

FROM COLLECTION TO PREVENTION: PRECONDITIONS FOR COMPREHENSIVE GATHERING OF INFORMATION ON DISCRIMINATION IN BOSNIA AND HERZEGOVINA¹

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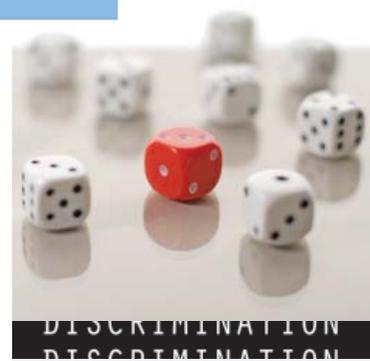
As a result of the adoption of the Law on Prohibition of Discrimination in Bosnia and Herzegovina in July 2009, all institutions in Bosnia and Herzegovina (BiH) are required to collect and keep records of data on cases of discrimination. According to this law, the institution responsible for monitoring its implementation is the Ministry for Human Rights and Refugees of BiH. This Ministry is also obliged to coordinate the collection of data and to act as a central repository of data on discrimination in the broader sense. In addition, the Ministry has the responsibility to report on the instances and the scope of discrimination in the country. Almost four years later, numerous provisions of the law in this area have not been realized. As a consequence, it is not possible to map the actual state of discrimination in BiH, which ultimately does not allow for the formulation of adequate policies and activities of protection against discriminatory treatment in BiH, as well as its prevention.

EXECUTIVE SUMMARY

INTRODUCTION

The collection and analysis of data on discrimination is generally recognized as one of the key measures undertaken by governments in the fight against discrimination. The European Union Directives in the area of discrimination² and the Community action programme to combat discrimination³ have highlighted the special role that data on discrimination may play in strengthening the measures against discrimination and in promoting equal opportunities. Accurate, objective and comparable

data may serve as a convincing basis for determining the existence of discrimination, as well as its forms, scope and areas in which it occurs, all with the aim of creating efficient measures towards its suppression and elimination.⁴ Moreover, statistical indicators on discrimination can efficiently be used in judicial proceedings in cases of discrimination, where such data may establish or refute claims on the existence of direct and indirect discrimination, or – referring to the language and the formulation of the Law on prohibition of discrimination (hereafter: LPD) – assist in making



¹ This Policy brief is based on the report by Analitika – Center for Social Research titled *From Collection to Prevention: Preconditions for Comprehensive Gathering of Information on Discrimination in Bosnia and Herzegovina*, written by Emina Ćerimović and Dženana Hrlović, and published in 2013. Preparation of the report and the policy brief was supported by the Open Society Fund B&H.

² The Council of the European Union, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of European Union*, L 18/2000; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal of European Union*, L 303/2000; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of the equal treatment between men and women in the access to and supply of goods and services, *Official Journal of European Union*, L 373/2004; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Recast Directive), *Official Journal of European Union*, L 204/2006.

³ The Council of the European Union, Council decision of 27/11-2000 of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006) (2000/750/EC).

⁴ Timo Makkonen and European Network of Legal Experts in the non-discrimination field, *Measuring discrimination: Data Collection and EU Equality Law* (Luxembourg: Office for Official Publications of the European Communities, 2007), 2006, p. 5 and 12.

KEY RECOMMENDATIONS

- The Ministry for Human Rights and Refugees of BiH should accelerate its activities on adopting Instructions for filling out the questionnaire for the collection of data on cases of discrimination, and establishing the central database pertaining to these cases;
- It is necessary for the Ministry to explore and identify all available sources of data on discrimination in the BiH context, and to determine the methodology for their collection;
- Collected data should be complemented with appropriate surveys and other types of quantitative research;
- The Ministry for Human Rights and Refugees of BiH should accelerate its activities on preparing annual and special reports on discrimination;
- The High Judicial and Prosecutorial Council of BiH should introduce a designated case type code for cases of discrimination in its automated court case-management system (CCMS).

