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## National Human Rights Systems: Bosnia and Herzegovina

- **ABSTRACT:** *The provisions of the Constitution of Bosnia and Herzegovina (hereinafter: the Constitution of BiH), inter alia, regulate the catalogue of human rights and freedoms, as well as the right to access the exercise of rights through institutions whose primary task is to protect human rights in the country. The basic issue concerning the effective protection of human rights in Bosnia and Herzegovina is reflected in the legal nature of the Constitution of BiH; however, it is also reflected in the relationship between the Constitution of BiH and ratified international instruments for the protection of human rights – primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention). In other words, the provisions of the Constitution of BiH address the effective institutional protection of human rights and freedoms in the material sense of the phrase. In addition to the judicial authorities, which certainly represent the most important institutions in resolving disputes, the institution of the Ombudsman for Human Rights of Bosnia and Herzegovina, the Constitutional Court of BiH and the Ministry of Human Rights and Refugees of BiH play a key role in the process of protecting human rights and fundamental freedoms. One particularly important issue is the trust of citizens in state institutions whose primary task is to protect human rights.*
- **KEYWORDS:** *Human rights protection system, Constitution of Bosnia and Herzegovina, European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court of BiH, the institution of the Ombudsman for Human Rights of Bosnia and Herzegovina*

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## 1. Introduction

Bosnia and Herzegovina is a state with a complex constitutional structure. Namely, according to Article I 2. of the Constitution of BiH, Bosnia and Herzegovina consists of two Entities – the Federation of Bosnia and Herzegovina<sup>1</sup> and the Republika Srpska.<sup>2</sup> Through subsequent arbitration, it was also determined that the Brcko District of Bosnia and Herzegovina exists under the state's sovereignty and is subject to the responsibilities of its institutions, as those responsibilities derive from the Constitution of BiH.<sup>3</sup> Furthermore, the Federation of Bosnia and Herzegovina, as one of the two entities, consists of ten cantons, each with its own constitution containing provisions related to the protection of human rights. Therefore, a detailed analysis of every level of government in Bosnia and Herzegovina, along with an overview of its normative and institutional protection mechanisms, would exceed the scope of this analysis. Accordingly, this analysis will focus exclusively on the state-level system for the protection of human rights and fundamental freedoms.

The rights and freedoms of every individual in Bosnia and Herzegovina are stipulated in the Constitution, international treaties or conventions to which Bosnia and Herzegovina has acceded, as well as other relevant legal provisions.

The Constitution of Bosnia and Herzegovina is an integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to as the Dayton Peace Agreement). The Dayton Peace Agreement, which was signed on 14 December 1995 in Paris, is the result of a political compromise reached with the aim of stopping the war, which is evident in its provisions.

The war against Bosnia and Herzegovina had, as its primary goals, “the disintegration of the state of Bosnia and Herzegovina and the violent tearing apart

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1 The Constitution of the Federation of Bosnia and Herzegovina contains a separate chapter (Chapter II) dedicated to human rights and fundamental freedoms. See: the Constitution of the Federation of Bosnia and Herzegovina [Online]. Available at: <https://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/FBH/FBH%20CONSTITUTION%20FBH%201-94%20and%2013-97.pdf> (Accessed: 12 January 2025).

2 The Constitution of the Republika Srpska contains a separate chapter (Chapter II) dedicated to human rights and fundamental freedoms. See: the Constitution of the Republika Srpska.

3 Brcko District is jointly owned by (a condominium of) the Entities and is a unit of local self-government with its own institutions, laws and regulations, with powers and status definitively prescribed by the awards of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brcko Area. See at: Parliamentary Assembly of Bosnia and Herzegovina (2009) ‘Amendment I to the Constitution of Bosnia and Herzegovina’ [Online]. Available at: [https://www.ustavnisud.ba/public/down/Amendment\\_I\\_to\\_the\\_Constitution\\_of\\_BiH\\_\(OHR\\_and\\_CC\).pdf](https://www.ustavnisud.ba/public/down/Amendment_I_to_the_Constitution_of_BiH_(OHR_and_CC).pdf) (Accessed: 4 January 2025).

of its social, political, cultural and ethnic fabric through crime, genocide, and massive violations of human rights.”<sup>4</sup> Therefore, the Dayton Peace Agreement is

imbued with the idea that democracy and human rights are precisely the factors of building the Bosnian state, the prerequisites for the restoration of that torn fabric, and the mechanism that leads the state of Bosnia and Herzegovina into European integration.<sup>5</sup>

The Dayton Peace Agreement contains 11 annexes, of which Annex 4 is the Constitution of BiH. For a more complete understanding of the Constitution of BiH, it is necessary to view it together with Annex 3 (Agreement on Elections),<sup>6</sup> Annex 6 (Agreement on Human Rights), Annex 7 (Agreement on Refugees and Displaced

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4 Bakšić Muftić, 2002, p. 314.

5 Ibid.

6 In order to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout Bosnia and Herzegovina, in accordance with relevant documents of the Organisation for Security and Cooperation in Europe (OSCE), the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska have agreed about conditions for democratic elections. Furthermore, according to Article V of Annex 3, the Federation of Bosnia and Herzegovina and the Republika Srpska have agreed to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina. See: The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia (1995a) ‘Annex 3 of The General Framework Agreement for Peace in Bosnia and Herzegovina’ [Online]. Available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf> (Accessed: 4 January 2025).

Persons),<sup>7</sup> and Annex 10 (Agreement on Civilian Implementation of the Peace Agreement).<sup>8</sup>

The Constitution of BiH must be viewed as a whole – the parts of which are closely interconnected – and individual provisions cannot be interpreted separately without the complementary meaning of other provisions. Although there can be no question of mutual supremacy of the individual constitutional provisions, the Constitution of BiH establishes the fundamental principles on which the state is based, which are, *inter alia*, expressed in the preamble to the Constitution of BiH.

Considering human rights protection mechanisms – in addition to judicial authorities, who certainly represent the most important institution in resolving disputes – the key role in the process of protecting human rights and fundamental freedoms is played by the institution of the Human Rights Ombudsman of Bosnia and Herzegovina, the Constitutional Court of BiH, and the Ministry of Human Rights and Refugees of BiH. Furthermore, in its foreign policy activities, the Ministry of Foreign Affairs of BiH<sup>9</sup> promotes the policy of protecting human rights and fundamental freedoms and advocates for the strengthening of democracy and

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7 According to Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska have agreed that “all refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina.” See more: The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia (1995c) ‘Annex 7 of The General Framework Agreement for Peace in Bosnia and Herzegovina’ [Online]. Available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf> (Accessed: 4 January 2025).

8 According to Annex 10 of The General Framework Agreement for Peace in Bosnia and Herzegovina, the Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, the Federation of Bosnia and Herzegovina and the Republika Srpska have agreed that the implementation of the civilian aspects of the peace settlement will entail a wide range of activities including continuation of the humanitarian aid effort for as long as necessary; rehabilitation of infrastructure and economic reconstruction; the establishment of political and constitutional institutions in Bosnia and Herzegovina; promotion of respect for human rights and the return of displaced persons and refugees; and the holding of free and fair elections according to the timetable in Annex 3 of the General Framework Agreement. Furthermore, they have requested the designation of a High Representative, to be appointed consistent with relevant United Nations Security Council resolutions, to facilitate the Parties’ own efforts and to mobilise and, as appropriate, coordinate the activities of the organisations and agencies involved in the civilian aspects of the peace settlement by carrying out, as entrusted by a U.N. Security Council resolution. See more: The Republic of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia (1995d) Annex 10 of The General Framework Agreement for Peace in Bosnia and Herzegovina [Online]. Available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf> (Accessed: 4 January 2025).

9 See more about the competences and foreign policy activities of the Foreign Affairs of BiH [Online]. Available at: <https://www.mvp.gov.ba/en> (Accessed: 4 January 2025).

the promotion of human rights. It is also important to note that the Human Rights Commission of the Constitutional Court of BiH is the successor to the Human Rights Chamber, which was originally established by Annex 6 of the Dayton Peace Agreement.

In addition to the above institutions, special bodies have been formed within the state administration system, aiming to further promote and improve the system of human rights protection. These include the Agency for Gender Equality, the Roma Committee, the Council for Persons with Disabilities, the Commission for Relations with Religious Communities, and others.

## **2. Norms and Protection of Human Rights in the Constitution of BiH**

As previously indicated, human rights in Bosnia and Herzegovina are regulated by the provisions of the Constitution of Bosnia and Herzegovina, which contain several constitutional principles and elements of state organisation that are characteristic of modern democratic states.

