

## THE OMBUDSMAN IN THE SYSTEM OF PROTECTION AGAINST DISCRIMINATION IN BOSNIA AND HERZEGOVINA: SITUATION ANALYSIS AND CHARACTERISTIC PROBLEMS<sup>1</sup>

The Law on the Prohibition of Discrimination of Bosnia and Herzegovina defines the Institution of Human Rights Ombudsman of Bosnia and Herzegovina as a central institution for protection against discrimination. However, the existing anti-discrimination mechanism provided for in the Law on the Prohibition of Discrimination is faced with a number of problems that affect the work of this Institution. The main structural problem relates to insufficient budget available to the Ombudsman of BiH, resulting in the lack of staff. Other problems derive from this circumstance, such as insufficient territorial coverage and accessibility of the Institution, as well as the lack of efficiency, specialisation and expertise in particular areas of discrimination. Moreover, the problems occur in the context of relationship between the courts and this Institution in cases of discrimination resulting from the lack of complementarity between the two. Thus, for example, courts may issue decisions contrary to the recommendations of the Ombudsman of BiH without providing reasoning for taking such action, which negatively affects the the principle of legal certainty.

### KEY FINDINGS

DISCRIMINATION  
DISCRIMINATION

### 1. INTRODUCTION

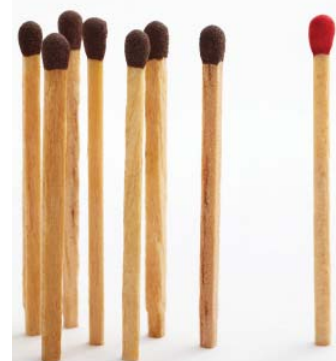
The Institution of Human Rights Ombudsman of BiH was made central institution for protection against discrimination in Bosnia and Herzegovina (BiH) by the 2009 Law on the Prohibition of Discrimination of BiH that was adopted. The competencies of this Institution are numerous, and in general they follow the international legal standards in relation to defining the role of such institutions. However, in practice, in addition to adopting legislation, it is crucial to ensure its appropriate implementation. The report of the European Commission from 2011 suggests that the application of the Law on the Prohibition of Discrimination in Bosnia and Herzegovina is weak.<sup>2</sup>

This analytical summary tackles key problems which prevent efficient application of the Law

on the Prohibition of Discrimination in relation to the Institution of Human Rights Ombudsman of BiH. It is divided in two parts. The first part contains an overview of the current situation, analysis of key legal provisions, as well as of institutional and procedural obstacles preventing efficient execution of competencies of the Ombudsman of BiH in the area of protection against discrimination; the second part contains proposals for rectifying these identified problems.

### 2. COMPETENCIES OF THE OMBUDSMAN OF BIH

The role of the Ombudsman of BiH in protection against discrimination in most part conforms to the relevant international standards.<sup>3</sup> The relevant legal framework grants



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<sup>1</sup> This policy brief is based on the findings from the report *The Ombudsman in the System of Protection against Discrimination in B&H: Situation Analysis and Characteristic Problems*, drafted by Adrijana Hanušić (Sarajevo: Analitika – Center for Social Research, 2012). The report is available online at: [http://www.analitika.ba/files/A.Hanusic\\_Ombudsmen\\_BOS\\_23nov2012.pdf](http://www.analitika.ba/files/A.Hanusic_Ombudsmen_BOS_23nov2012.pdf). Drafting of this policy brief was supported by research assistants Ada Hasanagić and Hatidža Bešić. The preparation of the report and policy brief was supported by the Open Society Fund Bosnia and Herzegovina.

<sup>2</sup> European Commission, Bosnia and Herzegovina 2011 Progress Report (Brussels: European Commission, October 12, 2011), SEC(2011) 1206, p. 18.

<sup>3</sup> In particular see UN General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), Resolution 48/134 (UN General Assembly, December 20, 1993).