the existence of discrimination appear probable in the concrete case.⁵ Lastly, the role of comprehensive data on discrimination in initiating wider public debates, advocating, raising awareness on, monitoring the implementation of international obligations, as well as conducting research in this area, is indisputable.⁶

In that sense, the LPD obliges all competent institutions to collect data on cases of discrimination on the basis of actual complaints.⁷ The Ministry for Human Rights and Refugees of BiH is the central institution responsible for the coordination of data collection on cases of discrimination in BiH.⁸ According to Article 8 of the LDP, the competences and the responsibilities of the Ministry include issuing a Rulebook on methods of collecting data on cases of discrimination in BiH (hereafter: the Rulebook), the establishment and management of a central databases on cases of discrimination (hereafter: central database), as well as preparing annual and special reports on the manifestations and scope of discrimination in the country that propose measures for the prevention and suppression of such manifestations in BiH. Reports are to be submitted to the Council of Ministers of BiH and the Parliamentary Assembly of BiH.⁹

The LPD also vests the Institution of Human Rights Ombudsman of BiH with an important

role in collecting data on discrimination, as well as all other relevant institutions in BiH. An approach that consists of more institutions collecting data on discrimination, with an adequate system of cooperation and coordination, can also be found in EU member states, but also in countries in the region. In some countries, such as Montenegro and Serbia, the tendency is to centralize the collection of data on discrimination. This approach has also been taken in BiH.

However, despite a relatively sound legal and institutional framework, BiH faces a number of problems in the implementation of this legal obligation.

This brief highlights inadequate actions taken by the competent institutions in this area, key problems they face in initiating activities on comprehensive data collection on discrimination in BiH, as well as steps that need to be taken to address the identified problems.

KEY PROBLEMS IN COLLECTING DATA ON DISCRIMINATION

The Rulebook on methods of collecting data, which was supposed to be adopted within 90 days after the Law enters into force, was adopted almost four years later, more precisely

⁵ "Zakon o zabrani diskriminacije" [Law on prohibition of discrimination], *Official Gazette of BiH* 59/09, Article 15.

⁶ Makkonen, *Measuring discrimination*, p. 23.

⁷ "Law on prohibition of discrimination," Article 8, para. 1.

⁸ *Ibid*, Article 8.

⁹ *Ibid*, Article 8, para. 3.

beginning of April 2013.¹⁰ Although the Rulebook does prescribe the form and the content of the Questionnaire for the collection of data on cases of discrimination,¹¹ the Rulebook foresees a deadline of 120 days for the adoption of the Instructions for filling out the Questionnaire,¹² whereby the launch of concrete activities in this area is prolonged further. In addition, of great importance is the fact that a central database has not been established yet, and the mentioned Rulebook stipulates that this will be done only by the end of 2013.¹³ Furthermore, the obligation of the Ministry to publish annual and special reports on the state of discrimination in BiH has not been implemented either.

Lacking financial resources for establishing the central database,¹⁴ limited staff capacity of competent institutions, the absence of real determination with regards to this issue as well as the absence of pressure and initiatives by civil society towards meeting these legal provisions are some of the key reasons for their extremely slow implementation.

Data on Discrimination Cases with a Reference to the LPD

Defining data which are deemed significant with respect to keeping records on discrimination is an important precondition for launching activities in this area. However, the LPD does not offer clear guidance on what types of data should be collected. In the part of the law that refers to record-keeping, the Law mentions data-collection activities that entail “data on the manifestations and the scope of discrimination”, and “data on cases of discrimination.”¹⁵ In addition, the LPD foresees only the collection of data on *committed* acts of discrimination into the central database.¹⁶ At the same time, it prescribes that competent authorities

should keep records on all *reported* cases of discrimination.¹⁷

Data on Cases of Discrimination with a Reference to the Rulebook

Although the Law stipulates that the central database of the Ministry should entail only data on *committed* acts of discrimination,¹⁸ the Rulebook foresees that data on newly reported cases of discrimination shall also be collected into the central database on a regular basis. In that sense, the database is to entail data on all cases of discrimination, regardless of the stage of the proceedings.¹⁹ According to the Rulebook, information on the discrimination case that will be collected are:

- Data on the person submitting the complaint (personal data, type of complaint or claim)
- Data on the defendant (data on the public body, private person or legal person in private and public sector)
- Data on the offender (data on the public body, private person or legal person in private and public sector)
- Data on proceedings for the protection from discrimination and the type of the decision issued
- Data on the act of discrimination (form, type and basis for discrimination)
- Data on compliance in areas of implementation
- Data on institution submitting data

Relevant institutions that are obliged by the Rulebook to submit data on reported and processed cases of discrimination are all institutions and bodies at the level of BiH, entities, cantons and the District of Brčko, municipal departments and legal persons with public competences.²⁰ The Rulebook also foresees that such data shall be submitted correctly



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¹⁰ “Pravilnik o načinu prikupljanja podataka o predmetima diskriminacije u Bosni i Hercegovini” [Rulebook on methods of collecting data on cases of discrimination in BiH], *Official Gazette of BiH* 27/13.

¹¹ “Upitnik za prikupljanje podataka: Dodatak Pravilniku o načinu prikupljanja podataka o predmetima diskriminacije u Bosni i Hercegovini” [Questionnaire for the collection of data: Appendix to the Rulebook on methods of collecting data on cases of discrimination in BiH], *Official Gazette of BiH* 27/13.

¹² “Rulebook on methods of collecting data on cases of discrimination in BiH,” Article 11.

¹³ *Ibid*, Article 13.

¹⁴ According to interviewed representatives of the Ministry, between 60,000 and 100,000 BAM are necessary to establish the database, and because of the Decision on temporary financing, these funds could not be secured earlier. – Interview with representatives of the Ministry for Human Rights and Refugees of BiH, November 30, 2012.

¹⁵ “Law on prohibition of discrimination,” Article 8, para. 1, para. 2. and para. 4.

¹⁶ *Ibid*, Article 8, para. 5.

¹⁷ *Ibid*, Article 8, para. 2.

¹⁸ *Ibid*, Article 8, para. 5.

¹⁹ “Rulebook on methods of collecting data on cases of discrimination in BiH,” Article 3, para. 2.

²⁰ *Ibid*, Article 3.

and regularly²¹, however, the Rulebook does not define a deadline for the delivery of such data.

It is important to note that the Rulebook does include a special obligation with respect to administrative and judicial proceedings in cases of discrimination completed with final and binding decision. It is namely foreseen that data on such cases shall be delivered *immediately* after they become final.²² The Rulebook stipulates that such data, in line with the Questionnaire for the collection of data, should be delivered by: courts, administrative bodies in BiH, legal persons with public competences that decide on reports of discrimination, Office of the Disciplinary Prosecutor of the High Judicial and Prosecutorial Council of BiH, as well as other bodies established by special regulations that decide on the rights of citizens, legal persons or other parties.²³ This list is not final, and according to the Rulebook, the Ministry is to adjust it on a yearly basis.²⁴

In addition to the mentioned information, the Rulebook also stipulates that the Ministry is to collect statistical data on *reported and completed* discrimination cases from the following institutions:²⁵

- a) High Judicial and Prosecutorial Council (hereafter HJPC)
- b) Institution of Human Rights Ombudsman of BiH
- c) The Constitutional Court of BiH
- d) The Office of the Agent of the Council of Ministers before the European Court of Human Rights

This data, according to the Rulebook, is to be submitted as aggregated data at least once a year and by 31 of March for the previous calendar year by the latest.²⁶ This data is also to be submitted in line with the Questionnaire on the collection of data.

