

IGOR MILINKOVIĆ*

The Universal Protection of Human Rights and Eastern Europe: Bosnia and Herzegovina

- **ABSTRACT:** *The effective protection of human rights is extremely important in countries in transition faced with the challenge of overcoming an authoritarian past rife with severe violations of basic human rights and freedoms. In post-war societies, where large-scale violations of human rights have resulted from armed conflicts, the effective protection of human rights is even more crucial. Therefore, it is not surprising that one of the primary goals of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Agreement) was to establish an adequate legal and institutional framework for the enforcement and protection of human rights in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina provides for a special status to the European Convention on Human Rights and its protocols, which, pursuant to Article II.1 of the Constitution, shall have priority over all other laws. The Constitution also stipulates that the enjoyment of rights and freedoms provided for in the 15 human rights instruments listed in Annex 1 to the Constitution shall be guaranteed to all persons in Bosnia and Herzegovina without discrimination on any grounds. While the Constitution envisages the existence of several institutions responsible for guaranteeing respect for human rights, the possibility of BiH citizens to directly address the European Court of Human Rights as well as other bodies responsible for monitoring the implementation of appropriate human rights instruments, whose practice will be discussed within this paper, is of great importance. Although this type of protection is highly important, it is necessary to strive for the improvement of the national (BiH and entity) human rights protection system, through the continuous improvement of the legal framework and the functioning of institutions entrusted with the protection and enforcement of human rights. The paper also analyses the effects of the ratification of international instruments on human rights protection.*

* Full Professor, Faculty of Law, University of Banja Luka (BiH), Bosnia and Herzegovina; igor.milinkovic@pf.unibl.org; ORCID: 0000-0002-7804-3866.



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1. Introduction

Human rights, understood as ‘the rights human beings have by virtue of being human’¹, are part of the most relevant social and legal values. They ‘articulate what it is that humans are entitled to’² simply as members of the human family, which demands national and international recognition and effective legal protection. Human rights ‘are universal, meaning that everyone holds them’³ (they are held by all human beings ‘as attributes of their human personality and not as rights granted by any human authority, be it state, monarch, or other authority, secular or religious’)⁴. A failure to recognize the universality of human rights may cause far-reaching negative consequences, including intensified discrimination, rights violations, and social inequality. Such an approach is ‘the very bread-and-butter of those who violate human rights, such as repressive governments’.⁵ Among the essential characteristics of human rights, as pointed out in literature on human rights, are also their inherent nature, meaning that humans are born with them, and that they are inalienable, meaning that they cannot be given away or taken away, although they can be limited under certain circumstances.⁶

The effective protection of human rights is particularly important in countries in transition faced with the challenge of overcoming an authoritarian past rife with severe violations of basic human rights and freedoms. The protection of these rights is essential for the development and stability of democratic institutions. Human rights are fundamental to the core principles of democratic order. They provide the basis for the individual freedoms necessary for the development and functioning of democratic institutions. Without the effective mechanisms of human rights enforcement and protection, democracy cannot function, as this form of political regime relies on the premise that all citizens have the right to participate in political processes and express their opinions freely without discrimination or oppression.

1 Biletzki, 2020, p. 3. According to Donnelly, human rights are ‘the rights that one has because one is a human’ (Donnelly, 2013, p. 7).

2 Ibid., p. 4.

3 Conde, 2004, p. 111.

4 Ibid.

5 Orend, 2002, p. 16.

6 Conde, 2004, p. 111.

The mechanisms of human rights protection also act as a check on the power of the state and other actors. By guaranteeing freedoms such as freedom of speech, assembly, and the press, human rights protection facilitates the expression of diverse opinions and the citizens' ability to criticise and scrutinize power holders. This scrutiny is essential for preventing government abuses and ensuring that state power is exercised in the public interest. Protecting human rights warrants political participation and representation, checks power, and promotes social stability.

In post-war societies, where large-scale violations of human rights have resulted from armed conflicts, effective mechanisms of human rights protection are even more crucial. These societies often face significant challenges, such as rebuilding political institutions, fostering national reconciliation, and preventing the recurrence of violence.

These introductory remarks expound that establishing an effective system of human rights protection is of exceptional importance in Bosnia and Herzegovina (BiH). Apart from the challenge of transitioning from an authoritarian regime existing in the former Socialist Federative Republic of Yugoslavia (SFRJ) to a new democratic one, this country also had to overcome the consequences of the armed conflict that took place in BiH from 1992 to 1995. Therefore, it is not surprising that one of the central goals of the General Framework Agreement for Peace in BiH⁷ was to establish an adequate legal and institutional framework for human rights protection.

2. Human rights protection in the constitutional system of Bosnia and Herzegovina

Human rights are accorded special attention in the constitutional system of BiH, as indicated by the position given to human rights in the BiH Constitution⁸ (whose human rights provisions are described as establishing 'one of the most complex regimes for the protection of human rights by law ever devised')⁹. Moreover, the complexity of the BiH's human rights system is contributed by the fact that in BiH, as a complex state community composed of two entities: the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), human rights

7 General Framework Agreement for Peace in BiH, 1995 [Online]. Available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf> (Accessed: 17 August 2024).

8 Constitution of BiH [Online]. Available at: <https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20CONSTITUTION%20.pdf> (Accessed: 14 July 2024).

9 O'Flaherty and Gisvold, 1998, p. ix.

protection is also governed by entity constitutions.¹⁰ In addition to the provisions of the Constitution of BiH, the Constitution of the RS and that of the FBiH already included human rights provisions before the General Framework Agreement for Peace in BiH was signed (the RS Constitution was adopted in 1992, and the FBiH Constitution came into force in 1994). Human rights provisions are also included in the BD Statute¹¹, as the District's supreme law, as well as in the constitutions of the FBiH cantons (as the federal units of this BiH Entity).

The Constitution of BiH is part (Annex 4) of the General Framework Agreement for Peace in BiH (the Dayton Peace Agreement – DPA), an international agreement that ended the armed conflict in BiH. The DPA was reached at Wright-Peterson Air Force Base near Dayton, Ohio (the United States of America – USA), on the 21 November 1995, and formally signed in Paris (France), on the 14 December 1995. The signatories of the DPA were the Republic of BiH (RBiH), Croatia and the Federal Republic of Yugoslavia (FRY), by authorization of the Republic of Srpska. The DPA was also signed by representatives of the European Union (EU), France, Germany, Russia, the United Kingdom (UK), and the USA, as witnesses. The DPA is based on the previously agreed Geneva Principles issued on 8 September 1995 and the New York Principles issued on 26 September 1995. Pursuant to Article VII of the DPA, the Parties, recognising the importance of observing human rights and protecting refugees and displaced persons in achieving a lasting peace, agree to and shall fully comply with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6, as well as the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7. Respect for human rights, as some authors point out, represents ‘a fundamental

10 BiH is a complex state, described in the literature as a federation with distinct confederal elements (Stanković, 2019, p. 4). It consists of two entities (federal units): the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). Some authors argue that BiH is an example of an asymmetric federation ('a mildly asymmetrical constitutional system'; Sahadžić, Woelk, 2023, p. 371). The RS is a unitary entity, while the FBiH is federally structured (it consists of 10 cantons). The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of the local self-government (pursuant to Article 1.1 of the BD Statute).

11 Statute of the Brčko District of BiH [Online]. Available at: <https://skupstinabd.ba/images/dokumenti/hr/statut-brcko-distrikta.pdf> (Accessed: 17 July 2024).

principle on which the whole body of the Dayton/Paris Accords is based'.¹² The DPA contains a preamble and 11 articles of the main text, as well as 12 annexes.¹³

Human rights, and the need of respecting them and ensuring their enforcement, are widely referred to in the BiH Constitution, beginning with its Preamble. The Preamble of the BiH Constitution explicitly expresses a commitment to upholding international humanitarian law and adhering to key international human rights instruments. It emphasises respect for human dignity, freedom, and equality as foundational principles in creating the constitutional provisions.