The provision on the applicability of the European Convention and the other 15 international conventions, as set out in Annex 1, «constitutionalise» the entire package of human rights and fundamental freedoms of various types and scopes.

Furthermore, Article III/3.b) of the Constitution establishes that the general principles of international law are a key part of the legal order in Bosnia and Herzegovina and the Entities. In this regard, when interpreting the legal norms that make up the integrity of the legal order in Bosnia and Herzegovina, the applicable general rules of international law must not be ignored.

Given the fact that the applicable Constitution is simultaneously an integral part of an international treaty – which also determines its legal nature – in the following section, we will briefly review the most significant constitutional normative solutions related to human rights and freedoms and their protection.

### **■ 2.1. Preamble to the Constitution of Bosnia and Herzegovina**

As an integral part of the Constitution of BiH, the preamble has a normative character and is extremely important for understanding the subject of this analysis. Namely, 10 paragraphs in the preamble of the Constitution of BiH contain what have been described as «10 commandments for peaceful coexistence in a heterogeneous society.»<sup>10</sup>

The preamble of the Constitution of BiH mentions, among other things, the concepts of human dignity, freedom, equality, peace, justice, tolerance and reconciliation. From the preamble of the Constitution, as well as from the

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10 Steiner and Ademović, 2010, p. 36.

instruments on human rights referred to by the constitution framers, the goal is clearly seen: «creating a legal framework for a state that has sovereignty, territorial integrity and political independence, which is based on democratic principles and in which human rights – civil, political, economic, cultural and social – should be respected.»<sup>11</sup>

Based on the first paragraph of the Preamble of the BiH Constitution, which reads: ‘Relying on respect for human dignity, freedom and equality’, it is evident that the basic and central constitutional values represent the assumptions and determinants of a democratic society. Namely, on the basis of Article II/6. of the Constitution of BiH, the state ‘Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms’.

The second paragraph of the Preamble to the Constitution of BiH reads: “Dedicated to peace, justice, tolerance, and reconciliation”; it undoubtedly expresses the intention of the framers of the Constitution to stabilise and build the society of Bosnia and Herzegovina. In pluralistic societies, such as the Bosnian one, peace, justice and tolerance, as basic constitutional values, are of exceptional importance for the protection of human rights and freedoms. This is supported by paragraph 3 of the Preamble to the Constitution of BiH, which reads: “Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society.” This also contributes to the definition of constitutional and legal values in Bosnia and Herzegovina. The practice of the Constitutional Court of BiH indicates that the Court often connects paragraph 3 with other constitutional provisions. As Steiner and Ademović state:

The third paragraph of the Preamble to the Constitution of BiH reaches, in principle, the border of a guideline, the role of which is to specify and shape the multiethnic character of the state authority in Bosnia and Herzegovina in accordance with the relevant international rights listed in Annex 1 to the Constitution of BiH.<sup>12</sup>

This paragraph, among other things, regulates that the most adequate instrument for achieving a peaceful and pluralistic society is represented by state institutions.

In paragraph 4 of the Preamble to the Constitution of BiH, “Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy,” the framers of the Constitution posited the concept of a social state (general welfare) as a constitutional principle, “declaring economic growth as a constitutional goal, and the protection

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11 Bakšić Muftić, 2002, p. 316.

12 Ibid., p. 44.

of private property and the development of a market economy as a framework for an appropriate economic order.”<sup>13</sup>

As a full member of the United Nations (UN), Bosnia and Herzegovina is obliged to act in accordance with the goals and principles on which the UN was founded. Namely, in accordance with Article I/1. of the Constitution of BiH,

The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be ‘Bosnia and Herzegovina’, shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognised borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organisations within the United Nations system and other international organisations.<sup>14</sup>

In this regard, the obligation to respect the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina, in accordance with international law, is also regulated. This is supported by paragraphs 5 and 6 of the Preamble to the Constitution of BiH.<sup>15</sup>

In the 1990s, during the aggression against Bosnia and Herzegovina, international humanitarian law did not prove to be effective in practice – it could not prevent genocide, ethnic cleansing, war crimes and crimes against humanity. In order to highlight the importance of the Geneva Conventions and the accompanying protocols, the constitution framers regulated the unlimited obligation of international humanitarian law in paragraph 7 of the Preamble to the Constitution of BiH, which reads: “Determined to ensure full respect for international humanitarian law.”<sup>16</sup> The four Geneva Conventions and two Additional Protocols are also included in the catalogue of 15 instruments for the protection of human rights in Annex I to the Constitution of BiH, and as such, represent substantive constitutional law.

Paragraph 8 of the Preamble to the Constitution of BiH (“Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments”<sup>17</sup>) outlines the protection of human rights in accordance with relevant international instruments. Furthermore, some of the aforementioned international instruments are also

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13 Ibid., p. 50.

14 Article I/1. of the Constitution of BiH.

15 See at: paragraphs 5 and 6 of the Preamble of the Constitution of BiH.

16 See at: paragraph 7 of the Preamble of the Constitution of BiH.

17 See at: paragraph 8 of the Preamble of the Constitution of BiH.

contained in Annex 1 to the Constitution of BiH, which further emphasises their binding force, as well as the obligation of Bosnia and Herzegovina, as a state, to protect human rights.

The tenth paragraph of the Preamble to the Constitution of Bosnia and Herzegovina – which reads: “Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows” – is of exceptional importance when it comes to the “realisation” of human rights in Bosnia and Herzegovina. Namely, if the provisions on human rights are viewed in the context of the specificities of Bosnia and Herzegovina, in terms of the existence of “constituent peoples” and consequently the protection of collective rights, it can be said that the necessary balance in respecting individual and protecting collective rights has not been established in an appropriate manner.

For example, according to the Constitution of BiH, only members of the constituent peoples can be elected to the Presidency of BiH. As the Constitution of Bosnia and Herzegovina, in certain places, established the proportional participation of the constituent peoples in the election of state bodies, the “quota” system was set up in the Presidency of BiH, along with the composition of the House of Peoples of the Parliamentary Assembly of BiH, when electing the Speaker and Deputy Speaker of the Houses. Furthermore, the provisions of the Constitution of BiH also regulate the manner of decision-making in the House of Peoples, which includes the conditionality of the minimum presence and representation of representatives of one of the constituent peoples. Finally, the provisions of the Constitution of BiH also institutionalise the protection of the vital interests of the constituent peoples, as well as the protection of the vital interests of the Entities.

In addition to the Preamble, the Constitution of BiH also contains other provisions on the protection of human rights and fundamental freedoms that refer to the principles and provisions of international law.

In the following part of the text, we will focus specifically on Article II of the Constitution of BiH.

### ■ 2.2. *Article II of the Constitution of BiH*

Article II explicitly regulates the obligation of the state of Bosnia and Herzegovina and its Entities to ensure the highest level of internationally recognised human rights and fundamental freedoms.

Namely, Article II/1. regulates that:

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission

for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.<sup>18</sup>

From the provisions of the Constitution of Bosnia and Herzegovina, it is clear that the constitutional legislator opted for the term *human rights and fundamental freedoms*.

The obligation to ensure the provision of legal protection at the highest level actually represents a guideline for the activities of the competent authorities in the process of protecting human rights and freedoms. The general clause contained in this paragraph is further elaborated in other articles of the Constitution of BiH.

Specifically, the obligation *to protect the covered rights* is contained in Articles I/4,<sup>19</sup> I/7.b),<sup>20</sup> II/2, II/3, II/4, II/5, II/7, III/2.c)<sup>21</sup> of the Constitution of BiH, as well as in Annex I. The issue of *subjects* who are obliged to provide protection is regulated in Articles I/4, II/6 and III/2.c) of the Constitution of BiH, while issues related to rights holders are regulated by Articles II/3, II/4 and II/5.<sup>22</sup>

In other words, the references in the Constitution to international instruments, particularly in relation to human rights and freedoms, not only allow and require BiH to attain the highest human rights standards but also build into the Constitution a certain dynamism enabling BiH to follow the development of human rights standards at the international level.

Furthermore, Article II/2. of the Constitution of BiH stipulates that:

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other laws.

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18 Article II/1 of the Constitution of BiH.

19 There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede the full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities.

20 'No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

21 'The Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognised standards and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.'

22 See at: Constitution of BiH.

Therefore, based on the constitutional provision, the European Convention in the legal order of Bosnia and Herzegovina is «above all other law.» This formulation positions the European Convention as a fundamental pillar of the constitutional order in Bosnia and Herzegovina.