The Rulebook also stipulates that the Ministry,

in accordance with need and “with the aim of research and analysis,” will collect data on judicial and administrative proceedings whose merits do not relate to establishing discrimination, and where some person or group of persons is placed in a less favorable position.²⁷ Such a formulation points towards a problematic and rather narrow understanding of discrimination cases in this context, according to which only data on cases where discrimination is decided on merits are collected on a regular basis. Considering that the provision is formulated in such a manner, cases where discrimination is deliberated as a preliminary issue will be encompassed by the Ministry’s activities on an *ad hoc* basis and only “in accordance with need.”

Moreover, collection of data on cases of discrimination from all other legal and private persons is foreseen by the Rulebook.²⁸ However, the methodology on collecting data from these additional sources is not clarified. Having in mind the fact that there is no legal obligation of private and legal persons to collect and submit data on cases of discrimination, the manner in which the Ministry is to collect such data remains uncertain.

Inadequate Record-Keeping of Discrimination Established in Criminal Proceedings

Judicial organs are of special significance when it comes to collecting data on discrimination. The LPD thus regulates the establishment of special records in judicial bodies for the purpose of registering cases of discrimination established in criminal, civil, non-litigation and enforcement proceedings.²⁹

Reflecting on the provision on data on discrimination in the context of criminal proceedings, although discrimination is not explicitly defined as a criminal offence in BiH, criminal codes in BiH do include the criminal offence of infringement of the equality of individuals and citizens³⁰

²¹ *Ibid*, Article 3, para. 2.

²² “Rulebook on methods of collecting data on cases of discrimination in BiH,” Article 6, para. 4.

²³ *Ibid*, Article 3, para. 3.

²⁴ *Ibid*, Article 3, para. 4.

²⁵ *Ibid*, Article 4, para. 1.

²⁶ *Ibid*, Article 4, para. 3.

²⁷ *Ibid*, Article 5, para. 1.

²⁸ *Ibid*, Article 3, para. 1.

²⁹ “Law on prohibition of discrimination,” Article 8, para. 4.

³⁰ “Krivični zakon Bosne i Hercegovine” [Criminal Code of BiH], *Official Gazette of BiH* 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 i 8/10, Article 145; “Krivični zakon Federacije Bosne i Hercegovine” [Criminal Code of the Federation of BiH], *Official Gazette of Federation of BiH* 36/03, 37/03, 21/04, 69/04, 18/05 i 42/10, Article 177; “Krivični zakon Brčko Distrikta Bosne i Hercegovine” [Criminal Code of the District of Brčko of BiH], *Official Gazette of the District of Brčko of BiH* 10/03, 6/05 i 21/10, Article 174; “Krivični zakon Republike Srpske” [Criminal Code of Republika Srpska], *Official Gazette of Republika Srpska* 49/03, Article 162.

that prohibits discrimination.³¹ In their regular records, police bodies, prosecutor's offices and courts in BiH record data on this criminal offence.³² In addition, criminal codes in BiH include provisions on hate crimes, inherently motivated by prejudice towards a certain group.³³ Ultimately, the Criminal Code of BiH, describing the criminal offence of torture, refers to the unlawful infliction of physical or mental pain or severe physical or mental suffering for a reason based on, *inter alia*, any type of discrimination.³⁴ However, records are currently not kept on the discriminatory elements of the criminal offence of torture nor is data on criminal offenses motivated by prejudice.³⁵ This is certainly a significant omission when it comes to providing comprehensive court records on criminal proceedings with discriminatory elements, and thus ensuring an accurate and comprehensive insight into discrimination in BiH.

Inadequate Record-Keeping of Discrimination Established in Anti-Discrimination Proceedings

With respect to keeping adequate records on anti-discrimination litigation,³⁶ a special challenge is posed by the fact that the CCMS currently does not have a designated case type code for cases of discrimination, which would take into account the distinct anti-discrimination procedure in which they are decided on.³⁷ More specifically, the Rulebook on the automated court case management system foresees codes for different types of cases. For example, criminal cases bear the case type code "K," civil cases "P," labor disputes "RS," etc.³⁸ As a specific case type code did not exist

for cases of discrimination, they were as a rule designated by the code "RS" or "P". Beginning of 2011, the HJPC sought to address this issue by introducing the possibility that court registry clerks responsible for CCMS data entry may also keep records on cases of discrimination; however, they were to do so not by case type, but by the legal basis of the lawsuit. In this manner, in cases where the plaintiff lists "discrimination" as the legal basis, these cases will be recorded as cases of discrimination. Such a system of record-keeping is problematic because in practice, if there is a failure to list the legal basis of the case properly, a certain number of discrimination cases will be categorized as "others."³⁹ Such a solution makes it difficult to establish the exact number of initiated lawsuits for the protection from discrimination.