Pursuant to Article II(1) of the BiH Constitution, BiH and both Entities 'shall ensure the highest level of internationally recognized human rights and fundamental freedoms'. Paragraph 2 of the same Article stipulates that the rights and freedoms set forth in the European Convention of Human Rights (ECHR) and its Protocols shall apply directly in BiH and have priority over all other law.¹⁴ It is controversial whether the ECHR is part of the BiH Constitution, with the same legal force as other constitutional provisions, or has supremacy over the Constitution. In its decisions in cases U 5/04¹⁵ and U 13/05¹⁶ (both adopted in 2006),

12 Aybey, 1997, p. 529. As Sloan noted, the human rights guarantees in the DPA are 'numerous and sweeping', 'it would be difficult to construct an international treaty in which more human rights are guaranteed in more ways' (Sloan, 1996, p. 207).

13 Vlaški, Woelk and Galić, 2023, p. 445. The largest part of the DPA consists of 12 annexes. The Annexes to the DPA are: 1. Annex 1-A: Agreement on Military Aspects of the Peace Settlement, 2. Annex 1-B: Agreement on Regional Stabilization, 3. Annex 2: Agreement on the Inter-Entity Boundary Line and Related Issues, 4. Annex 3: Agreement on Elections, 5. Annex 4: Constitution of BiH, 6. Annex 5: Agreement on Arbitration, 7. Annex 6: Agreement on Human Rights, 8. Annex 7: Agreement on Refugees and Displaced Persons, 9. Annex 8: Agreement on the Commission to Preserve National Monuments, 10. Annex 9: Agreement on BiH Public Corporations, 11. Annex 10: Agreement on Civilian Implementation, and 12. Annex 11: Agreement on International Police Task Force.

14 According to the BiH Constitutional Court, the direct application of the ECHR by regular courts in BiH is mandatory. In case number 269/10, the Constitutional Court found a violation of the right to a fair trial because the regular courts failed to apply the provisions of the ECHR directly. As the Court pointed out, under Article II/2 of the BiH Constitution, the rights and freedoms outlined in the ECHR and its protocols are directly applicable in BiH, and have priority over other laws. In the specific case, according to the Court's opinion, the regular courts failed to apply the constitutional provisions that indicate the priority of the application of the ECHR and its Protocols in relation to any other law. Regular courts, when deciding on lawsuits, have a constitutional obligation to apply international standards for the protection of human rights and freedoms, which, according to the Court's opinion, was lacking in this particular case (Živanović, 2014, p. 19).

15 Decision in case no. U 5/54, Constitutional Court of BiH [Online]. Available at: https://www.ustavnisud.ba/uploads/odluke/_en/U-5-04-71799.pdf (Accessed: 11 July 2024).

16 Ustavni sud Bosne i Hercegovine, no date [Online]. Available at: https://www.ustavnisud.ba/sr/tok-xxxii-plenarne-sjednice?force_locale=true (Accessed: 11 July 2024).

the BiH Constitutional Court held that the provisions of the ECHR cannot have superior status over the constitutional provisions.¹⁷

The Constitution of BiH also explicitly enumerates the rights that must be guaranteed to all individuals under its jurisdiction. Pursuant to Article II(3) of the Constitution, all persons within the BiH territory shall enjoy the human rights and individual freedoms referred to in paragraph 2 of the same Article, which include the following rights: the right to life; the right not to be subjected to torture or to inhuman or degrading treatment or punishment; the right not to be held in slavery/servitude or to perform forced or compulsory labor; the rights to liberty and security of person; the right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings; the right to private and family life, home, and correspondence; freedom of thought, conscience, and religion; freedom of expression; freedom of peaceful assembly and freedom of association; the right to marry and to found a family; the right to property; the right to education; the right to liberty of movement and residence.

Under Article II(4), all persons in BiH are entitled to enjoy all rights and freedoms set forth in Article II of the BiH Constitution or under the international agreements listed in Annex I to the Constitution. These rights and freedoms are guaranteed without discrimination based on sex, race, color, language, religion, political or other opinions, national or social origin, affiliation with a national minority, property, birth, or any other grounds (non-discrimination clause). The BiH Constitution also stipulates that BiH, and all courts, agencies, government bodies, and institutions operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in Article II(2) of the Constitution (Article II(6)).

Pursuant to Article II(7) of the Constitution, BiH will remain or become a contracting party to the international agreements listed in Annex I to the Constitution. Annex 1 to the BiH Constitution, entitled “Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina”, lists 15 international human rights instruments (conventions and agreements):

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide,
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto,
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto,
4. 1957 Convention on the Nationality of Married Women,

17 As stated in the Court's decision in the case U5/04, ‘the rights under the European Convention cannot have a superior status to the Constitution of BiH. The European Convention, as an international document, entered into force by virtue of the Constitution of BiH, and therefore the constitutional authority derives from the Constitution of BiH and not from the European Convention itself’.

5. 1961 Convention on the Reduction of Statelessness,
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination,
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto,
8. 1966 Covenant on Economic, Social and Cultural Rights,
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women,
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
12. 1989 Convention on the Rights of the Child,
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
14. 1992 European Charter for Regional or Minority Languages,
15. 1994 Framework Convention for the Protection of National Minorities.

The position adopted by the BiH Constitutional Court is that the human rights contained in the international human rights instruments listed above have the character of constitutional rights and that applicants can refer to them, demanding their legal protection. In its decision in case U 9/09, the Court held that the International Covenant on Civil and Political Rights (ICCPR) is part of the BiH Constitution and that it is, therefore, competent to decide whether the rights provided for in this Covenant have been violated by some act adopted by the BiH authorities.¹⁸

Pursuant to Article X(2) of the BiH Constitution, no constitutional amendment may eliminate or diminish any of the rights and freedoms referred to in Article II of the Constitution, or alter the present paragraph.

Article 5 of Annex II to the BiH Constitution ("Transitional Arrangements") stipulates that any treaty ratified by the Republic of BiH between 1 January 1992, and the date of entry into force of the BiH Constitution must be disclosed to the Members of the BiH Presidency within 15 days of their assuming office. Any treaty that is not disclosed within this period shall be denounced. Furthermore, within six months of the first convening of the Parliamentary Assembly, upon the request of any member of the Presidency, the Parliamentary Assembly shall review whether any other such treaty should be denounced.

¹⁸ Marković, 2021, pp. 156–157.

3. Institutional framework of the human rights protection in BiH

The BiH Constitution, as well as Annex 6 to the DPA (entitled ‘Agreement on Human Rights’)¹⁹, define the institutional framework for human rights protection in BiH, which has undergone several changes over time. Article II(1) of the Constitution foresees the existence of the BiH Human Rights Commission (the establishment of which is provided for in Annex 6 to the DPA, which regulates the organisation and competence of this institution).

Pursuant to Article 2.1 of Annex 6, the Human Rights Commission consisted of the Office of the Ombudsman and the Human Rights Chamber. The Commission was described as a quasi-international and *sui generis* body, integrated into the BiH legal system²⁰. During the first five years of their operation, both of the Commission’s bodies included a substantial international legal component.²¹ As stipulated in Annex 6, the Ombudsman should have been appointed for a non-renewable five-year term by the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) (Article IV.2). Pursuant to Article VII.2 of Annex 6, the Human Rights Chamber was composed of 14 member judges: four members were appointed by the FBiH, two were appointed by the RS, and the Committee of Ministers of the Council of Europe (CoE), pursuant to its resolution (93)6, and after consultation with the Parties, appointed eight member judges, who could not be citizens of BiH or any neighboring country (the Committee of Ministers of the CoE elected one such member to be the President of the Chamber). The main difference between these two institutions was the following: the Human Rights Chamber was established as a judicial body that makes final and binding decisions in cases of violations of the human rights of BiH citizens, whereas the Ombudsman is an institution whose decisions serves as authoritative but not legally binding recommendations for authorities in BiH.²²

Annex 6 provided for a wide range of competencies of the Human Rights Commission (its bodies). The Commission’s primary aim was to secure for all persons within the jurisdiction of the Parties (BiH, RS, and FBiH) the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided for in the ECHR and its Protocols, and the other international agreements listed in the Appendix to Annex 6. This list is similar

19 Annex 6 to the DPA: Agreement on Human Rights. [Online]. Available at: <https://www.ohr.int/dayton-peace-agreement/annex-6/> (Accessed: 19 July 2024).