## RECOMMENDATIONS

1. It is necessary that the government in Bosnia and Herzegovina implements Article 7, Paragraph 5 of the Law on the Prohibition of Discrimination by budgeting funds necessary for the efficient work of the Department for Elimination of all Forms of Discrimination of the Institution of Human Rights Ombudsman of BiH. The appropriate budget would cover the costs of the Institution and allow for improvement of human resources capacities in this Department. This would allow better territorial accessibility of the Institution and improved expertise of its staff in specific areas of discrimination.
2. In order to improve the procedure for protection against discrimination it is necessary to establish mediation as one of the important procedures for resolving cases of discrimination. This could be done primarily by training mediators among the Ombudsman staff which would then assist the parties in peaceful settlement of their disputes.
3. In order to improve the complementarity of the proceedings conducted before the Ombudsman of BiH on one hand and courts in Bosnia and Herzegovina on the other, it is necessary to remove the three-month statute of limitation foreseen for claiming judicial protection from discrimination. In accordance with the dominant practice in other states, this time limit should be either completely removed or the general statute of limitation should be applied also to the lawsuits relating to discrimination.
4. In order to ensure better harmonisation of proceedings conducted before the Ombudsman of BiH and courts in relation to the same case of discrimination, the relevant legislation should envisage the obligation of courts to provide clear reasoning when their decisions depart from the recommendations provided by the Ombudsman of BiH.
5. The Ombudsman of BiH should play an important role in judicial protection against discrimination by initiating court proceedings in the strategically important cases, and by taking more active part as a third party in the anti-discrimination court proceedings.
6. It is important that the Institution of Human Rights Ombudsman of BiH does not disregard cases in which discrimination continues as a result of failure to act upon its recommendations. A mechanism for invoking misdemeanour responsibility should be more actively used in such cases.

this Institution quasi-judicial competence, allowing it to conduct investigations and provide opinions and recommendations, *inter alia*, in individual cases of discrimination. In addition, the Ombudsman of BiH has a number of significant competencies, such as to: educate the public about issues that relate to elimination of discrimination, conduct analysis of statistics on discrimination, conduct research, submit annual reports about instances of discrimination to relevant state institutions and promote public policies that ensure equality.

In addition to the above, the Law on the Prohibition of Discrimination also provides for novelties which significantly improve the competence of the Ombudsman of BiH. Such novelty is contained in the provision that entitles the Institution to provide protection against discriminatory actions of any legal or natural person<sup>4</sup>. This indicates that the protection from discrimination has been extended by the Law to the private sector.

One of the important mechanisms of protection against discrimination in Bosnia and Herzegovina is a procedure initiated on the basis of individual complaints before the Institution of Human Rights Ombudsman of BiH. This procedure is free of charge and simple, which makes it easily available to indigent and marginalised individuals who believe that their anti-discrimination rights have been violated. This characteristic deserves to be emphasised. The procedure is initiated either *ex officio* or upon a complaint. If the particular case indicates a “possible violation of rights of the complainant, the investigative procedure shall be initiated by obtaining necessary documentation, seeking response from the alleged violator, review of relevant case files,”<sup>5</sup> etc. If the investigation results in establishing violation of rights and freedoms, the Ombudsman of BiH issues recommendations towards rectifying the violation. The recommendations issued by the Institution of Human Rights Ombudsman of BiH are

<sup>4</sup> “Zakon o zabrani diskriminacije Bosne i Hercegovine” [The Law on the Prohibition of Discrimination BiH], *Službeni glasnik BiH* [Official Gazette of BiH] 59/09, Article 7, p. 5.

<sup>5</sup> “Pravila postupka Institucije ombudsmana za ljudska prava BiH” [Rules of Procedure of the Institution of Human Rights Ombudsman of BiH], *Službeni glasnik BiH* [Official Gazette of BiH] 104/11, Article 30, December 28, 2011.

not legally binding. Nonetheless, another novelty introduced by the Law on the Prohibition of Discrimination provides for the possibility to use the mechanism of misdemeanour responsibility in cases of failure to act in accordance with an issued recommendation.

### 3. KEY ISSUES IN THE WORK OF THE OMBUDSMAN OF BiH

In accordance with the results of research conducted by Analitika in 2011 and 2012, the Institution of Human Rights Ombudsman of BiH faces a number of issues in combating discrimination in accordance with the Law on the Prohibition of Discrimination.