A Lack of a Comprehensive Approach to Data-Collection

Narrowly defined key concepts in the LPD and in the adopted Rulebook, such as the types and the scope of data that need to be collected, as well as the sources of data on discrimination, represent additional problems that challenge the effective realization of this legal obligation.

First of all, data collected only on the basis of discrimination cases before competent institutions are not a significant indicator of the level and the trends of discrimination, as many cases often remain unreported.⁴⁰ For example, in Sweden, it is assessed that only 4% of cases of discriminatory treatment in the course of one year are reported to the Ombudsman against Discrimination.⁴¹ A representative of

³¹ Sevima Sali-Terzić, *Komentar zakona o zabrani diskriminacije: Recenzija* [Commentary on the Law on Discrimination Prohibition: Review], Sarajevo, May 2010, p. 2.; See also: Observatory of Human Rights: Bosnia and Herzegovina, *Discrimination Prohibition*.

³² Interview with Fatmir Hajdarević, Office of the Police Commissioner of the Canton of Sarajevo, December 6, 2012; Interview with representatives of the HJPC, December 3, 2012.

³³ See OSCE Mission to Bosnia and Herzegovina, *Borba protiv krivičnih djela počinjenih iz mržnje. Analiza incidenata motiviranih predrasudama u Bosni i Hercegovini, sa preporukama* [Tackling Hate Crimes: An analysis of bias-motivated incidents in Bosnia and Herzegovina with recommendations] (Sarajevo: OSCE Mission to Bosnia and Herzegovina, 2012).

³⁴ "Criminal Code of BiH," Article 190.

³⁵ Interview with Fatmir Hajdarević, Office of the Police Commissioner of the Sarajevo Canton, December 6, 2012; See also: OSCE Mission in Bosnia and Herzegovina Mission, *Tackling Hate Crimes*, p. 50.

³⁶ "Law on prohibition of discrimination," Article 12.

³⁷ "Pravilnik o sistemu za automatsko upravljanje predmetima u sudovima (CMS)" [Rulebook on the automated court case management system (CCMS)], Presidency of the High Judicial and Prosecutorial Council of BiH, no: 09-50-1191/2011 Sarajevo, March 23, 2011, Article 47.

³⁸ *Ibid.*

³⁹ Interview with Aziz Babić, Secretary of the Municipal Court Sarajevo and Muriz Lončarević, Head of the Registry of the Municipal Court Sarajevo, November 23, 2012.

⁴⁰ Makkonen, *Measuring discrimination*, p. 45.

⁴¹ John Wrench, *The Measurement of Employment Discrimination by Research: Problems of Comparability* (33th seminar of The European Advisory Committee on Statistical Information in the Economic and Social Spheres, titled Ethnic and Racial Discrimination on the Labour Market: Measurement, statistics and indicators, Valletta, Malta, June 7-8, 2007), p. 7-8.

the Institution of Human Rights Ombudsman in BiH also believes that the number of complaints received by this institution, as well as the number of anti-discrimination lawsuits before courts, is significantly lower than the real number of discrimination cases.⁴² This is why a more comprehensive and ambitious approach to data collection needs to be taken, with the aim of establishing the real scope of discrimination in BiH. This is also confirmed by comparative experiences. For example, the European Union Agency for Fundamental Rights conducts research on instances of racism, xenophobia and discrimination, as well as fundamental rights throughout the European Union; in addition to collecting data on relevant court cases, the Agency collects additional data on discrimination using surveys, case studies and different types of qualitative research.⁴³