20 Kazazic, 2005, p. 45.

21 Ibid.

22 Živanović, 2014, p. 41.

to the one in Annex 1 to the BiH Constitution, except it includes the European Convention on Human Rights and its Protocols, which is not listed in Annex 1.²³

The Human Rights Ombudsman was established as an independent institution responsible for the protection and promotion of human rights and freedoms and the functioning of preventive mechanisms for preventing torture and other cruel, inhuman, or degrading practices. The operation of the Ombudsman is based on the functional independence of this institution, which implies its complete independence from the government bodies, both in terms of the issues it investigates and in terms of their formulation. As of 3 January 2001, the Law on the Human Rights Ombudsman of BiH²⁴ replaced Annex 6 of the DPA and became the legal basis for the operation of this institution. The entity-level Ombudsmen were also established to handle human rights issues within the RS and the FBiH.

The current Law on the Human Rights Ombudsman of BiH was adopted in 2002 and amended several times afterward (in 2004, 2006, 2008, and 2023).²⁵ In 2006, the amendments to the Law were adopted, which provided for the establishment of the unified Human Rights Ombudsman at the state level, while the Ombudsman institutions at the entity level were abolished.

According to the Law on the Human Rights Ombudsman of BiH, this institution is led by three Ombudspersons, appointed by the Parliamentary Assembly of Bosnia and Herzegovina. The three-member structure is designed to reflect the country's multi-ethnic composition, even though a person who does not belong to any of BiH constitutional peoples can be elected as an Ombudsperson.²⁶

Pursuant to Article 1, para. 2, the Human Rights Ombudsman of BiH is established in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the BiH Constitution and the international treaties appended to it, consequently monitoring to this end the activity of the institutions of BiH, the entities, and the BD.

The Ombudsman conducts an investigation on the basis of a submitted complaint or *ex officio*. As cited in Article 18(1), any natural or legal person claiming a legitimate interest may file a complaint to the Human Rights Ombudsman without any restriction. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may

23 Pursuant to Article II.2 of Annex 6, the bodies of the Human Rights Commission bodies were responsible for examining alleged or apparent violations of human rights under the ECHR and its Protocols, as well as alleged or apparent discrimination on any grounds arising from the enjoyment of any of the rights and freedoms protected by international agreements listed in the Appendix.

24 Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, No. 32/00.

25 Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH, No. 19/02, 35/04, 32/06, 38/06 – correction.

26 Marković, 2021, p. 167.

not restrict the right of a person to submit a complaint with the Institution. If an Ombudsman determines that a complaint or an issue considered *ex officio* offers sufficient grounds for an investigation, he or she will notify the government body concerned of the material elements of the case. The responsible person within that body must then submit a written response within a time-frame defined by the Ombudsman. An Ombudsman may also request at any time documents deemed necessary for the investigation (Article 23, paras. 1 and 2). If an investigation reveals that an abuse, arbitrary procedure, discrimination, error, negligence, or omission, as alleged in the complaint, was committed by an official of a government body, the Ombudsman may communicate this finding to the responsible official. Simultaneously, the Ombudsman shall forward the same document to the official's superior, accompanied by any recommendations deemed relevant (Article 29).

One of the essential aspects of the Human Rights Ombudsman's activities involves making recommendations and submitting reports. The recommendations that this institution sends to government bodies include measures that should be taken to improve the quality of the authorities' operation. As stated in Article 32(1), an Ombudsman is authorised to provide recommendations to government bodies for the implementation of new measures. Government bodies receiving such recommendations are required to respond in writing and inform the Ombudsman of the effect given to the recommendations within a timeframe indicated by the Ombudsman. Should a government body fail to implement the recommended measures within the timeframe specified by the Ombudsman or decline to provide justification for such inaction, the Ombudsman may bring the matter to the attention of the responsible Minister or the highest authority of the government body concerned, highlighting the details of the case and the recommendations provided (Article 32(2)).

The Human Rights Ombudsman shall each communicate the results of its activities in a report each year to the Presidency of BiH, the House of Representatives of BiH, the House of Peoples of BiH, the Parliament of the FBiH, and the National Assembly of the RS, which shall be published (Article 34, paras. 1 and 3).

The role of the BiH Human Rights Ombudsman in combating discrimination is further reinforced by the adoption of the BiH Law on the Prohibition of Discrimination²⁷, which enhances the Ombudsman's ability to address discriminatory practices (pursuant to Article 7(1) of this law, the central institution competent for the protection against discrimination is the BiH Ombudsman for Human Rights). The Law mandates the formation of a specialised Department for combating discrimination, which was established even before the Law came into force. However, despite the Department's operational status, the Ombudsman has indicated in its reports that the Institution's budget has not been increased.

27 Law on the Prohibition of Discrimination, Official Gazette of BiH, No. 59/09, 66/16.

Additionally, the Ombudsman highlights that the Institution's competencies related to promoting legal standards, monitoring court proceedings on discrimination, conducting research in the field of discrimination, and ensuring the harmonisation of laws are not unenforceable. The Law did not substantially broaden the scope of the Ombudsman institution's authority regarding the types of violations it addresses or alter the operational methods of the Ombudsman, as the competencies listed in Article 7 align with those outlined in the Law on the Human Rights Ombudsman of BiH. The only notable new obligation introduced is the requirement to submit a special annual report on instances of discrimination, alongside the capacity to refer individuals to mediation procedures.²⁸

However, the Law on the Prohibition of Discrimination extends the jurisdiction of the Ombudsman concerning violations in the area of non-discrimination, broadening the scope from addressing complaints against governmental authorities in BiH to include complaints regarding discriminatory actions by all legal and natural persons.²⁹ This expansion modifies the traditional role of the Ombudsman as an intermediary between public authorities and individuals or groups, enabling the institution to consider complaints about discriminatory actions committed by private individuals.³⁰

The Human Rights Chamber was defined by Annex 6 as an independent judicial body tasked with considering and deciding on cases related to alleged human rights violations throughout BiH and ensuring the enforcement of the ECHR provisions. The Chamber's mandate was outlined in Articles VII through XII of Annex 6. It was empowered to address alleged or apparent violations of human rights as stipulated in the ECHR and its Protocols, as well as alleged or apparent discrimination in the enjoyment of rights and freedoms provided for in the Convention and fifteen other international agreements listed in the Appendix to Annex 6.

Applications may be submitted by natural persons, legal entities, non-governmental organisations, or groups of individuals alleging a violation by a party to Annex 6. Submissions on behalf of alleged victims who were deceased or missing were also permitted. Applicants were not required to be nationals or permanent residents of BiH, as the rights provided under Annex 6 extended to any individual alleging violations by BiH or either of the Entities. The Chamber could only consider applications that related to matters within the jurisdiction of the signatories to Annex 6 (BiH, the FBiH, and the RS) and that occurred or continued

28 Živanović, 2014, p. 46.

29 As stipulated in Article 7(5) of the Law on the Prohibition of Discrimination, the BiH Ombudsman 'shall establish 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 Brcko 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 spheres of life'.