With regard to the formulation on the direct applicability of the European Convention in Bosnia and Herzegovina, it is a provision that allows for the direct application of the rights contained therein by the courts in the country without the adoption of subsequent acts for their implementation. At the same time, the essence of the concept of direct applicability is to prohibit state bodies from preventing the application of these rights in any way or from transforming these rights into national law and concealing their true source and meaning.

According to the existing practice of the Constitutional Court of Bosnia and Herzegovina, direct application of the European Convention by regular courts 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 European Convention directly:

The Constitutional Court hereby recalls that, in accordance with the provisions of Article II/2 of the Constitution of Bosnia and Herzegovina, the rights and freedoms provided for in the European Convention and its protocols shall be directly applicable in Bosnia and Herzegovina and shall have priority over all other law. In this specific case, according to the Constitutional Court, the regular courts failed to apply the constitutional provisions indicating the priority of the application of the European Convention and its protocols over any other law. Therefore, the regular courts, when deciding on claims, have a constitutional obligation to apply international standards for the protection of human rights and freedoms, which was not done in this specific case.<sup>23</sup>

The obligation to directly apply the European Convention and the instruments from Annex I to the Constitution of BiH is often neglected in practice. This is supported by final judgments and decisions of domestic courts, as well as the European Court of Human Rights.

Article II/3. of the Constitution of BiH stipulates that all persons within the territory of Bosnia and Herzegovina shall enjoy human rights and fundamental freedoms, including:

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23 Decision of the Constitutional Court of BiH in case AP 369/10, para. 34.

- a) The right to life.
- b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- c) The right not to be held in slavery or servitude or to perform forced or compulsory labour.
- d) The rights to liberty and security of person.
- e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- f) The right to private and family life, home, and correspondence.
- g) Freedom of thought, conscience, and religion.
- h) Freedom of expression.
- i) Freedom of peaceful assembly and freedom of association with others.
- j) The right to marry and to found a family.
- k) The right to property.
- l) The right to education.
- m) The right to freedom of movement and residence.<sup>24</sup>

Furthermore, Article II/4 of the Constitution of BiH also regulates the prohibition of discrimination. Namely, in accordance with Article II/4,

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

However, in Bosnia and Herzegovina, while human rights are generally (formally) respected, the full enjoyment of guaranteed rights and freedoms is lacking. Namely, the enjoyment of guaranteed rights and freedoms, primarily political, is often conditioned by (non)membership of a particular constituent people. Therefore, the active and passive voting rights, as well as the principle of non-discrimination, of particular significance, since these rights highlight the challenges faced by Bosnian-Herzegovinian society. For instance, the Presidency of BiH consists of three members: one Bosniac and one Croat, each directly elected

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24 Article II/3. of the Constitution of BiH.

from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.<sup>25</sup>

Article X/1 of the Constitution of BiH regulates the procedure for amending the Constitution, but Article X/2 establishes that: «No amendment to this Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution or alter the present paragraph.» Thanks to Article X/2 of the Constitution of BiH, Article II of the Constitution of BiH has become the only article that may not be amended in any way, and the human rights and freedoms regulated therein may not be reduced.

### 3. Institutions Responsible for the Protection of Human Rights in Bosnia and Herzegovina

The Dayton Peace Agreement established complex constitutional and political arrangements in Bosnia and Herzegovina, as well as a complex system of human rights protection, which was expected to respond to the challenges of the post-conflict transition.

As previously emphasised, when it comes to human rights protection mechanisms, in addition to judicial authorities – who represent the most important institution in resolving disputes – the key role in the process of protecting human rights and fundamental freedoms is played by the institution of the Ombudsman for Human Rights of Bosnia and Herzegovina,<sup>26</sup> the Constitutional Court of BiH, and the Ministry of Human Rights and Refugees of BiH.

In addition to the aforementioned institutions, a special role is also played by the Court of Bosnia and Herzegovina (which was not established by

25 For instance, citizens who do not belong to the constituent peoples cannot be elected to the Presidency. Likewise, a Serb from the Federation cannot be a candidate for a member of the Presidency, nor can they vote for a member of the Serb people. The European Court of Human Rights has ruled on these issues on multiple occasions. In this regard, see: the decisions of the European Court of Human Rights in the cases: *Case of Sejdić and Finci vs. Bosnia and Herzegovina*, Application Nos. 27996/06 and 34836/06, Judgement 22 December 2009; *Case of Pilav vs. Bosnia and Herzegovina*, Application No. 41939/07, Judgement 9 September 2016; *Case of Zornić vs. Bosnia and Herzegovina*, Application No. 3681/06, Judgement 15 December 2014; *Case of Pudarić vs. Bosnia and Herzegovina*, Application No. 55799/18, Judgement 8 December 2020.

26 The Constitution of Bosnia and Herzegovina, as well as the provisions of Annex 6 of the Dayton Peace Agreement, established a rather unusual state institution for the protection of human rights – the Human Rights Commission, composed of the Human Rights Ombudsman and the Human Rights Chamber. The main difference between these two institutions is the following: while the Chamber was formed as a «judicial body» that issues final and binding decisions in cases of human rights violations of BiH citizens, the Ombudsman is an institution whose decisions have the character of authoritative but legally non-binding recommendations for government bodies at the state-level of BiH.

the Constitution of BiH),<sup>27</sup> as well as the constitutional courts of the Entities and other courts operating within the institutional framework of the country. At the state level, no Supreme Court has been established. Supreme Courts exist only at the entity level – in the Federation of Bosnia and Herzegovina and in the Republic of Srpska.<sup>28</sup>

### ■ 3.1. *Human Rights Commission*

With the aim of fulfilling the obligations assumed by the signatory to Annex 6, Article II establishes the Human Rights Commission, consisting of the Office of the Ombudsman and the Human Rights Chamber.

#### 3.1.1. *Human Rights Chamber*

The Human Rights Chamber, composed of 14 members during its existence, was competent to:

receive, referred by the Ombudsman, on behalf of the complainant, or directly from any Party or person, non-governmental organisation, or group of individuals claiming to be victims of violence by any Party or acting on behalf of victims who are deceased or missing, for the purpose of resolving or deciding on applications relating to alleged or apparent violations of human rights.<sup>29</sup>

The Human Rights Chamber began its work in 1996, and its mandate expired on 31 December, 2003.<sup>30</sup> In that period, the Chamber received 15,169 different individual applications, in which it was claimed that one or more of the defendants

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27 The Court of Bosnia and Herzegovina was established to ensure the effective exercise of the competencies of the state of Bosnia and Herzegovina and the respect for human rights and the rule of law within its territory. The Court has jurisdiction over criminal offenses established by the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina. The Court has jurisdiction to decide on: a) appeals against judgments or decisions rendered by the Criminal Department of this Court; b) appeals against judgments or decisions rendered by the Administrative Department of this Court; c) extraordinary legal remedies against final decisions issued by the Court's departments, except for requests for a retrial. Furthermore, the Court is also competent to: a) adjudicate complaints concerning violations of the election law and additional regulations and instructions issued by the Central Election Commission of BiH; b) decide in all other matters as provided by the laws of Bosnia and Herzegovina.

The Court has its own budget, which constitutes an integral part of the Budget of Bosnia and Herzegovina.

28 For a more detailed discussion, see: Šarčević, 2011.

29 Article VIII of Annex 6.

30 Based on Article XIV of Annex 6, which refers to the transfer of responsibility, it is stipulated that: «Five years after the entry into force of this Agreement, responsibility for the continuation of the Commission's activities should be transferred from the contracting parties to the institutions of Bosnia and Herzegovina, unless the parties agree otherwise.»

(Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republic of Srpska) violated human rights and freedoms guaranteed by Annex 6. However, during its mandate, the Chamber did not resolve all the cases received (approximately 9,000 cases remained pending). On January 1, 2004, the Commission for Human Rights was formed in the Constitutional Court of Bosnia and Herzegovina. As an independent body and the legal successor of the Human Rights Chamber, the Commission had the primary task of completing the work and making decisions in the remaining approximately 9,000 items. The Commission worked from 1 January 2004 to 31 December 2006; and, during this period, completed approximately 8,500 cases of the former Human Rights Chamber. Approximately 500 unfinished cases were taken over by the Constitutional Court in 2007 based on the Agreement between Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, in accordance with Article XIV of Annex 6 of the Dayton Peace Agreement, with the obligation to complete these cases by 30 June 2007.<sup>31</sup>

### 3.1.2. *The Institution of the Ombudsman for Human Rights of BiH*

The Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter referred to as: the Ombudsman)<sup>32</sup> is an independent institution established<sup>33</sup> for the purpose of promoting good governance and the rule of law, and protecting the rights and freedoms of natural and legal persons, and in accordance with the Constitution of BiH and international agreements contained in Annex I

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31 For more details see: Completion of proceedings in cases of the former Human Rights Chamber of Bosnia and Herzegovina and the termination of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina [Online]. Available at: <https://www.ustavnisud.ba/bs/okoncanje-rada-na-predmetima-bivseg-doma-za-ljudska-prava-bosne-i-hercegovine-i-gasenje-aneksa-6-uz-opsti-okvirni-sporazum-za-mir-u-bih> (Accessed: 25 October 2024).