If we are to take into account good comparative practices, in addition to collecting data on discrimination cases, it is necessary to collect data on socio-economic statistics, conduct surveys among victims and other target groups, conduct discrimination testing, collect information from NGOs, private bodies, etc.⁴⁴ As the law foresees the obligation of reporting based on collected data on *manifestations and scope of discrimination*,⁴⁵ this concrete legal provision invite the interpretation that the BiH legal framework has prescribed a more comprehensive approach to data collection in this area. However, the LPD has not precisely defined the type of data on discrimination that should be collected, and has not defined the methodology that the collection is to be based on. The same holds for the newly adopted Rulebook.

From the abundance of possible additional in-

formation relevant for the area of discrimination, the current Rulebook only foresees in its Article 8 “coordination with non-governmental organizations,” without providing further details on what this coordination should actually entail. Moreover, it is especially significant that neither the LPD nor the Rulebook stipulates the use of official statistics as a source of data on discrimination. Finally, the Rulebook does not foresee that the Ministry will conduct own primary research, such as surveys on victimization, surveys on perception of discrimination and other types of research. This problem is even more considerable having in mind the uncertainty about the Institution of Human Rights Ombudsman of BiH actually conducting primary research, despite legal provisions that foresee that it also conducts research on discrimination.⁴⁶ This institution is currently significantly challenged by a lack of staff and funding.⁴⁷

Problem of Accessibility of Discrimination Data

If the purpose of the existence on data on cases of discrimination is to be met, it is necessary to provide access to data to a wider group of users, respecting at the same time the right to personal data protection.⁴⁸ For example, it is hard to imagine that an NGO or individuals are able to conduct research on the phenomenon of multiple discrimination effectively, without the possibility of insight into the abundance of data that the Ministry for Human Rights and Refugees will collect in one place. This is especially important given the limited financial and staff capacities of the Ministry, which could use any help in analyzing and interpreting collected data.

⁴² Interview with Predrag Raosavljević, Institution of the Human Rights Ombudsman of BiH, December 3, 2013. In the Institution of the Human Rights Ombudsman, 191 cases that pertain to discrimination were registered in 2011. See: The Institution of Human Rights Ombudsman of BiH, *Izveštaj o pojavama diskriminacije u BiH za 2011. godinu* [Annual Report on Occurrences of Discrimination in Bosnia and Herzegovina for 2011] (Banja Luka: The Institution of Human Rights Ombudsman of BiH, 2012), pp. 7, 11 and 26. Although three years have passed since the LPD came into effect, the number of final and binding court decisions in cases of discrimination is almost negligible. For more information, see: Adrijana Hanušić, *Sudska zaštita od diskriminacije u BiH: Analiza zakonskih rješenja i prakse u svjetlu prvih predmeta u ovoj oblasti* [Judicial Protection from Discrimination in Bosnia and Herzegovina: Analysis of Laws and Practice Based on Initial Cases in This Field] (Sarajevo: Analitika – Center for Social Research, 2013), p. 8.

⁴³ See website of the European Union Agency for Fundamental Rights, <http://fra.europa.eu/en/about-fra/what-we-do> (Accessed on February 26, 2013).

⁴⁴ Niklas Reuter, Timo Makkonen and Olli Oosi, *Study on Data Collection to Measure the Extent and Impact of Discrimination in Europe: Final report 7.12.2004* (Finland: Net Effect Oy, 2004), p. 4.

⁴⁵ “Law on prohibition of discrimination,” Article 8, para. 2.

⁴⁶ *Ibid*, Article 7, para. 2. h.

⁴⁷ Interview with Predrag Raosavljević, Institution of the Human Rights Ombudsman of BiH, December 3, 2013.

⁴⁸ For an example of a database, see the Canadian Legal Information Institute, www.canlii.org/en (Accessed on February 22, 2013). This database allows unlimited access to all court decisions (including court decisions on discrimination in Canada). Another example is the website of the Equal Opportunity Commission of South Australia, <http://www.eoc.sa.gov.au/> (Accessed on February 22, 2013), where access is granted to all complaints on discrimination (in shortened and anonymized form) submitted to this Commission.