30 Živanović, 2014, p. 46.

after the DPA came into effect. Article VIII of Annex 6 prioritised cases involving allegations of particularly severe or systematic violations, as well as those based on alleged discrimination on prohibited grounds. Additionally, requests for provisional measures were also accorded priority.³¹

Annex 6 of the DPA did not provide a specific enforcement mechanism for the Chamber's decisions (practically, decisions on the merits were forwarded to other international organisations, particularly the OSCE and the Office of the High Representative (OHR), for monitoring compliance).³²

As of 31 December 2002, the Chamber had resolved 1,878 individual applications, although a substantial backlog of unresolved applications remained. By the end of 2002, there were 12,659 registered applicants. The Chamber's cases encompassed a wide array of human rights issues, including property and housing disputes, employment discrimination, religious discrimination and freedom of religion, the duration of domestic court proceedings, non-enforcement of court decisions, fair trial, expropriation, cases involving missing persons, and allegations of ill-treatment in detention. The majority of the Chamber's applicants claimed individual instances of systematic human rights violations, such as the

31 Yeager, 2004, p. 44. Annex 6 required the Chamber to develop fair and effective procedures for adjudicating applications, ensuring that these procedures included appropriate written pleadings and, at the Chamber's discretion, hearings for oral arguments or the presentation of evidence. Unless the Chamber initially deemed an application inadmissible or chose to dismiss it, a written procedure was initiated, during which observations were requested from both the applicant and the respondent Party. Upon receiving the written observations, the Chamber typically deliberated and rendered a decision on the case. The Chamber was not restricted solely to the written evidence provided by the parties (it could, on its own initiative, request additional evidence from the parties or external sources). Annex 6 explicitly empowered the Chamber to appoint experts and compel the production of witnesses and evidence. Beyond the written procedure, the Chamber could decide to schedule a public hearing for oral arguments and the presentation of evidence by witnesses and experts. The Chamber normally sat in two panels of seven judges each, and applications were usually referred to a panel unless the case raised a significant question about the interpretation of Annex 6 or if the resolution by the panel might have been inconsistent with earlier Chamber jurisprudence (in such cases, the full Plenary Chamber deliberated the application). A decision from one of the Panels could be reviewed by the Plenary Chamber upon a timely request for review by either the applicant or the respondent Party. Ultimately, an application before the Chamber was resolved by a decision declaring the case inadmissible, a decision to strike the application from the case list, a friendly settlement, a decision on the merits, or a decision on review. The Chamber's decisions on the merits were delivered at public hearings and addressed the issue whether the established facts of the case indicated a breach of the respondent Party's obligations under Annex 6. If a violation was found, the decision specified the measures the Chamber ordered the respondent Party to take to remedy the breach. Annex 6 stipulated that the decisions of the Chamber were final and binding upon all governmental authorities of a respondent Party. If a decision established a violation, the respondent Party was required to acknowledge that its actions did not conform to its human rights obligations and to comply with the Chamber's orders. These orders could mandate the payment of monetary relief, including both pecuniary and non-pecuniary damages (*Ibid.*, pp. 45–46).

32 *Ibid.*, p. 46.

obstruction of refugee returns, the freezing of foreign currency savings accounts, employment discrimination, enforced disappearances, and the systematic failure of domestic courts to adjudicate cases brought by minority plaintiffs within a reasonable time frame. Such cases accounted for approximately two-thirds of the Chamber's registered application.³³ The Human Rights Chamber operated from 1995 to 2003. The Commission for Human Rights within the BiH Constitutional Court was given the task of resolving the remaining unresolved cases.

One of the characteristics of the human rights protection system in BiH is the fact that the BiH Constitutional Court does not only provide for abstract constitutional review, i.e. review of the compatibility of laws with the BiH Constitution, but also acts as the final national authority to remedy violations of human rights and freedoms guaranteed by the BiH Constitution and international human rights instruments.³⁴ According to Article VI.3.b of the BiH Constitution, the Constitutional Court holds appellate jurisdiction over issues under the Constitution of BiH arising from a judgment of any other court in BiH. This provision establishes the Constitutional Court as the highest legal instance in relation to the courts in BiH, underscoring its role as a key institutional guarantor of the protection of rights and freedoms established by the BiH Constitution.

Article 18 of the Rules of the BiH Constitutional Court provides for admissibility criteria of appeals under Article VI.3.b of the BiH Constitution. In particular, an appeal can be submitted against a judgement or other court decisions only after all effective legal remedies have been exhausted and within a period of 60 days from the date on which the appellant received the decision in question. Article 18.2 of the Rules provides for an exception by permitting the Court to examine an appeal in the absence of a decision of an ordinary court, provided the appeal alleges grave violations of human rights and freedoms guaranteed by the BiH Constitution or international documents applicable in BiH. Such exception relates, for example, to allegations concerning the excessive length of court proceedings as an element of the right to a fair trial under Article II.3.e of the Constitution of BiH and Article 6 of the ECHR, as well as the right to an effective remedy under Article II.2 of the Constitution and Article 13 of the ECHR.³⁵

Pursuant to Article VI.6 of the BiH Constitution, the decisions of the Constitutional Court are final and binding. However, the question arises regarding the impact of the Court's decisions on proceedings that have been concluded before the ordinary courts when a violation of the human rights and freedoms protected by Articles II.2 and II.3 of the BiH Constitution and the ECHR is found. As a rule, such decisions on an appeal in cassation result in the quashing of the judgement of the ordinary court and, pursuant to Article 62.1 of the Constitutional Court's

³³ Ibid., p. 47.

³⁴ Smalagic, Marko and Sahadzic, 2023, p. 331.

³⁵ Ibid., p. 332.

Rules, refer the case back to that court for new proceedings. However, in contrast to the earlier 2005 Court's Rules, the current Rules allow for an exception to this rule when the consequences of a violation of constitutional rights and freedoms can be remedied through alternative means.³⁶

4. The status of international human rights instruments in BiH and their impact on human rights protection

By incorporating the human rights and freedoms provided for by the ECHR and the international human rights instruments listed in Annex 1 to the BiH Constitution into the BiH's legal system, a significant step was taken toward improving human rights protection in this country. The ratification of these documents established conditions that enables BiH citizens to address international bodies established by these human rights instruments. The subsequent analysis will examine the status of the aforementioned documents in BiH, the effects that their ratification produced on the legal system of BiH and the entities, and the opportunities they provide for BiH citizens to safeguard their human rights within the supra-national human rights protection system.

On 12 July 2002, BiH formally ratified the ECHR (including Protocols 1, 4, 6, and 7). Since that date, the European Court of Human Rights (ECtHR) has been empowered to receive and adjudicate individual complaints alleging violations of the ECHR by the BiH authorities that occurred subsequent to the ratification. Pursuant to Article 25 of the ECHR, any person, non-governmental organization, or group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention is entitled to bring a complaint before the ECtHR, provided that all domestic remedies have been exhausted (Article 26).

The first judgment under the supervision of its execution by the Council of Ministers involved the case of *Jeličić v. BiH*, which became final on 31 January 2007. In this case, the applicant argued that the non-enforcement of a binding and final decision by a BiH court concerning 'old' foreign-currency savings violated the principle of the rule of law. The ECtHR agreed and found a violation of Article 6 of the ECHR, which mandates that any claim relating to a civil right that can be brought before a court or tribunal must also include the execution of a judgment as an 'integral part of the trial for the purposes of Article 6'.³⁷ Several judgments of the ECtHR have declared the exclusion of citizens who are not members of one of the three constituent peoples, or who refuse to declare their ethnic affiliation,

³⁶ Ibid., pp. 332–333.

³⁷ Banović, 2023, p. 259.

from some political offices by the BiH Constitution as a violation of the ECHR (*Sejdić and Finci v. BiH, Zornić v. BiH, Šlaku v. BiH*).³⁸

Individuals from BiH can also seek protection of their human rights and freedoms under various UN human rights instruments ratified by this country. These documents establish committees that monitor the implementation of treaty obligations by State Parties. One of these monitoring bodies is the UN Human Rights Committee (UN HRC), established under Article 28 of the ICCPR to monitor the enforcement of the Covenant's rights by the States Parties.³⁹

This body represents a panel of 18 human rights experts, who are nominated by the State Parties of which they are nationals and are elected by a ballot of all States Parties to serve a four-year term.⁴⁰ The UN HRC performs four essential functions in monitoring the ICCPR implementation: 1. conducts dialogues and derives conclusions from States' reports, 2. issues General Comments which explain the meaning of the provisions of the ICCPR, 3. considers inter-State complaints under Article 41 of the ICCPR, and 4. renders decisions under the First Optional Protocol.⁴¹ By joining the ICCPR, the States Parties agree that the UN HRC periodically studies their reports on the measures they have taken to exercise the rights provided for by the ICCPR and about the progress achieved in that area. States must separately agree to other competencies of the UN HRC. In order to better ensure the achievement of the goals of the ICCPR and the implementation of its provisions, the Optional Protocol was adopted to the ICCPR. It is a separate treaty which authorises the UN HRC 'to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant' (Article 1 of the Optional Protocol).⁴² This article also specifies that the UN HRC will not receive any communications regarding ICCPR States Parties that do not adhere to the Optional Protocol.