32 In addition to the Human Rights Ombudsman of BiH, since 1995, and 2000, such an institution has also existed at the level of the Federation of BiH and Republika Srpska. With the termination of the mandate of the Human Rights Chamber on 31 December 2003, the Ombudsman of BiH remained the only state institution for the protection of human rights at the state-level in BiH, while the Ombudsman of the FBiH and the Ombudsman of the RS continued to work on resolving cases of inadequate work of the public administration and violations of human rights of citizens at the entity level. The Ombudsman for Human Rights of Bosnia and Herzegovina began its work in 1996, when this function was performed by one person, a foreign citizen. At the beginning of 2004, the institution was taken over by citizens of BiH, and the number of ombudsmen were increased to three. In April 2006, amendments to the Law on the Ombudsman for Human Rights of BiH were adopted, based on which a single structure of ombudsman is established in the country, which also implies the termination of the work of such institutions at the entity level.

33 Article IV of Annex 6 establishes the Office of the Human Rights Ombudsman of BiH, sets out the criteria that members of the Office of the Human Rights Ombudsman must meet and explicitly states that the institution of the Ombudsman is completely independent in its work; no person or government body may influence its function in the implementation of its mandate.

to the Constitution of BiH. In this regard, the Ombudsman monitors the activities of government bodies throughout the territory of BiH, and no person or government body in BiH is allowed to interfere or influence the work and activities of the Ombudsman. The Ombudsman has broad investigative powers, including access to all information, documents and premises of public authorities.

The work and functioning of the Ombudsman for BiH is determined by Annex 4 and Annex 6 of the Dayton Peace Agreement.

With regard to the provisions of Annex 4 of the Dayton Peace Agreement, according to Article II/1 of the Constitution, Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina, as provided for in Annex 6 to the General Framework Agreement.

On the other hand, Annex 6 of the Dayton Peace Agreement refers to the Human Rights Agreement, which ensures the highest level of internationally recognised human rights and fundamental freedoms to all persons on the territory of Bosnia and Herzegovina. This includes the rights and freedoms guaranteed by the European Convention and its Protocols, as well as other international agreements specifically listed in the Appendix to Annex 6.<sup>34</sup>

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34 Appendix I of Annex 6 of the Dayton Peace Agreement lists international agreements for the protection of human rights and fundamental freedoms that have direct application in BiH: Convention on the Prevention and Punishment of the Crime of Genocide; Geneva Conventions I-IV on the Protection of the Victims of War and the 1977 Geneva Protocols I-II thereto; European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; Convention relating to the Status of Refugees and the 1966 Protocol thereto; Convention on the Nationality of Married Women; Convention on the Reduction of Statelessness; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; European Charter for Regional or Minority Languages; and Convention for the Protection of National Minorities. Annex 6. Available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf> (Accessed: 10 January 2025).

Article V of Annex 6 establishes the competencies of the Ombudsman:

The Ombudsman may investigate, either on his or her own initiative or in response to an allegation by any Party or person, non-governmental organisation, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, alleged or apparent violations of human rights (...).

The Ombudsman shall determine which allegations warrant investigation and in what priority, giving particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds.

The Ombudsman shall issue findings and conclusions promptly after concluding an investigation. A Party identified as violating human rights shall, within a specified period, explain in writing how it will comply with the conclusions (...).

The Ombudsman may also present special reports at any time to any competent government organ or official. Those receiving such reports shall reply within a time limit specified by the Ombudsman, including specific responses to any conclusions offered by the Ombudsman.

The Ombudsman shall publish a report, which, in the event that a person or entity does not comply with his or her conclusions and recommendations, will be forwarded to the High Representative described in Annex 10 to the General Framework Agreement while such office exists, as well as referred for further action to the Presidency of the appropriate Party (...).<sup>35</sup>

According to Article VI of Annex 6,

The Ombudsman shall have access to and may examine all official documents, including classified ones, as well as judicial and administrative files, and can require any person, including a government official, to cooperate by providing relevant information, documents and files. The Ombudsman may attend administrative hearings and meetings of other organs and may enter and inspect any place where persons deprived of their liberty are confined or work.

The Ombudsman and staff are required to maintain the confidentiality of all confidential information obtained, except where required

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35 Article V of Annex 6.

by order of the Chamber, and shall treat all documents and files in accordance with applicable rules.<sup>36</sup>

In addition to the above Annexes, the institution of the Ombudsman is also regulated by other legal provisions.

The Law on the Ombudsman for Human Rights of Bosnia and Herzegovina<sup>37</sup> establishes that the institution of the Ombudsman is the main guarantor of the rule of law and the protection of human rights and fundamental freedoms throughout the territory of Bosnia and Herzegovina. In this regard, it acts on the basis of individual complaints received from individuals or legal entities, or ex officio. This law largely follows the Paris Principles of the United Nations, which represent standards for state institutions for the protection of human rights. The Rules of Procedure of the Ombudsman were adopted on the basis of the Law, which elaborate in more detail the activities of this Institution.

The independence of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina is grounded in both institutional and functional autonomy. Institutional independence<sup>38</sup> is reflected in its legal and organisational

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36 Article VI of the Constitution of BiH.

37 Law on the Human Rights Ombudsman of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 32/00, 19/02, 35/04 and 32/06.

38 One of the key elements of institutional independence is financial independence, which entails the Institution's ability to independently plan, manage, and utilise budgetary resources without political interference and without the possibility of influence from other branches of government, particularly the executive. According to the applicable provisions of the Law on the Financing of the Institutions of Bosnia and Herzegovina, the Institution of the Ombudsman has the right to autonomously prepare its own budget request, which is submitted in draft form to the Ministry of Finance and Treasury of Bosnia and Herzegovina within the time limits prescribed by law. This provision confirms the normatively recognised autonomy of the Institution in planning its financial needs. In the subsequent stages of the budgetary procedure, the Ministry of Finance and Treasury does not decide upon the request; rather, it is required to prepare an opinion on the submitted draft budget, which is then forwarded, together with the budget request, to the competent legislative bodies – the Finance and Budget Committee of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina. In this manner, the formal influence of the executive branch is minimised, and parliamentary oversight of the budgetary process is ensured.

Nevertheless, despite these positive aspects, the financial independence of the Institution is not complete, as the influence of the executive branch in the budgetary process has not been fully eliminated. The Ministry of Finance and Treasury of Bosnia and Herzegovina, as well as the Finance and Budget Committee of the House of Representatives, exert significant influence in the process of budget formulation and verification, leaving room for potential political pressure. Furthermore, the absence of an equal and substantive role for the committee responsible for human rights in the decision-making process concerning the budget limits the effective oversight necessary to safeguard institutional independence. Accordingly, it is essential to further improve the legislative framework in order to ensure the Institution's full financial independence, in line with the requirements of international standards, particularly the Paris Principles.

self-sufficiency, that is, in its complete separation from the legislative, executive, and judicial branches of government. Functional independence, on the other hand, entails the Ombudsmen's ability to perform their duties freely, impartially, and without any external influence.

The principle of functional independence is explicitly guaranteed by Article 15 of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina. Meanwhile, Article 8 of the Rules of Procedure of the Ombudsman further clarifies that Ombudsmen, in the performance of their duties, shall not receive any orders or instructions, and that no person, body, or institution has the right to interfere with their work or decision-making. This ensures their full autonomy in carrying out the entrusted responsibilities.

In addition to financial independence, organisational and administrative independence represent key components of the overall institutional autonomy of the Ombudsman. The Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina enjoys a considerable degree of organisational autonomy, as it possesses the exclusive authority to regulate its internal structure and to independently adopt internal acts governing its mode of operation and the distribution of competences. It is also important to emphasise that the Institution enjoys a certain level of administrative autonomy, as it is authorised to independently conduct recruitment procedures through public competitions, thereby ensuring the selection of professional, competent and impartial staff.

