal resources for the preparation of Special Reports. Additionally, the designation of the IHRO as the NPM will provide the institution with more opportunities to work on Special Reports in the area of the prevention of torture and ill-treatment.

In order to facilitate the preparation of Special Reports, the IHRO should identify a pool of professional, dedicated members of staff to focus on these *ex officio* investigations. Preferably Heads of the Departments should be instructed to remain vigilant and identify the topics for the annual plan of Special Reports to be discussed by the Ombudsmen. Each Department can suggest a topic to be covered by a Special Report.

The Ombudsmen should take a decision on the priority list of the Special Reports the IHRO should work in the course of the reporting year, establish form a responsible team and designate adequate resources. When preparing Special Reports, the team would be less reliant on outside assistance. Should the IHRO lack internal capacities in the relevant area, it would have the option to draw on the assistance of an external expert. However, outside expertise would perhaps be more appropriate in training the above-mentioned team in the first place, thereby helping the long-term goals of the IHRO's output to become sustainable.

### **4.3. Annual Reports**

According to Article 34 of the Law on the Human Rights Ombudsman:

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<sup>27</sup> IHRO, *Special Report on the Status and Cases of Threats against Journalists in Bosnia and Herzegovina* (Banja Luka, June 2017). Available at: [http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017082415202346eng.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346eng.pdf) (accessed on 30 April 2018).

The Institution shall each year communicate the results of its activities in a report to the Presidency of Bosnia and Herzegovina, the House of Representatives of Bosnia and Herzegovina, Parliament of the Federation of Bosnia and Herzegovina, the National Assembly of Republika Srpska.

Furthermore, pursuant to Article 35 of the Law on the Human Rights Ombudsman the IHRO may “state the number and nature of the complaints received and the findings of such investigations; the Institution may also specify those suggestions or recommendations [...]”

It is commendable that the IHRO adopts such elaborate and substantial Annual Reports – for example the 2017 Annual Report was more than 240 pages long. In the 2017 Annual Report there are individual sections which give an overview of the work carried out by each of the Departments of the IHRO. The Report also contains sections on, among others, cooperation with media, national institutions and civil society organisations, as well as a table of recommendations, and an overview of the budget.

The Annual Reports of the IHRO mainly reiterate the IHRO’s activities in the preceding year and are very general and broad in this respect. Therefore, the Annual Reports need to specifically focus on the IHRO’s findings and analysis in this respect, making their own assessment as to the success and effectiveness of the activities mentioned above.

Moreover, the reports should have a separate section on non-implemented recommendations as opposed to the combined table and data at present. Since the Annual Reports are the main work product of the IHRO, accessibility and visibility would be improved if the presentation and structure of the reports was in a more user-friendly format. The Annual Report is an important opportunity to make more precise and concrete legislation and policy recommendations.

## **5. Department for the Elimination of all forms of Discrimination**

The Law of Bosnia and Herzegovina on the Prohibition of Discrimination was adopted on 28 July 2009. Apart from defining discrimination and establishing a certain framework for the courts to handle discrimination cases, this law designated the IHRO as the main institution with a competence to prevent and protect against discrimination.

According to Article 7.5 of the law, in order to exercise its competence, the IHRO is responsible for establishing a special Department that would exclusively consider cases of alleged discrimination related to actions of public bodies at the state level, entities, cantons and the Brčko District of BiH, municipal institutions and bodies, and

legal persons with public authorities, as well as actions of all legal and natural persons, in all areas.

Moreover, Article 7.5 provides that the Law on the Budget of BiH must ensure that there is a special provision allocating sufficient resources for the operation of the special department for combating discrimination.

Amendments to the Law on the Prohibition of Discrimination in 2016 broadened the grounds for direct discrimination and other forms of discrimination and extended the competences of the Ombudsman. As a result, the Department for the Elimination of all forms of Discrimination (the “AD Department”) may:

- receive individual and group complaints related to discrimination;
- provide assistance to persons and groups of persons who lodged an appeal alleging discrimination while initiating a court proceedings;
- analyse individual complaints up to initiation of a court proceedings;
- act as a mediator with the permission of the applicants;
- collect and analyse statistical data with regard to cases of discrimination;
- submit annual, and when required special reports to the BiH Parliamentary Assembly on the phenomena of discrimination;
- raise public awareness on discrimination related issues;
- carry out investigation in the field of discrimination;
- issue opinions and recommendations to the BiH Council of Ministers and to the BiH Parliamentary Assembly with a view to preventing and combatting discrimination, proposing corresponding legislative and other solutions;
- analyse and give examples of malfunctions in the authority’s structures when adopting decisions related to discrimination;
- remove obstacles to the consistent application of international conventions ratified by BiH;
- cooperate with organizations of civil society that deal with the protection of human rights and organizations that seek to protect groups exposed to a high risk of discrimination;
- support activities of the media-promoting principles of non-discrimination as set out in international conventions.

The AD Department processes 150-200 complaints per year. Any complaint relating to discrimination received by any of the offices of the IHRO should be forwarded to the AD Department. A few important tools have been developed to make the Department more effective in combatting discrimination. The development of the Guidelines for the Complainants on Filing Complaints in the Area of Discrimination<sup>28</sup>

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<sup>28</sup> [http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2016101709461593eng.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2016101709461593eng.pdf)



as well as a Special Manual for the Ombudsman for handling Discrimination Cases<sup>29</sup> has to be considered as an important positive step in order to both increase the effectiveness of case handling and promote better access to the institution.

The web page of the institution also provides a few important links to the remedies against discrimination, including the access to the LIRA platform to report the cases of discrimination<sup>30</sup>.

The AD Department carries out the following activities:

- organizing some awareness raising and training activities targeting particularly vulnerable groups such as Roma activists;
- carrying out investigations initiated *ex officio* mainly based on the information received from the media;
- monitoring court hearings at the request of the parties;
- assisting in the preparation of the Special Reports of the Ombudsman;
- preparing part on the anti-discrimination activities for the Annual Report of the Ombudsman.

From 2009 to 2015 the Ombudsman issued Separate Reports on Anti-Discrimination activities. In 2015 it was decided to change this practice and include this report in the Annual Report. The consultants were informed that the Parliament was one of the parties requesting this change of practice. The report is presented both at state and entity levels.

The AD Department cooperates with civil society organizations active in the field of non-discrimination and in particular works in partnership with the Sarajevo Open Centre, the Centre for Social Research Analitika, the Media Centre and other local NGOs. The AD Department tries to attend those events organized by the NGOs to which it is invariably invited. Last year, in cooperation with the Roma Rights NGOs, it conducted trainings for the Roma activists in Sarajevo and Vlačić.

The ECRI's 2016 Report on Bosnia and Herzegovina emphasized that the IHRO, which combines the functions of a typical Ombudsman with those of a specialised anti-discrimination body, is understaffed. The AD Department in charge of investigating alleged cases of discrimination on any of the grounds listed in the Law on the Prohibition of Discrimination has currently only two staff members, which severely hampers the institution's ability to carry out its mandate effectively. There are also insufficient financial resources to conduct awareness-raising activities among the general public about the IHRO and the possibility of lodging complaints.<sup>31</sup>

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<sup>29</sup> [http://ombudsmen.gov.ba/documents/obmudsmen\\_doc2016101419280006eng.pdf](http://ombudsmen.gov.ba/documents/obmudsmen_doc2016101419280006eng.pdf)

<sup>30</sup> <http://prijavi-diskriminaciju.ba>

<sup>31</sup> See footnote 6, para.81.

It is evident that BiH has an adequate legal framework for the protection from discrimination. Considering its available capacities and resources, the IHRO performs its functions rather well, although there is certainly room for improvement. Therefore, the IHRO needs to adopt a more proactive role in the protection against all forms of discrimination. Notably, as provided above, only five percent of the total number of complaints handled by the IHRO relate to discrimination, which is unfortunately not representative of the magnitude of cases of discrimination in BiH, at the present time.<sup>32</sup>

The Anti-Discrimination part of the annual report of the institution leaves much to be desired. The AD Department could consider

- providing more information to readers on the general situation in BiH related to discrimination, more detailed analysis of the cases handled in the course of the reporting year, by highlighting a few landmark cases it examined and recommendations issued;
- giving more information on international practice, with reference to the judgements of the European Court of Human Rights and other international bodies, including the reports and recommendations of ECRI;
- including the information about studies, surveys and other relevant available materials.