The provisions of the Optional Protocol to the ICCPR prescribe the conditions that an individual must meet in order for the UN HRC to consider his or her application. In addition to the fact that the State against which an individual submits a complaint must be a member of the Optional Protocol, before submitting a complaint all available national legal remedies must be exhausted. The submitted complaint must be signed, and it is explicitly stated that the UN HRC

38 Woelk, Galić and Sekulić, 2023, pp. 459–460; Marković, 2023, p. 3.

39 United Nations: International Covenant on Civil and Political Rights. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed: 2 August 2024).

40 Joseph and Castan, 2013, pp. 13–14.

41 Ibid., p. 15.

42 United Nations: Optional Protocol to the International Covenant on Civil and Political Rights. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political> (Accessed: 8 August 2024).

will not accept any communications which it considers to be an abuse of the right to submit such communications or to be incompatible with the provisions of the Covenant (Article 3 of the Protocol).

Pursuant to Article 5.2 Of the Protocol, the UN HRC will not consider any petition of an individual unless it has ascertained that ‘the same matter is not being examined under another procedure of international investigation or settlement’ and that ‘the individual has exhausted all available domestic remedies’ (whereby this condition does not apply where the application of the remedies is prolonged beyond a reasonable period of time).

There are no strict time limits for the submission of a complaint.⁴³ The UN HRC considers a complaint in closed sessions, and informs the interested States Parties and the individuals of every aspect it has established. The UN HRC decides on individual petitions exclusively on the basis of written documents submitted by the parties, without the right to appear before this body or to present evidence. Due to time constraints faced by the UN HRC, there is a significant reliance on the Secretariat, which has adopted a practice of providing summaries of communications to Committee members. Consequently, it is typical for only a limited number of the UN HRC members to have reviewed the full communications from the parties prior to rendering a decision.⁴⁴

Since the establishment of the competence of the UN HRC to decide on the complaints of individuals, polemics have been going on about the effectiveness of its decisions. The question arises, does it end only with the findings that the provisions of the ICCPR have been violated and the moral pressure they imply, or does the Human Rights Committee have the right to, at the request of the applicant or on its own initiative, request notifications about possible corrections or compensation? The Committee’s views are not legally binding, since the UN HRC is not a judicial body. However, the HRC serves as the principal interpreter of the ICCPR, which is itself legally binding. The HRC’s decisions are therefore strong indicators of legal obligations, so rejection of those decisions is the evidence of a State’s bad faith attitude towards the ICCPR obligations.⁴⁵ The UN HRC’s decisions are issued ‘in a judicial spirit’.⁴⁶ Decisions on the merits resemble definitive findings of breach, or non-breach, by the State Party concerned. The UN HRC also provides recommendations for appropriate remedies, which may include legislative amendments, compensation for damages, the making of representations to a State Party to which an author has been deported in violation of the Covenant, or the release of unfairly detained individuals. Additionally, the

43 Joseph and Castan, 2013, p. 21.

44 MacKey, 1999, p. 17.

45 Joseph and Castan, 2013, p. 21.;
Ibid., p. 22.

46 Selected Decisions of the Human Rights Committee under the Optional Protocol, CCPR/C/OP/2, 1988, cited in Joseph and Castan, 2013, p. 22.

HRC has instituted a 'follow-up' procedure that tracks and publicises the outcomes of its recommendations. Consequently, a State's non-compliance with the UN HRC's views is publicly recorded, potentially leading to international censure and criticism.⁴⁷

The UNHRC has considered several communications submitted by individuals from BiH, addressing various human rights violations. These communications, submitted under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), reflect the challenges faced by individuals in BiH in accessing justice to and protection of their rights. A significant number of communications from BiH have concerned enforced disappearances during the 1992-1995 conflict.

The UN HRC decision concerning Communication no. 1997/2010 involves the case of F.R. and R.R., who submitted a communication on their own behalf and on behalf of their missing relative, M.R. The case addresses the enforced disappearance of M.R. in July 1992 during the armed conflict in BiH. M.R. was allegedly detained by members of the RS Army and paramilitary groups, held under inhumane conditions, and subjected to ill-treatment. Despite the efforts of his family to find out his fate and whereabouts, no effective investigation was conducted by the BiH authorities. In their communication, the authors claimed a violation of Articles 6, 7, 9, 10 and 16, in conjunction with Article 2, paragraph 3 of the ICCPR in respect to M.R. They further alleged that they are themselves victims of a violation by BiH of Article 7, read alone and in conjunction with Article 2, paragraph 3, and of Article 2, paragraph 1, and Article 26 of the Covenant.

The Committee concluded that, under the circumstances, the facts before it reveal a violation of Article 2, paragraph 3, of the Covenant, read in conjunction with Articles 6, 7, and 9, with regard to the authors and their disappeared relative. The Committee also determined that the State's requirement for the family to declare M.R. dead to receive compensation constituted inhuman and degrading treatment in violation of Article 7, read alone and in conjunction with Article 2, paragraph 3, of the Covenant with respect to the authors.

The UN HRC ordered BiH to continue its efforts to establish the fate or whereabouts of M.R., bring those responsible to justice, provide adequate compensation to the family, and prevent similar violations in the future. The State was also requested to ensure that investigations into enforced disappearances are accessible to the families of missing persons, and that the current legal framework is amended so as not to require the relatives of victims to obtain a death certificate as a condition of receiving social benefits.

The UN HRC's decision concerning Communication no. 2206/2012 involves the cases of V.L. and M.B., who filed a complaint on behalf of themselves and their mothers, A.L. and S.P., BiH nationals, who were reportedly last seen on 2 August

47 Joseph and Castan, 2013, pp. 22-23.

1992, during the armed conflict in BiH. They were allegedly killed by the members of Bosnian Army, and their bodies have never been found. The complainants, their children, reported the disappearances to various authorities in BiH but received no substantive response or confirmation of investigations into the whereabouts of their mothers. In their communication, the authors claimed a violation by BiH of Article 6, read in conjunction with Article 2 (3), of the ICCPR in respect of A.L. and S.P. They also claimed that they are themselves victims of a violation of their rights under articles 7, 17 and 23 (1), read in conjunction with Article 2(3), of the Covenant.

The UN HRC found the communication admissible. The Committee concluded that the facts of the case reveal a violation of Article 6 read in conjunction with Article 2 (3), of the Covenant with regard to A.L. and S.P. due to the lack of a prompt and impartial investigation into their disappearances and alleged deaths. The failure of the authorities to provide any information regarding the fate of the missing persons or to conduct an effective investigation also amounted to the inhuman and degrading treatment of the complainants, violating Article 7 of the Covenant.

Some of the cases the UN HRC made decisions on were not related to the tragic armed conflict in BiH. The UN HRC decision concerning Communication no. 1219/2003 addresses the case of V.R., a former RS Supreme Court judge, who submitted a complaint alleging violations of his rights under the ICCPR after his judicial appointment was not renewed following two controversial judgements he had participated in.

V.R. served as a judge on the RS Supreme Court from 1993. to 2003. In 2002, a new selection process for judicial positions was initiated by the High Judicial and Prosecutorial Council of the RS. All existing judicial posts were declared vacant, requiring judges to reapply. The complainant's application for reappointment was denied based on his involvement in two controversial judicial decisions that raised questions about his suitability as a judge.