Together, these dimensions of independence constitute a solid foundation for the impartial, professional, and effective functioning of the Institution. They enable the Ombudsmen to act as objective and credible defenders of citizens' rights and freedoms, to contribute to strengthening public trust in state institutions and to ensure effective and comprehensive protection of human rights in Bosnia and Herzegovina.

The principle of impartiality is deeply embedded in all aspects of the Institution's work, and its preservation is ensured through the application of strict ethical standards and clearly defined mechanisms for the prevention of conflicts of interest. The Law on the Human Rights Ombudsman of Bosnia and Herzegovina explicitly stipulates that Ombudsmen must not perform any functions or engage in any activities that could compromise their independence or objectivity. In this regard, they are prohibited from holding membership in political parties, trade unions, non-governmental organisations, foundations or religious communities, as well as from performing duties within the executive branch, the judiciary, or the private sector. Furthermore, in order to mitigate the risk of potential pressures during their term of office, a safeguard measure has been established, allowing an Ombudsman to return to their previous position upon the expiration of their mandate, provided that they were employed in an institution prior to their appointment. This provision further strengthens the personal and professional independence of the officeholders, ensuring that Ombudsmen perform their

duties solely in the interest of protecting human rights, entirely free from any pressure, influence, or personal considerations throughout the duration of their mandate.

The Law establishes the composition, method of appointment and cases of resignation of the Ombudsman, as well as immunity and incompatibilities in performing the function of Ombudsman. In this regard, the Law stipulates that Ombudsman shall be appointed from among the members of the three constituent peoples, which does not exclude the possibility of appointment from among Others. Ombudsmen are appointed and dismissed by the House of Representatives and the House of Peoples of the Parliamentary Assembly of BiH by a majority vote, in accordance with the rules of procedure of each House. The Paris Principles establish, *inter alia*, that one of the essential elements of the independence of this institution is its pluralism. The representativeness of the institution for the protection of human rights and its composition, which reflects the social, ethnic, linguistic, and gender structure of a specific social community, significantly contribute to its efficiency. According to the Law on the Ombudsman for Human Rights of BiH, the function of “protector of human rights” is performed by three Ombudsmen.<sup>39</sup>

Pursuant to the Law, the institution of the Ombudsman for Human Rights of BiH is responsible for:

considering cases relating to poor functioning or violations of human rights and freedoms committed by any government body; acting upon receipt of a complaint or ‘ex officio’; undertaking a general investigation and making individual or general recommendations; conducting investigations into all complaints about violations of human rights and freedoms allegedly committed by military authorities; conducting investigations into all complaints regarding the poor functioning of the judicial system, or improper processing of individual cases and making recommendations for appropriate individual or general measures, provided that the Institution cannot interfere in the decision-making process of the courts, but may initiate court proceedings, or intervene in the course of the proceedings, whenever it determines that such action is necessary in the performance of its duties; ensuring equality of citizens and the elimination of all forms of discrimination; informing the public

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<sup>39</sup> Although this institution is generally tied to a single person, which makes it impossible to meet the aforementioned representativeness requirement, BiH is not the only exception to this rule. For example, in Sweden there are four Parliamentary Ombudsmen; in Austria, there is a collective body consisting of three Ombudspersons; while in Belgium, the functions of the Federal Ombudsman are performed by two persons, one of whom belongs to the French and the other to the Dutch language community.

about human rights through the media and education; publishing notices, opinions, recommendations, proposals and its reports; initiating amendments and adoption of laws and by-laws with the aim of harmonising them with international human rights standards, and ensuring the improvement of human rights and fundamental freedoms; preparing annual, periodic, special and other information and reports on the state of human rights and fundamental freedoms; cooperating, in accordance with the Constitution of BiH and existing legislation, with all domestic and international authorities and institutions dealing with the protection of human rights and fundamental freedoms.<sup>40</sup>

When it comes to the Ombudsman' reports,<sup>41</sup> they represent a kind of indicator of the level of human rights violations. For example, during 2023, as stated in the Annual Report, the BiH Ombudsman received a total of 2,794 complaints; with the cases transferred from previous years (1,768), there were 4,562 cases being processed. Work was completed on 2,831 cases, of which 1,686 were from 2023 and 1,145 cases were from previous years. When it comes to the structure of the complaints filed, in relation to the violation of rights: violations of political and civil rights – 771 cases; complaints related to the violation of economic, social and cultural rights – 741 complaints; violations of rights in the judiciary and administration – 709 complaints; violations of children's rights – 231 complaints; discrimination – 187 complaints; violations of the rights of persons deprived of their liberty – 86 complaints; violations of the rights of persons with disabilities – 56 complaints; and violations of the rights of national, religious and other minorities – 13 complaints.<sup>42</sup>

The specific competences of the Ombudsman are regulated by the Law on Ministerial Appointments, Appointments to the Council of Ministers and Other

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40 Kulić and Serdarević, 2020, pp. 11–12.

41 According to the Freedom House report, Bosnia and Herzegovina is a Partly Free country (51/100). If we look at the segments of political rights, the score is 17/40; while the score for civil liberties is 34/60. Last year's scores were 52/100 [Online]. Available at: <https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2024> (Accessed: 10 January 2025).

42 See: Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina (2024) *Annual Report on the Results of the Activities of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina for 2023*. Banja Luka: Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina [Online]. Available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2024040915403579eng.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2024040915403579eng.pdf) (Accessed: 4 January 2025).

Appointments of Bosnia and Herzegovina,<sup>43</sup> the Law on Prohibition of Discrimination and the Rules of Procedure of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina.<sup>44</sup>

The provisions of the Law on Ministerial Appointments, Appointments to the Council of Ministers and Other Appointments of Bosnia and Herzegovina empower the Ombudsman to review the appointment process carried out in accordance with the provisions of the aforementioned Law. If there is evidence that the principles or procedures for appointment to public positions under this Law have not been followed, any member of the public may file a complaint against the final appointment. The complaint is submitted to the responsible public official (head of the institution - *e.g.* minister, director of an administrative body, etc.), and a copy is submitted to the Ombudsman.

The Ombudsman may take all necessary measures to investigate the complaint. In this regard, the Ombudsman may raise issues related to the appointment procedure to which the complaint relates and may request that the responsible public official submit all documents and files related to the said appointment to his or her office. If the evidence collected indicates that the final appointment was made in violation of the Law, the Ombudsman is obliged to prepare a finding and conclusions regarding the complaint. The conclusions may include a recommendation where the evidence indicates that the principles of the Law as well as the appointment procedures established by the Law have been violated. The Ombudsman may, without disclosing confidential information (including personal data about candidates), publish the findings and conclusions, including recommendations. The Ombudsman is also obliged to submit his/her findings and conclusions to the complainant.<sup>45</sup>

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43 The Law on Ministerial Appointments, Council of Ministers Appointments, and Other Appointments of Bosnia and Herzegovina, Official Gazette of BiH, Nos. 07/03 and 37/03, available at: <https://odgovorno.ba/wp-content/uploads/2020/09/Zakon-o-ministarskim-imenovanjima-imenovanjima-Vijeca-ministara-i-drugim-imenovanjima-BiH-1-1.pdf> (Accessed: 10 January 2025).

44 Rules of Procedure of the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina, Official Gazette of BiH, No. 104/11 [Online]. Available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2013041003424659bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013041003424659bos.pdf) (Accessed: 10 January 2025).

45 For example, the Human Rights Ombudsman of BiH received a complaint that pointed to irregularities in the procedure for the election and appointment of four members of the Governing Board of the University of Sarajevo, appointed by the Government of Sarajevo Canton, and a violation of the Law on Higher Education of Sarajevo Canton. After conducting an investigation, the Ombudsman issued a recommendation to the Government of Sarajevo Canton to consider the possibility of amending the Law on Civil Service of Sarajevo Canton in terms of clearly defining the conditions under which a civil servant may be a member of the Governing Board, Supervisory Board, Assembly, Administration, or Management, or in the capacity of an authorised person, and taking into account the allegations in the recommendation. The aforementioned recommendation has not been implemented. See: Kulić and Serdarević, 2020, p. 15.