#### 3.1. Structural issues

The key issue that relates to the efficiency of the role of the Ombudsman of BiH, as the main institution for protection against discrimination in Bosnia and Herzegovina, is the manner in which this institution is funded.

Namely, the Institution of Human Rights Ombudsman of BiH does not have a proper role in drafting and approving its annual budget. Initially, the Ombudsman of BiH proposes its budget to the Ministry of Finance of BiH. The Ministry then drafts its final proposal that is submitted to the Parliamentary Assembly of BiH for adoption. The result of such marginalisation of the Ombudsman of BiH in the process of budget adoption is reflected in the fact that the appropriate budget funds for the activities of the Department for elimination of all forms of discrimination are still not adopted. In accordance with this development, the Institution lacks resources to efficiently implement its obligations stemming from the Law on the Prohibition of Discrimination. In particular, it lacks funds for promotion of the Law on the Prohibition of Discrimination, for court proceedings monitoring in discrimination cases, for research in the area of discrimination and monitoring of legislative harmonisation with new regulations in this area.<sup>6</sup> Indeed, the lack of resources results in insufficient staffing of the Ombudsman of BiH, mak-

ing its accessibility across Bosnia and Herzegovina rather limited. Namely, the Ombudsman of BiH has only five offices - Head Office Banja Luka and four Regional Offices in Sarajevo, Mostar, Livno and Brcko. Such territorial distribution of the offices fails to enable the fulfilment of a very important principle of accessibility of the Institution to the victims of human rights violations. In addition, the lack of human and financial resources restricts specialisation of the Ombudsman staff in different areas of discrimination, a requirement foreseen in the relevant international standards.<sup>7</sup> Due to the above issues, the capacity of the Institution is not sufficient because it fails to efficiently process the influx of cases, and the cases are not resolved in due course. For example, just in the area of discrimination there were 81 pending cases transferred from 2010 to 2011, and only 40 of those were completed. In 2011, out of 191 new cases of discrimination, only 88<sup>8</sup> were completed, which means that a large number of cases, both from 2010 and 2011 were transferred into 2012. Such trends in processing cases of discrimination continuously increase the burden on the Ombudsmen of BiH.

#### 3.2. Legal Ambiguities

Although the Ombudsman of BiH is designated by law as the central institution for protection against discrimination, it is not clearly defined how this complex role is to be implemented in practice. Particularly problematic is the fact that public, including professional-legal community, have insufficient knowledge of the novelties of the Law on the Prohibition of Discrimination, such as shifting the burden of proof onto the alleged discriminator, or protection from victimisation. This significantly reduces the effect of these legal innovations in protection against discrimination. As already mentioned, the Law on the Prohibition of Discrimination regulates both the public and private sector discrimination. However, the public is still not aware of this novelty, which makes the number of reports of discrimination in the private sector virtually negligible.

<sup>6</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Godišnji izvještaj o rezultatima aktivnosti Institucije ombudsmana za ljudska prava Bosne i Hercegovine za 2010. godinu* [Annual Report on Results of the Activities by the Human Rights Ombudsman of Bosnia and Herzegovina for 2010], (Banja Luka: The Institution of Human Rights Ombudsman of BiH, 2011), p. 121; The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *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, 2011), p. 7.

<sup>7</sup> See, for example, Commissioner for Human Rights of the Council of Europe, Opinion of the Commissioner for human rights on national structures for promoting equality (Strasbourg: Commissioner for Human Rights of the Council of Europe, March 21, 2011), CommDH(2011)2, para. 4.2.

<sup>8</sup> The Institution of Human Rights Ombudsman of BiH, *Annual Report for 2010*, p. 121; Annual Report on Occurrences of Discrimination, p. 11.

The same applies to the principle on shifting the burden of proof, which means that if the complainant makes the discrimination probable, the burden of proof is shifted to the alleged violator. In such case the Ombudsman of BiH confirms discrimination when the alleged violator fails to prove a non-discriminatory treatment. However, this rule was not used appropriately in practice. The Institution of Human Rights Ombudsman of BiH, as the central institution in combating discrimination, should certainly develop a practice of applying this institute in its work, and in this way assist the courts as well to apply it properly.