V.R. claimed that the non-renewal of his appointment violated his right to equal access to public service (Article 25(c) of the ICCPR), his right to an effective remedy (Article 2), and the right to privacy and protection of honour and reputation (Article 17). The Committee found the author's claims inadmissible. It concluded that V.R. failed to substantiate his allegations that his non-reappointment was based exclusively on his legal decisions or that his rights under articles 17 and 25 of the Covenant were violated. The Committee also noted that the claim of a violation of Article 2, which guarantees an effective remedy, could not be substantiated as there was no proven violation of a substantive right.

BiH is a State Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which outline the rights of refugees and the legal obligations of States to protect them (as previously noted, these instruments are included in Annex 1 to the Constitution of BiH). Pursuant to Article III.1f of the BiH

Constitution, the responsibility for issues related to migration, visas, and asylum is assigned to the BiH institutions. Initially, these matters fell under the jurisdiction of the Ministry for Human Rights and Refugees of BiH. However, following the establishment of the Ministry of Security of BiH, the latter assumed authority and responsibility for managing the aforementioned issues.⁴⁸ The first law in this area adopted at the state level in BiH was the Law on Immigration and Asylum, in 1999. This was followed by several changes in legislation, culminating in the adoption of the Law on Asylum⁴⁹ in 2016. This law, among others, prescribes the rights and obligations of asylum seekers and individuals granted some form of international protection (refugee status, subsidiary protection, or temporary protection). BiH acceded to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 13 December 1996, and it officially entered into force in BiH on 1 July 2003.⁵⁰ Alongside a relatively adequate legal framework for the protection of refugees, asylum seekers, displaced persons, and migrants, which adheres to international principles and standards, the country has also made noticeable progress in institutional development. This progress is reflected in the establishment of various institutions with specific competences dedicated to managing these processes.⁵¹

BiH is also a State Party to the 1979 Convention on the Elimination of All Forms of Discrimination against Women⁵² (the Convention is listed in Annex 1 to the BiH Constitution). BiH ratified the Optional Protocol to the Convention in 2002. Pursuant to Article 18 of the Convention, States Parties are obligated to submit a report to the Secretary-General of the UN, which will be reviewed by the Committee on the Elimination of Discrimination against Women. The report must detail the legislative, judicial, administrative, or other measures undertaken to implement the provisions of the Convention, as well as the progress achieved in this regard.

48 Council of Ministers of BiH: Initial Report on Implementation of Provisions of the International Convention on the Protection of All Migrant Workers and Members of Their Families in BiH. Sarajevo. [Online]. Available at: <https://www.mhrr.gov.ba/PDF/LjudskaPrava/3.INITIAL%20Report%20...pdf> (Accessed: 18 July 2024).

49 Law on Asylum, Official Gazette of BiH, No. 11/16 and 16/16.

50 Initial Report on Implementation of Provisions of the International Convention on the Protection of All Migrant Workers and Members of Their Families in BiH.

51 Omerovic, 2022, p. 46.

52 United Nations: Convention on the Elimination of All Forms of Discrimination against Women. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (Accessed: 14 September 2024).

In its Concluding Observations on the Sixth Periodic Report of BiH (2017)⁵³, the Committee on the Elimination of Discrimination against Women evaluated BiH's efforts to fulfill its obligations under the Convention, highlighting both advancements and areas requiring improvement. The Committee commended BiH for legislative reforms, including amendments to the Law on Prohibition of Discrimination, the adoption of the Law on Free Legal Aid, and amendments to the Criminal Code addressing sexual violence and human trafficking. Policy frameworks such as the Gender Action Plan (2018-2022) and national strategies to combat violence against women and human trafficking were recognised as significant strides. Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence further reinforces BiH's commitment to addressing gender-based violence.

Despite these achievements, the Committee identified several challenges. It highlighted inconsistencies in the implementation of anti-discrimination laws across BiH's decentralized administrative structures. Women in rural areas, marginalized groups, and victims of wartime sexual violence face systemic barriers to accessing justice, healthcare, and economic opportunities. The Committee noted the high prevalence of domestic violence, the underreporting of cases, and insufficient training for professionals addressing such violence. It also criticised the limited representation of women in political and decision-making roles, inadequate support for survivors of war crimes, and the absence of comprehensive measures to address economic and social disparities among women, particularly Roma women, rural women, and women with disabilities.

Key recommendations include ensuring uniform implementation of gender equality laws across all administrative levels and enhancing access to justice through expanded legal aid and training for judicial personnel. The Committee urged BiH to intensify efforts to combat gender-based violence by providing adequate support systems for survivors, improving prosecution rates, and raising public awareness. It also called for measures to promote women's political representation, address gender pay gaps, and reduce economic inequality. Recognising the disproportionate burdens on rural women, the Committee recommended targeted strategies to empower them economically and socially.

The Committee also stressed the importance of addressing intersectional discrimination, particularly against Roma women, migrant women, and lesbian, bisexual and transgender women. It called for comprehensive strategies to eliminate discriminatory stereotypes and improve women's access to education, healthcare, and economic resources. Additionally, it highlighted the need for

53 Committee on the Elimination of Discrimination against Women: Concluding Observations on the Sixth Periodic Report of BiH. [Online]. Available at: https://arsbih.gov.ba/wp-content/uploads/2020/06/CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf (Accessed: 17 September 2024).

robust data collection systems to monitor progress and evaluate the impact of gender equality initiatives.

BiH is the State Party to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention is one of the international instruments explicitly referred to in Annex 1 to the BiH Constitution). BiH, like all State Parties to the Convention, is obligated to submit regular reports to the Committee against Torture. These reports must provide a comprehensive overview of measures implemented to comply with UNCAT provisions and address adherence to the Committee's recommendations.

In its Concluding Observations on the Sixth Periodic Report of BiH⁵⁴, the Committee against Torture noted several positive developments, but also highlighted some issues of concern. The Committee acknowledged as a positive development the ratification of or accession to the following international human rights instruments by BiH: 1) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2012, and 2) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2013. The Committee also welcomed the legislative measures such as the adoption of: Law on Witness Protection Programme in BiH (2014), Law on amendments to the Criminal Code of BiH (2015), Law on Aliens (2015), Law on Asylum (2016), and Law on Free Legal Aid Provision in BiH (2016). The adoption of strategies on the rights of the child, domestic violence, migration, and anti-trafficking was also commended.

Despite these advancements, the Committee raised significant concerns. It highlighted inconsistencies and inadequacies in the provisions addressing the offense of torture across the criminal legislation of the entities and the Brčko District, the inadequate implementation of legal safeguards, and issues such as detainees' lack of access to independent medical examinations. Reports of routine ill-treatment and torture during police interrogations prompted recommendations for independent investigations, strengthened oversight, and training in non-coercive interrogation methods. Furthermore, the lack of independent mechanisms to handle complaints against police and limited accountability for torture perpetrators were criticised. The Committee also highlighted delays in prosecuting war crimes, including sexual violence, and recommended measures to expedite cases, standardise legislation, protect victims and witnesses, and establish a comprehensive national reparation framework. The report highlighted delays in the prosecution of war crimes, including cases of sexual violence, and recommended measures to expedite proceedings, harmonise legislation, and ensure the protection of victims and witnesses. It also expressed concerns over the

54 Committee Against Torture: Concluding Observations on the Sixth Periodic Report of BiH. [Online]. Available at: <https://www.ohchr.org/en/documents/concluding-observations/catchco6-committee-against-torture-concluding-observations> (Accessed: 19 September 2024).

limited access to reparations for war crime victims, calling for the establishment of a comprehensive national reparation framework.

The Committee recommended addressing substandard detention conditions by improving infrastructure, access to healthcare, and detainee activities while reducing overcrowding. It also urged the increased use of non-custodial measures for juveniles, their separation from adults in detention, and stronger protections against domestic violence, human trafficking, and discrimination, with enhanced data collection and enforcement of anti-discrimination laws. The Committee emphasised the need for mandatory training for officials on torture prevention, dissemination of the report's findings, and timely follow-up on key recommendations.