On the other hand, the Law on Prohibition of Discrimination stipulates that the Ombudsman is the central institution for protection against discrimination and is competent to:

‘receive individual and group complaints regarding discrimination; provide necessary information to natural and legal persons who have filed a complaint due to discrimination on their rights and obligations, and the possibilities of judicial and other protection; regarding the complaint, the Ombudsman of BiH may decide not to accept the complaint, or to initiate an investigation procedure in accordance with special regulations; propose the initiation of a mediation procedure in accordance with the provisions of the Law on Mediation; collect and analyse statistical data on cases of discrimination; submit annual and, if necessary, extraordinary reports on the occurrence of discrimination to legislative bodies of all levels of government in Bosnia and Herzegovina; inform the public about the occurrence of discrimination; conduct research in the field of discrimination on its own initiative; provide opinions and recommendations with the aim of preventing and combating discrimination, and proposes appropriate legal and other solutions to the competent institutions in BiH; utilise its right to initiate and participate in the procedure for protection against discrimination for violations prescribed by this Law; monitor legislation and provides advice to legislative and executive bodies; work on the promotion of this law, informs the public, raises awareness, conducts campaigns and in other ways actively promotes the fight against discrimination for the purpose of its prevention; improve policies and practices aimed at ensuring equal treatment’.<sup>46</sup>

When it comes to the type of violations and the manner of the Ombudsman’s activities, the Law on Prohibition of Discrimination has not significantly expanded the Ombudsman’s jurisdiction. Namely, the jurisdictions listed in Article 7 of the Law on Prohibition of Discrimination follow the jurisdictions regulated by the Law on the Institution of the Ombudsman, as well as the Paris Principles. Conditionally speaking, the only new obligation that has been established is the submission of a special annual report on the occurrence of discrimination, as well as the possibility for the Ombudsperson to refer persons to mediation procedures.

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<sup>46</sup> Article 7 of the Law on Prohibition of Discrimination, Official Gazette of BiH, Nos. 59/09 and 66/16 [Online]. Available at: [https://fuzip.gov.ba/wp-content/uploads/2022/09/Zakon\\_o\\_zabrani\\_diskriminacije\\_sl\\_glasnik\\_bih\\_broj\\_59\\_2009\\_i\\_66\\_2016-1.pdf](https://fuzip.gov.ba/wp-content/uploads/2022/09/Zakon_o_zabrani_diskriminacije_sl_glasnik_bih_broj_59_2009_i_66_2016-1.pdf) (Accessed: 12 January 2025).

However, the Law on Prohibition of Discrimination expands the jurisdiction of the Ombudsperson with regard to violators of rights. Namely, the traditional jurisdiction of the Ombudsperson as an institution that stands between the authorities and individuals or groups has been expanded, and (only) in the area of discrimination, this institution has the possibility to consider complaints about the actions of individuals.

In conclusion, the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina embodies the key features of modern ombudsman mechanisms – independence, a dual function encompassing both oversight and protection, accessibility and informality of procedure, action based on moral authority and a high degree of transparency achieved through the regular publication of comprehensive reports on its work. These characteristics position the Institution as a crucial corrective mechanism in the relationship between public administration and citizens, as well as an indispensable pillar of the contemporary system for the protection of human rights.

### ■ 3.2. *Constitutional Court of Bosnia and Herzegovina*

The Constitutional Court of Bosnia and Herzegovina has existed since the time when Bosnia and Herzegovina was part of the former Socialist Federal Republic of Yugoslavia (SFRY). It was first established on 15th February 1964 in accordance with the 1963 Constitution of the SFRY and later continued to exist on the basis of the 1974 Constitution. The jurisdiction of the initially established Constitutional Court of BiH was primarily focused on abstract normative control, such as the assessment of the compliance of republican laws with the Constitution and the assessment of the constitutionality and legality of other general acts, self-government acts, resolution of disputes between the Republic vs. other socio-political communities and conflicts of jurisdiction between courts and bodies of a socio-political community.

Defining the preconditions for the further development of a democratic political system and a market economy and modifying the internal structure of the state, the 1995 Constitution of BiH (Annex 4) also established the institutional framework of the Constitutional Court on a completely new and different political and legal basis compared to the past. With the changes made, the constitutional position and competences of the Constitutional Court of BiH made it compatible with the standards of constitutional judicature—both as an independent “guardian of the constitution” and as an institutional arbiter of the protection of human rights and freedoms.<sup>47</sup>

The Constitutional Court of Bosnia and Herzegovina has nine members. Four members are selected by the House of Representatives of the Federation, and two members by the Assembly of the Republika Srpska. The remaining

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47 See: Omerdić, 2022; Trnka, 2006; Ibrahimagić, 2009.

three members are selected by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina.<sup>48</sup> The judges shall be distinguished lawyers of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights could not be citizens of Bosnia and Herzegovina or of any neighbouring state. The judges shall act in the Constitutional Court in their personal capacity.

The Constitutional Court elects its President and Vice-Presidents from among the judges. The term of office of President of the Constitutional Court shall be three years, and it shall commence upon election. The President of the Constitutional Court represents the Constitutional Court, organises, directs, convenes and chairs the sessions and public hearings, signs the decisions of the Constitutional Court, is responsible for cooperation with other institutions, issues individual acts and carries out other duties as specified in these Rules and other acts of the Constitutional Court.

Each judge has the right and obligation to participate in the work and decision-making by the Constitutional Court and those of its working bodies of which he or she is a member. The position of a judge is incompatible with various positions, including a membership in a political party or a political organisation in Bosnia and Herzegovina; a membership in a legislative, executive and other judicial authority in Bosnia and Herzegovina or the Entities and the Brčko District of Bosnia and Herzegovina; and any other position that could affect the impartiality of the judge.

Article 24 of Rules relates to the status of Judge Rapporteur:

- (1) As a rule, following the examination of admissibility, a case shall be assigned to the Judges Rapporteurs in an alphabetical order of the judges' surnames. The President of the Constitutional Court may decide to assign cases to the Judges Rapporteurs in a different manner.
- (2) The cases concerning the same factual and legal issues may be assigned to a single Judge Rapporteur.
- (3) When deciding on a case the Constitutional Court may, on a proposal of the Judge Rapporteur, decide on his/her discharge from the case.

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48 The Constitution of BiH does not stipulate that the Federation of BiH must elect two Bosniak and two Croat members, and for the Republika Srpska to elect two Serb members of the Constitutional Court. However, an analysis of the current practice and procedure for electing judges to the Constitutional Court leads to the conclusion that the principle of ethnic parity is implemented without exception, although it is not stipulated by the Constitution itself.

- (4) A Judge Rapporteur shall give his/her approval for a proposal of the decision to be brought before the session of the Constitutional Court.'

The Secretariat of the Constitutional Court of Bosnia and Herzegovina (hereinafter: the Secretariat) assists the Constitutional Court in performing its professional and other duties. The Secretariat is managed by the Secretary General who assists the Constitutional Court in the performance of its functions, along with being responsible for the organisation and activities of the Secretariat under the authorisation of the President of the Constitutional Court.

In addition to the Secretary General of the Constitutional Court, the most complex professional duties relating to exercising of the rights and duties of the Constitutional Court are carried out by the Registrar, Heads of Departments, Head of Office of the President of the Constitutional Court, Assistant Secretary General of the Constitutional Court and legal advisors to the judges who are appointed and dismissed by the plenary Court. Distinguished lawyers with experience in the same or similar legal activities and in accordance with the conditions prescribed by a special act of the Constitutional Court may be appointed to the Secretary General of the Constitutional Court, Registrar, Heads of Departments, Head of Office of the President, Assistant Secretary General of the Constitutional Court and as legal advisors to the judges. The Registrar performs the duties of the Deputy Secretary General in the event he/she is absent or otherwise prevented.

The work of the Constitutional Court is carried out through permanent and ad hoc commissions and other bodies of the Constitutional Court. The permanent commissions are: a) the Editorial Commission; b) the Commission for Administrative Affairs; c) the Commission for Budget; d) the Commission for Publication, Information and Information Systems. The work of the permanent commissions is regulated in the Rules. *Ad hoc* commissions might be established for the purpose of drafting general acts, professional papers, analysis and for other purposes.

According to the provisions of the Rules of the Constitutional Court of Bosnia and Herzegovina (Rules), the Constitutional Court shall be independent of all other governmental bodies in Bosnia and Herzegovina and of any other external influences. Furthermore, the Constitutional Court shall exercise its rights and obligations in accordance with the Constitution, Rules and other acts of the Constitutional Court. The organisation of the Constitutional Court shall be exercised under the principle of administrative and financial independence.

According to Article 3 of the Rules:

- (1) The funds for the operation of the Constitutional Court shall be secured within the Budget of the institutions of Bosnia and Herzegovina.