The AD Department should, therefore, consider developing a separate and more comprehensive report. Merging the report on anti-discrimination activities with the Annual Report should not be considered as a step forward and, therefore, the IHRO should consider returning to its previous practice of producing a separate report on its anti-discrimination activities in accordance with the IHRO's legal obligation.

It is evident that the AD Department is under-resourced and needs to be strengthened. The role of Head of the Department should be further strengthened and the AD Department should not handle cases outside its remit. This will enable the staff in the Department to allocate more time for out-of-office activities, such as reporting, studies, research, public outreach, awareness raising, advocacy and other activities – which will be beneficial to the institutional reputation and recognition.

The IHRO staff could also benefit from additional targeted training sessions related to, among others, the prohibition of discrimination, international practices and standards in this area and best practices in combatting discrimination in different fields.

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<sup>32</sup> See Section 3.2. Quantitative Analysis

In any case, as already noted in Section 1,<sup>33</sup> it is clear that there might be certain overlaps in the mandates and activities of this Department and the Department for Minorities. It seems that the Department for Minorities already handles complaints outside of its thematic scope. Therefore as suggested above, the IHRO should consider establishing the “Department for the Elimination of all Forms of Discrimination and Rights of National, Religious and other Minorities”. This ‘merger’ would significantly improve the efficiency and effectiveness of the IHRO, and would not necessarily require further amendments to the Law.

The AD Department functions in a context in which the courts struggle to process discrimination cases in a timely and efficient manner. The courts claim that very few cases on discrimination reach the judicial system in the first place. However, the most important obstacle is that the concepts and principles of anti-discrimination have not yet been fully grasped by the courts and state institutions in practice. Accordingly, it is clear that judges should receive more training in the area in order to contribute to the full implementation of the anti-discrimination legislation in a more efficient manner. This is where the IHRO can play an active role in the providing training to the judges and the civil servants handling discrimination-related cases.

The Law on the Prohibition of Discrimination provides that a person commits a misdemeanour if he/she fails to cooperate with the IHRO and/or fail to comply with the IHRO’s recommendations. The availability of these measures should be explored by the IHRO – in order to ascertain whether it would be beneficial for the IHRO’s work on anti-discrimination.<sup>34</sup>

## **6. The Ombudsman as the National Preventive Mechanism for the Prevention of torture**

During the mission, the consultants were informed that the Parliament is considering the adoption of new amendments to the Law on the Human Rights Ombudsman of BiH which would designate the IHRO as the National Preventive Mechanism (“NPM”) for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Article 17 of the OPCAT.

Based on the anticipated changes to the Law, the Ombudsman will have the right to visit anytime and without prior notice any place in which people are deprived of their liberty. The Ombudsman will also issue Annual Reports on the NPM activities for the relevant part of the general report of the institution. The new amendments will also provide that separate rules approved by the Ombudsman will regulate the selection and operation of the NPM.

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<sup>33</sup> See p.9 above.

<sup>34</sup> Article 20 of the Law on Prohibition of Discrimination

Like many other institutions, which are designated as NPMs, the IHRO also, has some experience in visiting places in which people are deprived of their liberty. Every year, the IHRO also processes numerous complaints received from persons deprived of their liberty. The Institution has a separate Department on the Rights of Detainees and Prisoners headed by the Assistant Ombudsperson, a lawyer with 18 years' experience in the IHRO. This Department consists of two lawyers. The Head of the Department's office is in Sarajevo and the lawyer works in Banja Luka. The main competencies of the Department are:

- carrying out permanent activities for the the protection of the fundamental and all other rights and freedoms of prisoners;
- undertaking measures and activities to investigate justified complaints of convicted persons and in relation to the proceedings of possible human rights violations;
- recommending regulations for the status and position of rights and obligations of convicted persons, as well as the proper treatment of the employees of competent services in penitentiary institutions and advocating their consistent application;
- analysing and pointing out the key reasons for the malfunctioning of the authority structures that deal with issues related to prisoners;
- removing obstacles to the consistent implementation of international conventions ratified by BiH.

Although the NPM has not yet been established, the Department already visits some places where people are deprived of their liberty and in particular, the closed-type prison in Zenica at least once every two months, as most of the complaints reaching the IHRO are from this penitentiary institution.