The rights and freedoms enshrined in the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁵⁵ were also integrated into the human rights protection framework in BiH (the Convention is listed in Annex 1 to the BiH Constitution). The ICERD is the only international instrument applicable in BiH that provides an actual definition of the term 'racial discrimination'.⁵⁶ This definition explicitly includes discrimination based on 'ethnic origin', a particularly relevant aspect in the context of BiH, where 'the majority of discriminatory acts as well as atrocities were carried out by representatives of ethnic or national groups and directed towards members of other ethnic or national groups'.⁵⁷ Pursuant to Article 9 of the ICERD, States Parties are obligated to submit a report to the Secretary-General of the United Nations for review by the Committee on the Elimination of Racial Discrimination (COERD). This report must detail the legislative, judicial, administrative, or other measures adopted to implement the provisions of the Convention effectively.

The COERD, in its Concluding Observations on the Combined 12th and 13th Reports of BiH⁵⁸, acknowledged several positive developments in the ICERD implementation, including the adoption of the Law on Asylum (2016), amendments to the Anti-Discrimination Law (2016), and revisions to the Law on Citizenship (2016). The Committee also welcomed the adoption of the Revised Action Plan for Roma (2016-2020) addressing employment, housing, and healthcare for the Roma community. On the other hand, the Committee expressed concern over persistent ethnic and ethno-religious divisions, perpetuated by discriminatory constitutional provisions. It urged BiH to implement policies promoting integration and reconciliation and to amend discriminatory categorisations such as 'constituent peoples' and

55 International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, 1965.

56 Nystuen, 2005, p. 114.

57 Ibid., p. 118.

58 Committee on the Elimination of Racial Discrimination: Concluding Observations on the Combined 12th and 13th Periodic Reports of BiH (CERD/C/BIH/CO/12-13). [Online]. Available at: <https://documents.un.org/doc/undoc/gen/g18/272/18/pdf/g1827218.pdf> (Accessed: 17 September 2024).

'others'. The Committee also criticized the systemic discrimination against Roma and other minority groups. Specific challenges included low school enrollment rates, inadequate housing, high unemployment, and limited access to social and healthcare services. The Committee recommended developing a comprehensive strategy for Roma inclusion, emphasising education, employment, housing, and access to documentation. The Committee observed the intensification of hate speech, particularly from public figures, within the media, and in sports contexts. In response, it advocated for a more stringent regulation of hate speech, ensuring accountability for those responsible, and enhanced oversight of media content to address these issues effectively. The Committee also raised concern about the inadequate capacity to house asylum seekers, barriers in accessing basic services, and insufficient procedural guarantees in the course of asylum applications. It recommended increasing reception capacity, improving access to services, and ensuring procedural safeguards for asylum seekers.

In its response to the Committee's Observations, BiH reported several advancements in the ICERD implementation. This included adoption of the Law on the Prohibition of Discrimination and its 2016 amendments, which brought the legislation into alignment with European standards. Authorities also emphasised the implementation of action plans targeting Roma communities, focusing on housing, healthcare, education, and employment. Specific efforts included improving access to personal documentation and raising awareness about the right to health. These developments also included conducting regular training sessions for judges, prosecutors, and civil servants on human rights and anti-discrimination laws, the simplification of processes for acquiring citizenship, the implementation of the 2016 Law on Asylum, and ensuring procedural safeguards for individuals under international protection. Efforts to address LGBTQI rights included initiatives to reduce inequality, promote acceptance, and foster dialogue among stakeholders. Institutional strengthening was also emphasised, particularly through enhancements to the institution of the Human Rights Ombudsman of BiH to ensure compliance with the Paris Principles. This included the establishment of national preventive mechanisms and securing adequate financial resources for operational improvements. The document also highlights several systemic challenges that persist despite the progress made. Notable difficulties include the implementation of Committee recommendations in relation to constitutional reforms and amendments to Electoral Law.⁵⁹

59 Ministry of Human Rights and Refugees of BiH: Information Regarding the Concluding Observations for the Combined 12th and 13th Periodic Report of Bosnia and Herzegovina on the Implementation of the International Convention on the Elimination of Racial and All Forms of Discrimination Before the UN Human Rights Council with a Proposal for Conclusions. [Online]. Available at: <https://mhrr.gov.ba/PDF/LjudskaPrava/12.Informacija%20%20na%20objedineni%2012%20i%2013%20cerd.pdf> (Accessed: 11 September 2024).

The Convention on the Rights of the Child (1989), which contains universal standards that must be guaranteed by each State Party to the Convention to every child born, is also one of the human rights instruments listed in Annex 1 to the BiH Constitution. During 1998, the first entity reports on the implementation of the Convention on the Rights of the Child for the period 1992–1998 were prepared. These reports formed the basis of the First Report of the BiH Committee for the Rights of the Child, which was submitted to the Council of Ministers of BiH in June 2001. It was renamed Initial Report during the adoption procedure and was submitted to the Committee on the Rights of the Child in 2004. The Committee reviewed the Initial Report of BiH concerning the implementation of the Convention on the Rights of the Child (CRC/C/11/Add.28) during its 1030th and 1031st sessions on 19 May 2005 (CRC/C/SR.1030 and CRC/C/SR.1031). Subsequently, the Committee adopted its Concluding Observations at the 1052nd session on 3 June 2005 (CRC/C/15/Add.260). In these Concluding Observations, the Committee issued several recommendations to the relevant authorities in BiH. Among these recommendations was the withdrawal of the reservation to Article 9, paragraph 1 of the Convention on the Rights of the Child. The Committee noted that there was no necessity for this reservation, as social work centres could be considered ‘competent authorities’ as specified in Article 9 of the Convention. Following this, the BiH Presidency decided to withdraw the reservation to Article 9, paragraph 1, and the Ministry of Foreign Affairs notified the UN Secretary-General of this withdrawal in 2008.⁶⁰

BiH ratified the UN Convention on the Rights of Persons with Disabilities (2006) on 12 March 2010 (the Convention entered into force 30 days after the instrument of ratification was deposited). By ratifying the Convention, BiH committed itself to the implementation of the principles and obligations set out in the Convention, ensuring that persons with disabilities enjoy the same rights and freedoms as other citizens. The Convention ensures a range of rights for persons with disabilities, including respect for their inherent dignity, the principle of non-discrimination, full social inclusion, respect for diversity, equal opportunities, accessibility, gender equality, and respect for the development of children with disabilities, as well as the right of these children to maintain their own identity. The Convention places particular emphasis on raising awareness about the rights of persons with disabilities throughout society, promoting accessibility, and supporting independent living and community inclusion.

To facilitate activities related to advocacy, promotion, and enhancement of the implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Ministry of Human Rights and Refugees of BiH prepared the Decision on the establishment of the Council for Persons with Disabilities of BiH, which was adopted at the 135th session of the Council of Ministers

60 Čeranić, 2011, pp. 275–276.

of BiH on 19 October 2010. The decision provides for the establishment of the BiH Council for Persons with Disabilities to ensure collaboration with the relevant entity authorities and associations of persons with disabilities.⁶¹ Additionally, in line with the Rulebook on Internal Organization and Systematization, the Human Rights Ombudsman established the Department for the Protection of the Rights of Persons with Disabilities as a distinct organisational unit aimed at promoting and safeguarding more effectively the rights of this demographic group.⁶²

However, the ratification of the Convention did not bring much for this vulnerable population. The scientific papers dedicated to the status of persons with disabilities call attention to the constant violations of the human rights belonging to this category of the population, while improvements required for an adequate realisation of these rights have been described as unsatisfactory.⁶³ As a result, persons with disabilities often have difficulty exercising their rights, including the rights outlined in Article 5 of the Convention, which address equality and non-discrimination, as well as the right to equal access to the built environment, transportation, information and communication, as well as the right to independent living (Article 9), and the right to work (Article 27).