The fear from victimisation strongly affects the level of reported cases of discrimination to the Ombudsman of BiH. One of the important factors that affect this is the fact that the Ombudsman of BiH fail to do enough to protect their clients from victimisation, although the Law provides for appropriate mechanism of protection through misdemeanour procedures. In addition, no steps are taken to reduce the fear from the negative consequences of reporting discrimination, such as promoting mechanisms of protection from victimisation and cases in which these mechanisms have produced positive effects.

### 3.3. Procedural Issues

Procedurally, the first problem is the fact that mediation, which is foreseen by the Law on the Prohibition of Discrimination as a mechanism for resolving cases of discrimination, is not precisely defined. On one hand, this legal provision may be interpreted to refer to the Ombudsman of BiH as a mediator, while on the other hand it may suggest that the Ombudsman only advises the parties in appropriate cases to bring the case before the Association of Mediators in BiH. The Ombudsman of BiH currently understand this provision in light of the latter interpretation, although the internal mediation would probably be a better solution considering the position and experience of the Institution in the area of protection against discrimination.

The limited legal aid offered by the Ombudsman to the victims of discrimination who wish to use other mechanisms of protection is an additional problem in this field. First, legal aid is limited at the structural level because it is not equally accessible to all citizens across the state. Besides providing general information about the mechanisms of protection and mere trial monitoring, the Ombudsman of BiH has no stronger means to support the victim in the

judicial proceedings, such as writing briefs on their behalf or ensuring their legal representation before other public bodies.

Weak implementation of recommendations of the Ombudsman in the area of discrimination is another important issue of concern. The relevant statistics indicate that out of the total number of 128 cases of discrimination in 2011, 102 were closed without finding discrimination. In the remaining 26 cases the Institution has issued appropriate recommendations for rectifying discrimination. Nonetheless, the Ombudsman report on discrimination for 2011 indicates that as many as 18 recommendations are still pending implementation. Such statistical data is very discouraging. The Ombudsman of BiH, however, have an option of ensuring fulfilment of their recommendations regarding discrimination - despite them not being legally binding - primarily using the mechanism of misdemeanour procedures. Nevertheless, this potentially important mechanism has not been adequately and consistently utilised until now. When it comes to the discrimination in the public sector, another potentially important tool for exerting pressure towards compliance with recommendations issued by the Ombudsman is disclosing in the annual report of the Ombudsman of BiH the names of public bodies which refuse to implement recommendations, along with the names of responsible individuals within these bodies. Considering that the annual report is addressed primarily to the highest state and entity bodies, and is also available to the wider public, it can serve as a significant mechanism of additional pressure on those who commit discrimination. However, the practice of the Ombudsman of BiH shows that this potentially important measure is not used either.

Finally, the fact that there is no systematic state or entity level parliamentary monitoring of the implementation of recommendations issued by the Ombudsman of BiH is another important problem in this field. This is certainly an important shortfall as the support of parliaments to implementation of recommendations is one of the key factors to ensure their effectiveness and authoritative force.

### 3.4. The Ombudsman of BiH and Judicial Protection

In addition to addressing the Institution of Human Rights Ombudsman of BiH, the persons who claim that their right to freedom from discrimination is violated may also initiate court proceedings for protection against discrimination. The crucial difference between the two

procedures is the fact that the court proceedings result in the binding court decision, while the Ombudsman issues authoritative but not legally binding recommendations. The recommendations of the Ombudsman in the area of discrimination, it should be reiterated, are additionally strengthened by the possibility of invoking misdemeanour responsibility for failure to implement them.

Achieving the complementarity between the two mechanisms of protection is very important goal to be achieved. In practice, recommendations of the Ombudsman of BiH in court proceedings conducted regarding the same case of discrimination are mostly used as evidence of violation of rights. In that sense, the courts in most cases issue a decision corresponding to that issued by the Ombudsman of BiH. In such cases, the court has to establish the scope of violation only, and pronounce appropriate legally prescribed sanction in that particular case. However, it may happen in practice that these two institutions issue different decisions in the same case, i.e. that the court issues decision contrary to recommendations issued by the Ombudsman. Namely, the court is not legally bound to accept the recommendations issued by the Institution of Human Rights Ombudsman of BiH. A positive implication of such provision and practice is the reaffirmation of the principle of judicial independence. Nonetheless, at the same time, such lack of harmonised approach may bring into question the principle of legal certainty.