The Department mainly carries out such visits up to 15-20 times annally. The Sarajevo remand prison is also a problematic institution as it is overpopulated. Approximately two years ago, following demonstrations, the relevant IHRO Department visited police holding facilities in three cities. The IHRO staff can enter the facilities and hold private interviews with detainees.

During the visits they also check documentation, including medical files. Following the visits, reports are drawn up which form part of the Annual Report of the IHRO (See Section 4.3.). This year the Ombudsmen accompanied by the staff of the Department also visited some special residential homes.

Most complaints received by the Department are submitted by those detained in prison. As stated above the majority relate to the Zenica Prison, particularly in relation to the problem of access to and provision of healthcare. The Department also have to process other complaints, not related to prisons and prisoners, for example, complaints related, among others to the Law on Governmental and Ministerial Appointments.

In 2017, they processed 160 complaints from persons deprived of their liberty and approximately 30-40 additional ones, mainly related to appointment procedures. On five to six occasions, the Department worked on the text of the recommendations submitted to the Ombudsmen for their approval.

In order for the Department to improve its presence in BiH prisons and to have the capacity to conduct more frequent visits, the Department will need to be strengthened. By way of example, when visiting the Zenica prison, the staff member of the Department has to travel from Banja Luka to join the team. Such additional resources would also allow the Department to do more work on reviewing draft Laws and existing legislation that relates to their work. The Department would also benefit from the possibility of hiring some experts especially on medical issues to assist in its work

The Department on the Rights of Detainees and Prisoners' staff have not received any specialized training in recent years related to the monitoring of the places in which people are deprived of their liberty. The last training they attended was provided by the OSCE in relation to the Prohibition of Discrimination.

The Department has not been involved in discussions about the future NPM, but they know that when the NPM is established the office is expected to hire approximately three to four new staff members to work for the NPM, even if they are not aware of the precise details.

It is evident that the institution can already take some steps to prepare itself for its new role as the NPM. The current resources available of the IHRO are not sufficient to meet the needs of the NPM, although there are the grounds to build on. The NPM will enable the institution to expand its monitoring activities and play a key role in the prevention of ill treatment in BiH. The Department formed within the institution should have a certain degree of independence, and be headed by experienced person in the field.

Sufficient resources should be provided in order to enable the NPM to recruit staff of the right calibre and hire experts required for the NPM's work (psychiatrists, forensic doctors, psychologists, other specialists.) The newly recruited staff should receive appropriate and continuous training in the area. Moreover, the NPM should develop its capacities in order to be able to spend most of the time visiting institutions and preparing both annual and special reports targeting different areas under the mandate of the mechanism.

## **7. Relationship with the Courts**

Article 4.1 of the Law on the Human Rights Ombudsman provides that the IHRO has the power to investigate all complaints related to the poor functioning of the judicial

system or the poor administration in an individual case and to recommend appropriate individual or general measures. However, pursuant to Article 4.2 of the same Law, *“an Ombudsman shall not interfere with the adjudicative functions of a court, but may initiate court proceedings or intervene in pending proceedings, whenever he or she finds action necessary for the performance of his or her duties. An Ombudsman may also make Recommendations to the government body party or be consulted by the parties.”*

Moreover, the relationship between the IHRO and the courts is defined in Article 15.9 of the Law on Prohibition of Discrimination of BiH which provides that:

(9) In cases where the court considers that the case on which the Ombudsman Institution has already made a recommendation, which a party to the proceedings uses as evidence, the court shall consider the Ombudsman's recommendations in accordance with the rules of procedure,.

Furthermore, rather wide powers are given to the IHRO in administrative proceedings and administrative dispute legislation in Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. However, according to the Law on General Administrative Procedure, such powers of the IHRO do not extend to Republika Srpska. \_

Therefore a harmonisation of the relevant procedural laws with the Law on IHRO and Anti-discrimination Law would be necessary. \_

ECRI's 2016 Report on Bosnia and Herzegovina *“recommends that the authorities grant the Ombudsman Institution the right and the capacities to represent victims in proceedings before the courts in discrimination cases.”*<sup>35</sup> Also, according to ECRI's General Policy Recommendation, a special chapter is devoted to the support and litigation function of equality bodies.<sup>36</sup>

With regard to the IHRO's relationship with the courts, it is clear from its Annual Reports, as stated above, that the vast majority of IHRO cases relate to the unreasonable length of civil and criminal proceedings, as well as non-enforcement of judgments. The IHRO could prepare general recommendations relating to this systemic problem. A comparative study of these issues, as opposed to addressing them on a case-by-case basis, would fill an important gap in solving these structural problems.