- (2) The use of the approved funds shall be governed by an internal act of the Constitutional Court.
- (3) The Secretary General of the Constitutional Court shall prepare a Draft Budget of the Constitutional Court and, following the procedure conducted in accordance with these Rules, shall submit it to the Ministry in charge of the preparation of the Budget of the institutions of Bosnia and Herzegovina.
- (4) The Minister of the competent Ministry referred to in paragraph 3 of this Article shall submit an Opinion with reasoning on the Draft Budget to the Constitutional Court.
- (5) After the competent Commission of the Constitutional Court has considered the previously submitted Opinion, the Constitutional Court shall establish the Proposal of the Budget of the Constitutional Court.
- (6) The Budget Proposal of the Constitutional Court shall be submitted to the Presidency of Bosnia and Herzegovina to be included in the Budget Proposal of the institutions of Bosnia and Herzegovina.
- (7) The Constitutional Court shall be independent in allocating the approved funds from the Budget of the institutions of Bosnia and Herzegovina, in accordance with its annual Budget<sup>49</sup>.

The Constitutional Court takes decisions sitting in sessions: the plenary Court, the session of the Grand Chamber and the session of the Chamber.

The Plenary Court is composed of all the judges of the Constitutional Court. The Constitutional Court takes decisions in the plenary session by a majority of votes of all the judges of the Constitutional Court. This is done in cases arising out of the competence of the Constitutional Court: a) under Articles VI(3)(a), where instituted by an authorised applicant, VI(3)(c) and IV(3) (f) of the Constitution and Amendment I to the Constitution (hereinafter: Amendment I); b) under Article VI(3)(b), which are included in the agenda of the plenary Court; c) other issues set forth in the Constitution, these Rules and conclusion of the plenary Court.

The Grand Chamber is composed of the judges elected by the competent Entity Legislature. The President of the Constitutional Court presides at the sessions of the Grand Chamber. The Grand Chamber takes decisions by a majority of votes of all the judges of the Constitutional Court (a minimum of five judges) on cases arising out of the competence of the Constitutional Court under Article VI(3) (a). This is done when instituted by unauthorised applicants and Article VI(3)(b)

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49 Article 3 of the Rules of the Constitutional Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 94/14 [Online]. Available at: [https://www.ustavnisud.ba/uploads/documents/rules\\_1611259624.pdf](https://www.ustavnisud.ba/uploads/documents/rules_1611259624.pdf) (Accessed: 12 January 2025).

of the Constitution – which are not included in the agenda of the plenary Court – and for other issues included in the agenda of the session in accordance with the Constitution and these Rules. If no decision is made, the case shall be referred to the Constitutional Court sitting in the plenary session with a text proposed by a Judge Rapporteur, unless the Grand Chamber decides otherwise.

The Chamber is composed of the President of the Constitutional Court and two Vice-Presidents from among the judges elected by the competent Entity Legislature. The President of the Constitutional Court presides over the Chamber. The Chamber takes decisions by a unanimous vote on requests for interim measures regarding administrative issues, which are not decided at the sessions of the Constitutional Court.

### *3.2.1. Jurisdictions of the Constitutional Court of Bosnia and Herzegovina*

The competences of the Constitutional Court of BiH are defined in Articles VI/3. and IV/3. of the Constitution of Bosnia and Herzegovina.

In addition to the basic task - to support the Constitution of Bosnia and Herzegovina, based on Article VI/3. of the Constitution of Bosnia and Herzegovina,

- a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to: Whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina. Whether any provision of an Entity's constitution or law is consistent with this Constitution.  
Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.
- b) The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina.
- c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols,

or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision'.<sup>50</sup>

When it comes to disputes of conflict of jurisdiction and abstract review of constitutionality, the Constitutional Court of BiH has exclusive jurisdiction to decide on all disputes arising from the Constitution between two Entities, or between Bosnia and Herzegovina and one or both Entities, or between institutions of Bosnia and Herzegovina. In essence, the Court here decides on positive or negative conflicts of jurisdiction, as well as on any other disputes that may arise in relations between state and entity structures of government or institutions of Bosnia and Herzegovina.

The Constitutional Court has jurisdiction to decide whether any provision of the Constitution or law of an Entity is in accordance with the Constitution of BiH. Although the Constitution of BiH explicitly speaks only about «provisions of Entity laws,» the next general task of the Constitutional Court is to uphold the Constitution of BiH, which does not exclude the laws of Bosnia and Herzegovina from the review of constitutionality. As a special case of upholding the Constitution of BiH, the Constitutional Court is also competent to examine whether the decision of an entity to establish a special parallel relationship with a neighbouring state is in accordance with this Constitution, including provisions relating to the sovereignty and territorial integrity of Bosnia and Herzegovina. In both cases, according to the Constitution of BiH, disputes may only be initiated by a certain circle of authorised initiators: a member of the Presidency of Bosnia and Herzegovina, the Chairman of the Council of Ministers, the Chairman, or his deputy, of any Houses of the Parliamentary Assembly, one quarter of the members/delegates of any Houses of the Parliamentary Assembly or one quarter of the members of any Houses of the legislative body of an Entity. The Rules of the Constitutional Court of BiH regulate the principle of self-limitation, based on which the Constitutional Court cannot initiate proceedings for the assessment of constitutionality on its own initiative, but the cause for action, *i.e.* for conducting proceedings before the Constitutional Court, must be initiated by the aforementioned authorised bodies.<sup>51</sup>

For the subject of this analysis, the appellate jurisdiction of the Constitutional Court of BiH is of particular importance. Namely, the appellate jurisdiction of the Constitutional Court of BiH is established by Article VI/3.b), based on which “The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and

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50 Article VI/3 of the Constitution of BiH.

51 Rules of the Constitutional Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 94/14 [Online]. Available at: [https://www.ustavnisud.ba/uploads/documents/rules\\_1611259624.pdf](https://www.ustavnisud.ba/uploads/documents/rules_1611259624.pdf) (Accessed: 12 January 2025).

Herzegovina.”<sup>52</sup> This means that the Constitutional Court of BiH represents the highest legal instance in relation to the courts in Bosnia and Herzegovina, which confirms its role in terms of a special institutional guarantor of the protection of rights and freedoms established by the Constitution of BiH.

The Constitutional Court may consider an appeal only if all effective legal remedies available under the law have been exhausted against the judgment, or the decision challenged by it, and if it is filed within 60 days from the date on which the appellant received the decision on the last effective legal remedy he or she used. However, the Constitutional Court may exceptionally consider an appeal even when there is no decision of the competent court, if the appeal indicates serious violations of the rights and fundamental freedoms protected by the Constitution or international documents applicable in Bosnia and Herzegovina.<sup>53</sup> By the decision accepting the appeal, the Constitutional Court shall annul the contested decision and return the case to the court or body that made that decision for a new procedure, except in cases where the consequences of the violation of constitutional rights can be eliminated in another way. The court or body whose decision has been annulled shall be obliged to issue a new decision, whereby it is obliged to respect the legal understanding of the Constitutional Court on the violation of the constitutionally established rights and fundamental freedoms of the appellant. Exceptionally, if the body whose decision has been annulled in the sense of the previous paragraph issues a new decision without respecting the legal understanding of the Constitutional Court, the Constitutional Court may decide on the merits of the case itself if there is a decision of the body that does not violate constitutional rights, by leaving such a decision in legal force.

Pursuant to Article VI/3.c),

“The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court’s decision.”<sup>54</sup>

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52 Article VI/3.b) of the Constitution of BiH.

53 Article 18 of Rules of the Constitutional Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 94/14 [Online]. Available at: [https://www.ustavisud.ba/uploads/documents/rules\\_1611259624.pdf](https://www.ustavisud.ba/uploads/documents/rules_1611259624.pdf) (Accessed: 12 January 2025).

54 Article VI/3.c) of the Constitution of BiH. Summaries of sixty-six decisions rendered by the Court in the exercise of this competence are available on the official website of the Constitutional Court. See more at: <https://www.ustavisud.ba/bs/opcenito-171> (Accessed: 12 January 2025).

The aforementioned provision consists of two parts. The first part refers to the classic concept of the assessment of the constitutionality of a law. The second does not link the consideration of the Constitutional Court to a specific legal provision or the law as a whole but introduces the jurisdiction for the Constitutional Court to examine the existence or scope of a general rule of international law that is important for the court's decision.