### Deadlines

In case of discrimination, an individual in Bosnia and Herzegovina has the right to either file a complaint with the Ombudsman of BiH or initiate a procedure for protection from discrimination before the court, or both. The time limits for addressing the two institutions, however, differ. For addressing the court, a subjective three-month statute of limitation and an overall one-year time limit are prescribed.<sup>9</sup> On the other hand, the general time limit to file a complaint with the Ombudsman is one year from the day of occurrence of events complained of, although this Institution has discretion to accept complaints filed after expiration of the deadline. However, the subjective deadline of three months to initiate civil proceedings (provided for discrimination cases only by the Law on the

Prohibition of Discrimination) may discourage individuals to address the Ombudsman of BiH, which should not become a dominant practice. Namely, in accordance with current legislation, addressing the Ombudsman of BiH does not suspend deadlines to address the court. Therefore, in practice, completion of the anti-discrimination proceedings before the Ombudsman of BiH may result in missing the deadlines for going before the court. The fact that these two mechanisms may be used at the same time, in theory, should provide a better protection of an individual from discrimination. However, complementarity of the two anti-discrimination proceedings is not fully ensured by the current legal framework. First, short subjective deadline to address the court in cases of discrimination may motivate the victims to avoid addressing the Ombudsman of BiH, and go to courts immediately, although the case could potentially have been resolved in a more efficient and simpler manner before the Ombudsman of BiH. In the long term, this may jeopardise the position of the Institution of Human Rights Ombudsman of BiH as the central institution for protection against discrimination.

### The Role of the Ombudsman in Judicial Proceedings

The primary role of the Ombudsman of BiH is to act as an important mechanism in protecting human rights through issuing recommendations for protection of individuals against discrimination. However, the Ombudsman of BiH, within its competences, may also initiate misdemeanour or criminal proceedings in cases of discrimination, and it may intervene in the course of ongoing proceedings, whenever it finds that such an intervention is necessary in exercising its duties.<sup>10</sup>

Moreover, the current legal framework grants Ombudsman a possibility to initiate court proceedings, either on behalf of an individual or on its own behalf. The latter option is particularly important in the area of discrimination as it allows filing a lawsuit in cases in which there are no specific victims (for example, issuing vacancy that contains discriminatory elements) or in cases when potential victims fear the negative consequences if they would personally file the lawsuit. Naturally, it is hardly expected, and it would be counterproductive, that the Ombudsman of BiH turns into a

<sup>9</sup> "The Law on the Prohibition of Discrimination", Article 13, para. 4.

<sup>10</sup> "Zakon o ombudsmanu za ljudska prava BiH" [The Law on the Human Rights Ombudsman of Bosnia and Herzegovina], *Službeni glasnik BiH* [Official Gazette of Bosnia and Herzegovina] 19/02 i 32/06, Article 4, para. 2.



permanent representative of the victims before the courts or to strongly engage in filing lawsuits on its own behalf. Nevertheless, the experience of other countries suggests that carefully planned engagement of this Institution in initiating lawsuits in strategically important cases may have rather positive effects.

An additional option for Ombudsman to participate in court proceedings is the possibility of a third party intervention in cases of discrimination. In accordance with Article 16 of the Law on the Prohibition of Discrimination, the Ombudsman may intervene in court proceedings by joining a victim of discrimination, i.e. the plaintiff, as a way of enhancing his or her position before the court. The potentially important role of the Ombudsman of BiH as *amicus curiae* clarifying and elaborating certain legal or factual issues in court proceedings in the area of discrimination is unfortunately not envisaged by the current legislation.

Nonetheless, despite its widely defined competences, the Institution of Ombudsman of BiH still hesitates to engage meaningfully in court proceedings. This is mainly due to ever present lack of resources, but also to the restrictive interpretation of its role in the area of protection against discrimination, which is viewed by the representatives of this Institution as strictly and fully separated from that granted to courts.