On the other hand, it is not clear from the Annual Reports, whether the IHRO has ever initiated or intervened in court proceedings in recent years. Furthermore, the IHRO rightly points out in the Executive Summary of its 2017 Annual Report, that the existing problem of the excessive length of administrative proceedings is

<sup>35</sup> See footnote 6, p.13 (Recommendation 12)

<sup>36</sup> ECRI, *General Policy Recommendation No.2: Equality bodies to combat racism and intolerance at national level* (Strasbourg, 7 December 2017 – published on 27 February 2018). Available at: <http://ombudsman.hr/attachments/article/1283/REC-02rev-2018-006-ENG.pdf> (accessed 30 April 2018).

exacerbated by the fact that courts repeatedly and frequently refer cases back to the administrative body without deciding on the merits of the case and then the process is repeated.

Having regard to the powers given to the IHRO in the relation to administrative proceedings and administrative dispute legislation –the problems specified above point to the potential need for the IHRO to play a more proactive role in administrative cases.

Another separate issue is the relationship of the IHRO with the Constitutional Court of BiH. As stated in the 2016 Annual Report, the Constitutional Court of BiH has adopted the position that the IHRO does not have legal standing before the Court. While it may be argued that this decision of the Constitutional Court of BiH is not in line with the best practice as provided by the Venice Commission and the Paris Principles, it is unlikely that the Constitutional Court will change its position, particularly absent any constitutional changes. Nevertheless, the possibility for the IHRO to intervene before the Constitutional Court as an *amicus curiae* should be considered.

#### **8. Activities related to advocacy and awareness raising**

For all Ombudsman Institutions a certain level of visibility, bolstered by an Ombudsman-friendly climate in the media, is essential for institutional effectiveness. The media is one of the best tools for raising awareness about the institution of the Ombudsman, as well as its mandate and role. A proper communication strategy and action plan, supported with adequate funding, can play a key role in achieving progress in this area. Institutions throughout the world employ a number of tools to better inform the general public about their role and activities.

The influence of social media is also of growing importance and a number of institutions actively use this tool in addition to their existing websites to their maximum advantage. Conducting a public opinion survey will serve as a good tool to identify the main deficiencies and plan the appropriate strategy to address the issues.

Reports issued by the institution constitute one of the best tools for awareness raising and advocacy activities. The IHRO should be commended for not limiting its reporting role to the Annual Report of the institution but also issuing a number of Special Reports throughout the year. This excellent tool can be used to popularize the work of the institution and raise public awareness of the human rights related issues in particular areas. The institution should employ all available resources to provide maximum publicity to the reports published.

The IHRO should consider the following options:

- press-conferences;
- discussions in the Parliament;
- special roundtable discussions;
- discussions of the reports with both the agencies concerned and also with other stakeholders, as well as university students;
- follow-up work on the implementation of the recommendations leading to a Special Report on the state of implementation of the recommendations.

Targeted media campaigns are usually most effective but are also costly. Especially in large countries, where the television is one of the widely used sources of information, properly organized media campaigns can play a significant role in promoting the Ombudsman institution. Making use of specially prepared PSAs is one of the options to be considered. There can be series of PSAs, describing the mandate of the Ombudsman, providing the information about receiving complaints and purely educational PSAs indicating, for example, the contact information of the Ombudsman's office.

Television channels both at central and local levels as well as social networks should be used for broadcasting and disseminating the video. The regions with the smallest number of complaints should be targeted as a matter of priority.

Printed materials produced to raise awareness can also play an important role in popularizing the Ombudsman and human rights issues. Brochures, stickers, posters, leaflets, information sheets, other types of publications distributed in particular institutions, educational organizations, public transport, places in which people are deprived of their liberty, settlements in the regions and in other locations can also largely contribute to the achievement of those goals.