The Ministry for Human Rights and Refugees of BiH currently does not plan to make available to the wider public data from the central database and other data on discrimination that it collects. What the Ministry does plan to make available on its website are statistical analyses and reports.⁴⁹ This certainly narrows down the scope and the end effect of the Ministry's activities in this area.

CONCLUSION

The Law on Prohibition of Discrimination in BiH has recognized the important role the data on discrimination have in the system of discrimination prevention. However, the collection of this data is largely neglected in practice. The underlying reason is certainly the delay in implementing the basic legal obligation and precondition – adopting the Rulebook on methods of collecting data on cases of discrimination in BiH. Other reasons include the significant ambiguity when it comes to defining and identifying sources of relevant data in this area, as well as the methodology of their collection. Moreover, inadequate record-keeping of discrimination cases before courts, the lack of a clear vision of the Ministry for Human Rights and Refugees on the need and the means of collecting a wider range of data on discrimination, additionally hamper the effective implementation of legal provisions on recording discrimination. Finally, the public currently has extremely restricted access to collected data, which reduces the potential that a central repository of data on discrimination, or a “knowledge database” on discrimination, may have in the shaping of further activities directed towards ensuring equality in the BiH society. The recommendations that follow aim to initiate a more proactive stance of the government with respect to this issue, and also to serve as a point of reference to the competent Ministry and other responsible institutions to adequately meet not only their legal obligations in the area of data collection on discrimination in BiH, but also the general purpose of activities in this field.

RECOMMENDATIONS

Recommendations for the Ministry for Human Rights and Refugees of BiH

1. It is necessary to accelerate activities on the adoption of the Instructions for filling out the Questionnaire for the collection of data on

cases of discrimination and the establishment of the central database on cases of discrimination.

2. It is necessary to explore and identify all available sources of data on discrimination in the context of BiH, and to define the methodology of their collection. It is especially important to develop an appropriate system of data collection in the private sector, and from non-governmental organizations.

3. It is necessary to urgently start drafting and issuing annual and special reports on discrimination. Having in mind expected limitations and defects of the current mechanism of data collection on discrimination in BiH, especially in the initial phase of the implementation of the LPD, the collected data should be complemented by appropriate surveys on victimization and perception of discrimination, as well as other qualitative research during every reporting period.

4. It is necessary to allow easy access to the collected data on discrimination to the wider public, while ensuring mandatory compliance with legislation on personal data protection.

Recommendations for the High Judicial and Prosecutorial Council

5. In the automated court case management system, a designated case type code should be introduced for discrimination cases that would take into account the distinct anti-discrimination procedure in which they are decided on. The current system of recording labor disputes can serve as a good basis for such an intervention.

6. Alternatively, it is necessary to ensure that court registry clerks responsible for data-collection insist on precise and correct definitions of the legal basis of lawsuits when registering cases.

7. It is necessary to introduce an option in the CCMS which would allow the recording of the established discrimination as an element of criminal offence of torture and to record established discriminatory motive for hate crimes.

Recommendations for other competent bodies

8. It is necessary to ensure that all competent institutions start collecting data and keeping records on manifestations of discrimination. It is especially important to educate designated staff in these institutions and to introduce internal procedures that would ensure the fulfillment of this legal obligation.



Open Society Fund B&H Anti-Discrimination Program

The policy brief is produced in the framework of the Open Society Fund B&H Anti-Discrimination Program, which brings together partner organizations across B&H divided into four teams committed to key activities in the field of combating discrimination: monitoring, documentation and reporting, strategic litigation, policy analysis, and advocacy. For more information on the Open Society Fund B&H Anti-Discrimination Program, please visit the website www.diskriminacija.ba.

⁴⁹ “Rulebook on methods of collecting data on cases of discrimination in BiH,” Article 10.

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