#### 4. CONCLUSION AND RECOMMENDATIONS

In comparison to other ways of protection from discrimination, the mechanism of protection of individual victims before Ombudsman of BiH is faster and efficient, because it is provided by a specialised institution, whose procedures are less formalistic and which do not require legal representation. For this reason, the complaint mechanism before the Ombudsman is available to a wider category of victims of human rights violations. However, although the legal framework offers a solid basis for the Ombudsman in BiH to perform an important role in combating discrimination, a number of problems that this Institution faces in practice undermine the potential of the wide set of its competencies in the field. The lack of financial and human resources, insufficient usage of the available mechanisms for improving the authority of this Institution (such as the invoking misdemeanour responsibility for failure to act in accordance with its recommendations in the area of discrimination) and insufficient support to its work by other stakeholders, in particular the

parliaments, are some of the key problems that the BiH Ombudsman continues to face. In addition, the unclear understanding of the role and competence of this Institution, the continuous failure to use other available mechanisms of protection – such as the initiation of, or participation in, court proceedings for the protection against discrimination – reduces the scope of engagement and an overall effectiveness of the Ombudsman of BiH in fighting discrimination.

Admittedly, the Ombudsman of BiH shares, more or less, the same problems with institutions for protection of equality in other countries. Despite the fact that numerous roles of the Ombudsman of BiH in the area of protection against discrimination are a very recent development, it is possible and necessary to take a number of strategic steps to optimise the efficiency of this key instance for protecting individuals against discrimination.

#### Status of the Institution of Human Rights Ombudsman of BiH

1. It is necessary to clarify the status of the Institution of Human Rights Ombudsman of BiH as a central institution for protection against discrimination by amending the Law on the Prohibition of Discrimination, i.e. by providing clear definitions of meaning, content and implications of such a status of the Institution.

#### Budgetary and Structural Issues

2. In addition to amending the legal framework, it is necessary to ensure financial resources to enable the Ombudsman of BiH to fulfil its mandate and truly act as the central institution for protection against discrimination. In that sense, it is necessary that all competent institutions of Bosnia and Herzegovina comply with relevant provisions of the Law on the Prohibition of Discrimination (Article 7, paragraph 5) which sets an obligation to ensure budgetary funds necessary for the efficient work of the Department for Elimination of all Forms of Discrimination of the Ombudsman of BiH. One additional possibility of funding, as shown in the example of Croatia, is to ensure necessary funds from the European Union programme that includes financial support to enhancing protection against discrimination. However, this is surely not a long-term solution, which makes it necessary to ensure appropriate financial resources from local funds.

3. It is necessary to ensure that budget-related requests by the Ombudsman of BiH are considered by the Parliamentary Assembly of BiH. This would mean that the version proposed by

the Ombudsman of BiH must be included in the proposed state budget as a single proposal or jointly with the amended proposal submitted by the Ministry of Finance of BiH. Another option is to amend the procedure for proposing the budget to allow the Ombudsman of BiH to directly present its budget proposal to the appropriate parliamentary committee of the Parliamentary Assembly of BiH.

4. It is necessary to ensure sufficient staffing in the Department for Elimination of all Forms of Discrimination. The experience of other countries, in particular the neighbouring ones, as well as the population figures in Bosnia and Herzegovina, suggest the need of establishing a team of around 15 officers in the Department. In addition, it would be necessary to form separate sectors within the Department to deal with complaints, research, reporting and publications, including analysis of legislative and legal issues. Such an organisation of the Department would ensure that work and tasks of staff are divided in accordance with specific areas of discrimination, which would in the long term enable specialisation and development of necessary expertise within the Institution itself.

#### Accessibility of the Ombudsman of BiH

5. It is necessary to prompt the opening of the Ombudsman offices in Tuzla, Bihac and Trebinje. In addition to increasing the accessibility of the Ombudsman, this would improve its efficiency in investigations, monitoring of cases and raising public awareness on combating discrimination.