The organisation of competitions by the Ombudsman institutions whether for school pupils in secondary education or university students could constitute a further useful tool for publicity. Usually, the competition should focus on the level of awareness of the institution, human rights issues or a particular thematic area, such as the prohibition of discrimination, or the rights of people with disabilities. Such activities can be carried out in cooperation with certain Ministries, for example the Ministry of Education or Higher Education Institutions.

The opening of regional offices especially in countries with a large territory and numerous regional centres also supports awareness raising and improved accessibility, but will not be successful without the correct strategy and proactive approach. The Central office usually plays a key role in the promotion of the institution but a solid presence in the regions with the active heads of the regional offices and motivated staff members can be an important tool in popularising the office locally, make it more accessible for the general population and increase the general human rights awareness in the region.



Strengthening the central office and developing a strategy for the expansion to the regions should be done at the same time. Although the Institution is already well represented in BiH and represents a positive example for other institutions, there is a plan to establish field presences in a several other locations and this should be pursued further.

Another matter worthy of attention is the presence of the dedicated staff members of the institution to handle the daily work with the media and coordinate awareness raising activities. At present, the IHRO has two staff members responsible for external relations and public relations who are part of the staff of the Cabinet. The IHRO should assess if this component in the cabinet should be reinforced further, and also include a general coordination of the advocacy related work and awareness raising activities.

It is preferable that the Ombudsmen themselves appear in the media as much as possible and media appearances should not be limited to the purely, significant high-profile events such as the publication of the Annual and Special Reports or the IHRO's participation in important high-level meetings and conferences.

The IHRO should consider commissioning a countrywide public opinion survey in order to identify the areas to be targeted with a communication strategy and an action plan. As it is rather expensive to carry out an appropriate survey, funding could be sought from donors. The survey can focus on a few issues, including measuring the general awareness of the IHRO and its mandate, as well as the level of awareness of human rights issues amongst the general public. Based on the outcome of the survey, the IHRO can move to the second phase of starting to work on an effective communication strategy, as well as the action plan to include these planned activities and the amount of funding required for their implementation.

## **Recommendations**

### **The IHRO's institutional structure and related issues**

- The issues related to the IHRO's internal organizations should be the subject of a serious discussion;
- The IHRO should commission a fully-fledged institutional diagnostics conducted by a company specialised in the field;
- Substantive changes should be made to the institutional structure, as well as to the practice of registration and allocation of the cases and other tasks between Departments. The competences of the Cabinet and the functions of the Heads of Departments should also be revised; the distribution of human resources to the Departments should change based on the realistic needs of each Department.
- The best option to start changing current practice is to form a separate Department in charge of the registration, filtering and distribution of

complaints between the relevant units of the IHRO. The Department should consist of a Head, at least two lawyers and internal consultant to provide the required information and assistance to the complainants.

- Another, transitional option to be considered is to strengthen the Cabinet with lawyers and a consultant to take over the function of registering the complaints and deciding on their admissibility (filtering) and allocation to the relevant Departments.
- Middle management should be strengthened and, in particular, the Heads of the Departments should not be involved in the case-handling and should take over the managerial and supervision role.
- Relevant changes should be made to the Rules on Internal Organization and Systematization, reflecting these recommendations.

### **Human Resources, Staffing and Training Related Issues**

- The IHRO should improve the working environment by implementing structural reforms as proposed in this report and based on the results of the institutional diagnostics;
- Legislative amendments should be advocated in order to achieve an increase in salaries and provision of financial incentive schemes. This would, in turn, help the staff members to improve their motivation, performance quality, and discourage their departure.
- Designate a staff member from the Cabinet or the General Affairs Department to be responsible for human resources issues and to conduct an annual TNA and thereafter develop an appropriate annual training plan.

### **Allocation of the complaints**

- The IHRO should strengthen the Departments which deal with the subject areas that correspond to the highest number of complaints and stop sharing the cases with other departments, which receive a smaller number of thematic complaints. This practice should be an exception rather than a rule.

### **Backlog and Improving the Number of Completed Cases**

- The IHRO should develop a specific strategy or policy focused on the backlog of complaints;
- The IHRO should develop guidelines on the procedure for handling complaints.

### **Electronic Database, Case Management System (CMS)**

- The IHRO should monitor electronic files through an electronic tracking

system;

- The IHRO should insert in the electronic database timeframes and deadlines for dealing with the complaints.