Concerning the right to participate in political and public life, the 'Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in BiH' (2012) indicates that the Election Law of BiH (Official Gazette of BiH, no. 20/02) does not deny the right of persons with disabilities to vote or be elected. The Report further notes that the F BiH and RS Strategies for the Improvement of the Social Position of Persons with Disabilities have recognised the necessity of promoting the active participation of representatives of persons with disabilities in political parties, political life, and decision-making processes at all levels. Specifically, organisations representing persons with disabilities are encouraged to engage in public debates concerning documents of significance to the citizens.⁶⁴

BiH submitted its initial report to the UN Committee on the Rights of Persons with Disabilities in 2015, detailing the measures taken to implement the Convention as well as the challenges encountered. In its Concluding Observations, the UN Committee identified several areas requiring improvement in BiH, including the enhancement of accessibility to public spaces, including enhancing the accessibility of public spaces, ensuring non-discrimination in education and

61 Parliamentary Assembly of BiH: United Nations Convention on the Rights of Persons with Disabilities and Regulations of Bosnia and Herzegovina, p. 6. [Online]. Available at: <http://untz.ba/wp-content/uploads/2021/02/Konvencija-ujedinjenih-nacija-o-pravima-osoba-s-invaliditetom-i-propisi-Bosne-i-Hercegovine.pdf> (Accessed: 8 August 2024).

62 Institution of the Human Rights Ombudsman of BiH: Special Report on the Rights of Persons with Disabilities, p. 5. [Online]. Available at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2013020406303506bos.pdf (Accessed: 20 August 2024).

63 Gadzo-Sasic, 2023, p. 45.

64 Ibid., p. 44.

employment, and increasing the availability of community-based services. The country is expected to continue reporting on its progress and to address the Committee's recommendations.

It is unsurprising that the Committee on the Rights of Persons with Disabilities expressed 'concerns about the lack of transparent procedures and laws to regulate consultations with organisations of persons with disabilities. Another concern relates to the lack of structured financial support and capacity building for these organisations, particularly at the local level' (CRPD/C/BIH/CO/1).⁶⁵

5. Conclusion

The establishment of an effective human rights protection system is of particular importance in countries in transition. The protection and enforcement of human rights are integral elements of democratic development and the strengthening of the rule of law. In BiH, as a country that, in addition to overcoming the authoritarian legacy of the former SFRY, also had to deal with the consequences of a tragic armed conflict, the establishment of such a system assumes even greater importance.

The constitutional and legal system of the protection of human rights and freedoms in BiH is fully based on international human rights instruments. The most prominent are the ECHR and its Protocols, as well as the fifteen international documents on human rights and freedoms included in Annex 1 to the BiH Constitution. The BiH Constitution mandates the direct application of these instruments within the domestic legal system. Although the Constitution envisages the existence of several institutions responsible for ensuring respect for human rights, the possibility of BiH citizens to directly address the ECTRH and other bodies monitoring the implementation of appropriate human rights instruments is of particular importance. As a result, additional guarantees are provided that their rights will be adequately protected, although the goal of the BiH/entity authorities should be to establish the most appropriate and effective national human rights protection system.

⁶⁵ Ibid., p. 45.

Bibliography

- Aybay, R. (1997) 'Appendix I: A New Institution in the Field: The Human Rights Chamber of Bosnia and Herzegovina', *Netherlands Quarterly of Human Rights*, 15(4), pp. 529–545; <https://doi.org/10.1177/092405199701500410>.
- Biletzki, A. (2020) *Philosophy of Human Rights: A Systematic Introduction*. New York; London: Routledge, <https://doi.org/10.4324/9781315766638>.
- Conde, H.V. (2004) *A Handbook of International Human Rights Terminology*. Lincoln; London: University of Nebraska Press.
- Čeranić, D. (2011) 'Primjena međunarodnih konvencija o pravima djeteta u Bosni i Hercegovini', *Zbornik radova, Pravni fakultet Univerziteta u Istočnom Sarajevu*, pp. 262–278.
- Donnelly, J. (2013) *Universal Human Rights in Theory and Practice*. Ithaca; London: Cornell University Press, <https://doi.org/10.7591/9780801467493>.
- Gadžo-Sašić, S. (2023) 'United Nations Convention on the Rights of Persons With Disabilities in Times of Crisis', *Montenegrin Journal for Social Sciences*, 7(1), pp. 35–48.
- Joseph, S., Castan, M. (2013) *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. 3rd edn. Oxford: Oxford University Press, <https://doi.org/10.1093/law/9780199641949.001.0001>.
- Kazazić, V. (2005) 'Ostvarivanje i zaštita ljudskih prava u Bosni i Hercegovini kroz prava ombudsmana i doma za ljudska prava', *Zbornik radova Pravnog fakulteta u Splitu*, 42(1–2), pp. 43–53.
- MacKay, D. (1999) 'The UN Covenants and the Human Rights Committee', *Victoria University of Wellington Law Review*, 29(1), pp. 11–18; <https://doi.org/10.26686/vuwlr.v29i1.6048>.
- Marković, G. (2023) 'Kovačević v. Bosnia and Herzegovina', *NBP – Nauka, bezbednost, policija*, 28(3), pp. 2–18; <https://doi.org/10.5937/nabepo28-47970>.
- Marković, G. (2021) *Ustavni lavirint: Aporije ustavnog sistema Bosne i Hercegovine*. Beograd: Službeni glasnik.
- O'Flaherty, M., Gisvold, G. (1998) 'Introduction' in O'Flaherty, M. and Gisvold, G. (eds.) *Post-War Protection of Human Rights in Bosnia and Herzegovina*. The Hague: Martinus Nijhoff Publishers, pp. 9–14; https://doi.org/10.1163/9789004481756_003.
- Orend, B. (2002) *Human Rights: Concept and Context*. Peterborough: Broadview Press.
- Omerović, E. (2022) 'International Law Principles for the Protection of Irregular Migrants with Bosnia and Herzegovina's Social Characteristics', *South East European Law Journal*, 10(1), pp. 26–48.
- Sahadžić, M., Woelk, J. (2023) 'Bosnia and Herzegovina's Federal System: An (A)symmetrical "Twin State"' in Sahadžić, M. et al. (eds.) *Citizens, Constitution, Europe: Glossary of Essential Constitutional Concepts in BiH*. Sarajevo, pp. 369–372.
- Sloan, J. (1996) 'The Dayton Peace Agreement: Human Rights Guarantees and Their Implementation', *European Journal of International Law*, 7(2), pp. 207–225; <https://doi.org/10.1093/oxfordjournals.ejil.a015510>.

- Stanković, M. (2019) *Uspostavljanje BiH – federalizma: agregacija ili devolucija*. Sarajevo: Fondacija Centar za javno pravo [Online]. Available at: http://www.fcjp.ba/analize/Marko_Stankovic1-Uspostavljanje_BiH%20federalizma_agregacija_ili_devolucija.pdf (Accessed: 18 August 2024).
- Ustavni sud Bosne i Hercegovine (no date) *Tok XXXII plenarne sjednice* [Online]. Available at: https://www.ustavnisud.ba/sr/tok-xxxii-plenarne-sjednice?force_locale=true (Accessed: 5 June 2024).
- Vlaški, B., Woelk, J., Galić, D. (2023) 'General Framework Agreement for Peace in Bosnia and Herzegovina – Dayton Peace Agreement' in Sahadžić, M. et al. (eds.) *Citizens, Constitution, Europe: Glossary of Essential Constitutional Concepts in BiH*. Sarajevo, pp. 445–449.
- Živanović, M. (2014) *Ljudska prava u Bosni i Hercegovini: Pravna praksa i međunarodni standardi ljudskih prava*. Sarajevo: Centar za ljudska prava Univerziteta u Sarajevu.
- Yeager, J.D. (2004) 'The Human Rights Chamber for Bosnia and Herzegovina – A Case Study in Transitional Justice', *International Legal Perspectives*, 14(2), pp. 44–55.
- Woelk, J., Galić, D., Sekulić, T. (2023) 'Bosnia and Herzegovina and European Union Integration' in Sahadžić, M. et al. (eds.) *Citizens, Constitution, Europe: Glossary of Essential Constitutional Concepts in BiH*. Sarajevo, pp. 457–461.