6. In order to ensure that the Ombudsman of BiH is accessible to all citizens of Bosnia and Herzegovina, and not only those living in big urban centres, it is necessary to introduce a red line to enable individuals to contact the Institution for advice if they are victims or witnesses of discrimination. Moreover, the best practice of other countries suggests establishing a network of “anti-discrimination centres” at the local level to which victims of discrimination could directly approach for advice. In a current situation characterized by the lack of available resources, it is important to emphasise that these centres would not entail large costs because they could operate in partnership with reliable local organisations and institutions, with adequate training and supervision provided by the Ombudsman of BiH.

#### Improvement of the Procedure for Protection against Discrimination

7. It is necessary to establish mechanisms of

mediation to be used in cases of discrimination. This could primarily be achieved through appropriate training of the Ombudsman staff. Another option is to create a list of the available external mediators specialised in the area of protection from discrimination.

#### Relationship between the Proceedings before the Ombudsman of BiH and those before the Courts

8. In order to achieve harmonisation between the anti-discrimination proceedings before the Ombudsman of BiH and those before the courts, it is necessary to introduce legislation that would oblige the courts to provide for a clear and detailed explanation for their decisions when departing from recommendations issued by the Ombudsman of BiH in the same case of discrimination.

9. The Ombudsman of BiH would have to be more active in court proceedings for protection against discrimination. The experience and knowledge of the Ombudsman of BiH in this area would be important to use, primarily in terms of initiating strategic litigation, but also by way of a more frequent participation of the Ombudsman of BiH as a third party in the judicial proceedings in cases of discrimination.

10. Amendments to the Law on the Prohibition of Discrimination should introduce a possibility for courts to request opinion and expertise from the Ombudsman of BiH as *amicus curiae* in cases pertaining to protection against discrimination. In addition to enabling the constructive input of the Ombudsman of BiH in terms of providing clarifications of the key concepts and presentations of findings related to discrimination in court proceedings, such a procedural avenue would contribute to a better general coordination of work between the courts and the Ombudsman of BiH in this area.

11. It is necessary to abolish or significantly extend extremely restrictive, three-month statute of limitation provided for using the judicial mechanism of protection against discrimination. Such solution would additionally improve complementarity of the anti-discrimination proceedings conducted before the Ombudsman of BiH and courts in Bosnia and Herzegovina.

#### Mechanisms for Improving Implementation of Recommendations Issued by the Ombudsman of BiH in the area of Discrimination

12. It is necessary to ensure that annual reports of the Ombudsman of BiH pay particular



#### 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](http://www.diskriminacija.ba).

attention to cases of prolonged discrimination occurring due to a failure to implement its recommendations. All such cases should be expressly published, along with the names of responsible officials, which would increase the public pressure to eliminate discrimination in specific cases.

13. It is necessary to establish appropriate mechanism within parliaments in Bosnia and Herzegovina, which would monitor the process of implementation of recommendations of the Ombudsman of BiH that relate to discriminatory actions of public bodies, as well as to include civil society and media into such mechanism.

14. The Ombudsman of BiH should consistently use the option of initiating and participating in the misdemeanour proceedings for protection against discrimination, both in situations where its recommendations are not implemented and where discrimination and victimisation continue despite the recommendations. Moreover, it is necessary to take a strategic approach and to disseminate information about positive outcomes of such cases, all of which could have an educational and preventive function.

### Promotional Activities

15. The novelties introduced by the Law on the Prohibition of Discrimination should be decisively promoted. This refers in particular to extending the scope of protection from discrimination to the private sector, prohibition of victimisation, and misdemeanour responsibility for failing to implement recommendations issued by the Ombudsman of BiH. Such promotion would both encourage the victims to file a complaint and discourage possible perpetrators of discrimination.

16. The Ombudsman of BiH should use its expertise in the area of protection from discrimination to provide the necessary explanations to the professional community, and to stimulate the practice of appropriate application of the legal novelties in this area.

17. It is necessary to ensure implementation of a number of information and education information activities in the area of protection from discrimination, focusing in particular on the Law on the Prohibition of Discrimination and the protection mechanisms provided therein, with a particular emphasis on the Ombudsman of BiH as the central institution in this field.

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