### **Publication of the Recommendations**

- The IHRO should reconsider its policy regarding the publication of cases, particularly those in respect of which the recommendations have not been implemented;
- All recommendations that are not implemented should be made publicly available on the IHRO's website.

### **Quality Assessment of the Recommendations**

- The IHRO should develop a "manual on drafting recommendations" for individual cases;
- The IHRO should consider the creation of an uniform model and approach to drafting its recommendations that should contain the following criteria:
  - Each recommendation should have a section on legal reasoning that properly informs the respondent party about its wrongdoing;
  - The section on international law could be shortened;
  - There ought to be a uniform citation of international and national law.

### **Special Reports**

- The IHRO should address human rights issues on an "ex officio" basis more proactively and never be limited to the issues raised in the received complaints;
- The IHRO should explore other avenues to alleviate the demands on special reports, such as better planning and mobilization of sufficient internal resources for the preparation of such reports;
- The Heads of Departments should be responsible for focussing on *ex officio* investigations with a broad overview of the pressing human rights needs in BiH and draw up a list of proposed topics that will be the subject of Special Reports; the Ombudsmen should decide on the final priority list of the special reports to be prepared and published by the institution in the course of the reporting year, form relevant working teams and allocate sufficient resources;
- This team would alleviate the need for external expertise, which can nonetheless remain an option to be used exceptionally.

## **Annual Reports**

The IHRO should

- improve the accessibility and visibility of the Annual reports through a more user-friendly and structure and format;
- offer more precise, concrete legislative and policy recommendations.

## **The Department for the Elimination of all Forms of Discrimination**

- The IHRO should consider merging the Department for the Protection of the Rights of Ethnic, Religious and Other minorities with the AD Department, thereby strengthening the latter and avoiding overlapping competences;
- The AD Department should no longer handle complaints falling outside its remit;
- The Staff of the AD Department as well as rest of the lawyers working in IHRO should have the opportunities to receive continuous in-house training in the area of the prohibition of discrimination;
- Training should be provided to newly hired staff and other state institutions drawing on the considerable experience and knowledge of the current Head of the Department, Member of ECRI;
- The AD Department should be more visible. The volume, structure and contents of the Annual Report should be revised so as to provide more information to the readers on
  - the general situation in BiH related to discrimination;
  - more detailed analysis of the cases handled in the course of the reporting year;
  - an overview of international practice, referring to the judgements of the European Court of Human Rights and other international bodies, including ECRI reports and their recommendations;
  - studies, surveys and other relevant available materials.
- The IHRO should, as a matter of priority, consider reinstating its former practice of issuing a separate report on the activities of the Department;
- The IHRO should consider providing training judiciary on anti-discrimination issues.
- In preparation for the new role of the Ombudsman as the NPM, the IHRO should:
  - seek additional resources;
  - plan how the NPM will fit into the structure of the institution;
  - prepare relevant changes to internal documents;

- discuss the future NPM with the current staff members working in the Department for the Monitoring of the Rights of Prisoners and Detainees.

## **Relationship with the Courts**

### **The IHRO should:**

- explore the possibility of preparing general recommendations related to the systemic problem of the unreasonable length of civil and criminal proceedings, as well as the non-enforcement of judgments. A comparative study of these issues, as opposed to addressing them on a case-by-case basis, would fill an important gap in solving these structural problems;
- reconsider its power to initiate or intervene in court proceedings and improve its visibility in matters outside of its anti-discrimination mandate – particularly, in relation to administrative proceedings. In that respect a harmonisation of the relevant procedural laws with the Law on IHRO and the Law on Prohibition of Discrimination would be necessary.
- ensure that its relationship with the courts are transparent and visible by publishing all the data on cases in which IHRO was involved;
- intervene before the Constitutional Court of BiH as an *amicus curiae*.

## **Activities related to advocacy and awareness raising**

### **The IHRO should:**

- strengthen the Cabinet with a view to designating a dedicated staff member to coordinate advocacy and awareness raising activities;
- seek external resources in order to commission a national public opinion survey to identify the main gaps in its communication with the general public as well as issues related to awareness raising on human rights;
- take into account other relevant factors, drawing up a communication strategy and action plan, based on the outcomes of the survey;
- organise an IHRO initiated competition for the last two years of the secondary school or the university students on the Ombudsman and human rights issues;