Although the purpose of this constitutional jurisdiction is to reduce the number of cases in which violations of individual rights that have their origin in legislation are established through the active approach of regular courts and through the activities of the Constitutional Court of BiH, this jurisdiction is the least represented in the work of the Constitutional Court. The reason for such a small number of requests under this jurisdiction of the Constitutional Court may also be the fact that the constitutional courts of the Entities have similar jurisdiction and that a significantly larger number of this type of case is before the entity constitutional courts, especially before the Constitutional Court of the Federation of Bosnia and Herzegovina. However, these cases mainly relate to cantonal regulations for which the Constitutional Court of Bosnia and Herzegovina does not have jurisdiction.

The Constitutional Court's decisions are final and binding and every natural and legal person is obliged to respect them. All authorities are obliged, within their competences established by the Constitution and the law, to implement the decisions of the Constitutional Court of BiH. Anyone with a legal interest may request that the decision of the Constitutional Court be implemented. In the event of failure to act, or delay in implementing or informing the Constitutional Court of the measures taken, the Constitutional Court shall issue a decision establishing that the decision of the Constitutional Court has not been implemented or may determine the manner of implementing the decision. This decision shall be submitted to the competent prosecutor, or another body competent for implementation designated by the Constitutional Court.

Failure to implement the decisions of the Constitutional Court of BiH, according to Article 239 of the Criminal Code of BiH, is punishable by imprisonment for a term of 6 months up to 5 years.<sup>55</sup>

### ■ 3.3. *Ministry of Human Rights and Refugees of Bosnia and Herzegovina*

Based on Article 12 of the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, the Ministry of Human Rights and Refugees of Bosnia

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<sup>55</sup> Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15, 35/18, 46/21, 31/23 and 47/23 [Online]. Available at: <https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosnei-hercegovine.html> (Accessed: 4 January 2025). Krivični zakon Bosne i Hercegovine [Online]. Available at: <https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html> (Accessed 4 January 2025).

and Herzegovina is responsible for monitoring and implementing international conventions and other documents in the field of human rights and fundamental freedoms.

In addition to the above, the Ministry of Human Rights and Refugees is responsible for: promoting and protecting personal and collective human rights and freedoms; coordinating and preparing reports to competent domestic bodies and institutions and international institutions and organisations on the implementation of obligations under international conventions and international documents; designing and implementing activities to facilitate the fulfilment of BiH's obligations concerning accession to Euro-Atlantic integration, in particular concerning the application of the European Convention on Human Rights and Fundamental Freedoms and its Protocols; establishing and operating the representative/agent of the Council of Ministers of BiH and the Office of the Representative/Agent of the Council of Ministers of BiH before the European Court of Human Rights; establishing and operating the Agency for Gender Equality in BiH and ensuring gender equality; the monitoring, production and dissemination of information on standards, achievements and activities in the field of human rights; cooperation with religious communities; cooperation with national minorities and their associations; with institutions and organisations responsible for searching for missing persons in BiH, as well as with the Red Cross of BiH and the International Committee of the Red Cross and humanitarian organisations.<sup>56</sup>

In addition to taking care of the rights and issues of refugees and persons under subsidiary protection in BiH after determining their status, pursuant to Article 12 of the Law, the Ministry for Human Rights and Refugees is also responsible for: all data that the Ministry deems relevant in accordance with all applicable data protection standards, as well as the use of data for the purpose of protecting individual human rights; reception and care, for a period of up to 30 days, of BiH citizens returning to Bosnia and Herzegovina on the basis of the Readmission Agreement; implementation of Annex 7 of the Dayton Peace Agreement, as well as monitoring and supervision of the implementation of that Annex; creation and implementation of BiH policy in the field of return of refugees and displaced persons to BiH, reconstruction projects, and provision of other conditions for sustainable return; coordination, direction and supervision within the Commission for Refugees and Displaced Persons, activities of entities and other institutions in BiH responsible for implementing policy in this area; all other activities prescribed by law, and/or related to the implementation of Annex 6 and Annex 7 of the Dayton Peace Agreement; cooperation with the non-governmental

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56 Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, Nos. 5/2003, 42/2003, 26/2004, 42/2004, 45/2006, 88/2007, 35/2009, 59/2009, 103/2009, 87/2012, 6/2013, 19/2016 and 83/2017 [Online]. Available at: <https://www.paragraf.ba/propisi/bih/zakon-o-ministarstvima-i-drugim-organima-uprave-bosne-i-hercegovine.html> (Accessed: 12 January 2025).

sector on issues within the competence of the ministry; creation of Bosnia and Herzegovina's policy towards emigration; collection, systematisation, publication and distribution of all data within the competence of the ministry.

In accordance with the Decision on the Procedure for Medium-Term Planning, Monitoring and Reporting in the Institutions of Bosnia and Herzegovina,<sup>57</sup> the Ministry for Human Rights and Refugees has prepared a document entitled «Medium-Term Work Plan for the Period 2024 – 2026.» The aforementioned document emphasises that the mandate of the Ministry for Human Rights and Refugees relates to a transparent, efficient and accountable public sector that prioritises undertaking coordinated policies that will strengthen the rule of law, security and fundamental rights of all citizens in Bosnia and Herzegovina. The medium-term goal is defined as improving the system of human rights protection and developing relations between the institutions of Bosnia and Herzegovina and the diaspora. The specific goal of the Ministry for Human Rights and Refugees is:

‘Promotion and protection of human rights and freedoms of all citizens, realisation of rights from Annex 7 of the Dayton Peace Agreement, international legal protection and readmission, protection of gender equality in Bosnia and Herzegovina, protection of the rights of emigrants and development of BiH's relations with the diaspora.’<sup>58</sup>

#### 4. Conclusion

The protection of human rights in Bosnia and Herzegovina is one of the key elements for building a stable, democratic and just society. The Constitution of BiH contains an unusually broad catalogue of human rights and freedoms listed. Human rights and freedoms in the Constitution of BiH are not concentrated in a single catalogue but are found in different places and in different legal sources. There are few modern democratic states in which the most relevant international norms on human rights and freedoms are directly incorporated into the legal order, as is the case in Bosnia and Herzegovina. The normative basis for the protection of human rights and freedoms at the state level of Bosnia and Herzegovina exists because the state is a signatory to all major international conventions and charters relating to human rights.

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57 Decision on the procedure for medium-term planning, monitoring and reporting in the institutions of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 44/15 [Online]. Available at: [http://www.mpr.gov.ba/biblioteka/podzakonski\\_akti/05%201%20Odluka%20za%20srednjorocno%20planiranje%20u%20institucijama%20BiH%20-%20BJ.pdf](http://www.mpr.gov.ba/biblioteka/podzakonski_akti/05%201%20Odluka%20za%20srednjorocno%20planiranje%20u%20institucijama%20BiH%20-%20BJ.pdf)

58 Ministry for Human Rights and Refugees, 2023.

Although the basic principles of human rights protection are formally incorporated into the legal system through the Constitution of BiH and international conventions, their application in practice often encounters obstacles. The complex state structure, political division and lack of political leads to unequal application of laws and institutional weaknesses that make it difficult to exercise equal rights for all citizens.

The established system does not enable full protection of human rights and freedoms. One of the biggest challenges remains discrimination in political rights, which has been recognised through judgments of the European Court of Human Rights – such as the *Sejdić-Finci*, *Pilav*, *Zornić* and others – which have not yet been implemented. In addition, access to justice and the efficiency of the judicial system are often limited by administrative obstacles and political influence. Economic inequalities and social exclusion of marginalised groups – such as national minorities, women and persons with disabilities – also indicate the need for more comprehensive reforms.

However, there are also positive developments. The role of civil society, international organisations and institutions such as the Human Rights Ombudsman is increasingly important in protecting fundamental freedoms and raising awareness concerning human rights. Also, the European integration process imposes certain standards that BiH must meet, which can serve as a trigger for necessary reforms.

In the future, key steps towards improving the efficiency of human rights protection in Bosnia and Herzegovina include constitutional reform to ensure equality for all citizens, strengthening the independence of the judiciary and consistent application of international standards. Furthermore, it is necessary for the competent state institutions to be more active in adopting legal acts and consistently implementing norms that prevent and eliminate all forms of discrimination against citizens of Bosnia and Herzegovina. Acting on the recommendations of the institution of Ombudsman and implementing the final and binding decisions of the Constitutional Court of Bosnia and Herzegovina would greatly strengthen the system of human rights protection in Bosnia and Herzegovina.

Ultimately, only the strengthening of institutions and a more active role of civil society can further contribute to the creation of a more inclusive and just society. Only through systemic and consistent reforms can Bosnia and Herzegovina ensure genuine protection of human rights, thereby becoming a more democratic and just society for all its citizens.

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