



**ANNUAL REPORT  
ON OCCURRENCES OF DISCRIMINATION  
IN BOSNIA AND HERZEGOVINA  
FOR 2011**



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## INTRODUCTION

Discrimination in Bosnia and Herzegovina is present in almost all areas of life and unduly elimination of discrimination frequently causes certain tensions in the surroundings where it appears.

In carrying out their mandate set forth in Article 7, paragraph 2, item f) of the Law on Prohibition of Discrimination in Bosnia and Herzegovina, Human Rights Ombudsmen of Bosnia and Herzegovina decided to prepare Annual Report on occurrences of discrimination for 2011. This Report shall be submitted to the Parliamentary Assembly of Bosnia and Herzegovina, People's Assembly of Republika Srpska, the Parliament of the Federation of Bosnia and Herzegovina the Parliament of the District of Brčko of Bosnia and Herzegovina.

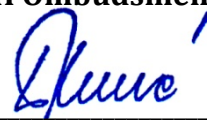
Submission of the first Annual report on occurrences of discrimination in Bosnia and Herzegovina provides a good opportunity for highlighting dimensions and associated characteristics of occurrences of discrimination, measures undertaken by Ombudsman Institution in the field of elimination of discrimination, as well as measures expected to be undertaken by responsible parties with a view of creation of open and tolerant society based on respect of equality, freedom and fundamental human rights for every individual.

As ombudsmen we seize this opportunity to remind that all public bodies at the levels of state, entities, cantons and the District of Brčko of Bosnia and Herzegovina, municipal institutions and bodies, legal entities with public competences including all legal entities and natural persons in all areas of life, are obliged to ensure application of measures contained in present Report, and omission of carrying out these measures shall made them responsible for human rights violation.

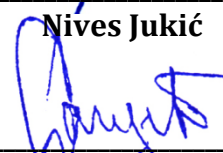
Banja Luka,

February 2012

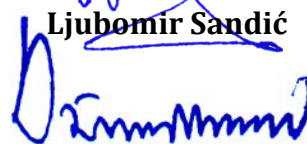
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## **ABOUT OMBUDSMEN INSTITUTION AND ITS DEPARTMENT FOR ELIMINATION OF ALL FORMS OF DISCRIMINATION**

In the system of human rights protection the Institution of Human Rights Ombudsmen of Bosnia and Herzegovina (BiH Ombudsmen) is independent institution established to promote good governance and the rule of law, protection of rights and liberties of natural and legal persons that are guaranteed by BiH Constitution and international treaties appended thereto.

Base for work and functioning of BiH Ombudsmen is contained in Annexes IV and VI of the General Framework Agreement on Peace of 14 December 1995 and based on these documents the Institution has started to function since 1996. The Law on Ombudsmen Institution was adopted in 2000 and was amended in 2002, 2004 and 2006.

BiH Ombudsmen have special powers and competencies described in provisions of the Law on Prohibition of all Forms of Discrimination, Freedom of Access to Information Act and the Law on Ministerial, Governmental and other Appointments and appointments by the Council of Ministers and other Appointments in Bosnia and Herzegovina,<sup>1</sup> including entity laws on ministerial, governmental appointments, and, consequently, the Institution provides natural and legal persons with information on their rights and obligations, possibility of court or other protection, processes individual and group complaints, proposes initiation of mediation procedures, etc.

**Governmental organs and institutions are obliged to cooperate with the Ombudsmen and in this sense are obliged to provide adequate assistance in investigations and monitoring, to enable access to files or documents, do personal interviews and consideration of necessary files or documents for examination of allegations contained in complaints.<sup>2</sup>**

Aware of significance of creation of strong mechanism for prevention of all forms of discrimination, in January of 2009 BiH Ombudsmen, even before the Law on Prohibition of Discrimination entered into force, decided to establish Department for Elimination of all Forms of Discrimination. The main task of this Department is to ensure harmonized approach to exercise and protect citizens' rights in entire territory of BiH and undertake effective measures to prevent any form of discrimination in exercise of citizens' constitutionally guaranteed rights. In 2011 in the Department there were employed two lawyers and one trainee working in Head Office in Banjaluka and Regional Office in Sarajevo.

Handling of individual complaints filed by citizens is one of most important forms targeted to elimination of discrimination in the society. Through work on individual complaints or *ex officio* investigations the Ombudsmen endeavor to stress importance of

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<sup>1</sup> Articles 16 and 17 of mentioned Law

<sup>2</sup> Article 25 of the Law on Human Rights Ombudsman of BiH

consistent application of the Law on Prohibition of Discrimination contained in international treaties and domestic legislation, as well as to importance of harmonization of domestic legislation with international human rights standards. Thro recommendations and other decisions responsible institutions and services are remind of factors disabling equal legal treatment to all BiH citizens and propose adequate measures for effective legal intervention aimed to protection of citizens' rights.

Procedure for protection against discrimination processed by Ombudsmen Institution is initiated by filing of complaint to one of the addresses indicated in official web site of the Institution.<sup>3</sup> „Any natural or legal person claiming a legitimate interest may complain to the Institution without any restriction. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may not restrict the right to lodge a complaint with the Institution. Complaining to the Institution or the latter's intervention shall not entail for the complainant any criminal, disciplinary or other sanction or any disadvantage or discrimination. Any complaint must be signed and submitted by the person concerned in a document stating his or her grounds, written on plain paper. A complaint presented in a less formal manner may be accepted where an Ombudsman finds that circumstances so require. All the work of the Institution is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.<sup>4</sup>

Deadline for submitting a complaint to Ombudsmen Institution is 3 months, and deadline for submitting the lawsuit referred to in the Law on Prohibition of Discrimination is 3 months after finding about violation of a right and latest one year as of the day a violation was committed.

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<sup>3</sup> [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

<sup>4</sup> Article 18. Of the Law on Human Rights Ombudsman of BiH

## **BINDING LEGAL FORCE OF PROHIBITION OF DISCRIMINATION IN BOSNIA AND HERZEGOVINA**

- **International standards**

**Prohibition of discrimination is contained in international treaties that are directly applicable in domestic judicial system, contained in European instruments that are directly applicable or acquire legal force in process of accession of Bosnia and Herzegovina to EU, contained in the Law on Prohibition of Discrimination in BiH, in the Constitution of BiH and other domestic regulations that are in conformity with above mentioned Law.**

International treaties containing prohibition of discrimination:

- Universal Declaration on Human Rights (UDHR)<sup>5</sup>
- International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup>
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>7</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>8</sup>
- Discrimination (Employment and Occupation) Convention, 1958, (ILO-C-111),  
Convention on Protection of Migrant Workers and Members of their Families,
- Convention on the Rights of the Child (CRC)
- Convention on Rights of Persons with Disabilities
- UNESCO Convention Against Discrimination in the Area of Education

- **Regional instruments**

Prohibition of discrimination is defined by European Convention on Human Rights and Fundamental Freedoms, which, together with its Protocols, is directly applicable in BiH and has priority over all domestic laws in BiH.

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<sup>5</sup> Article 1 and 2

<sup>6</sup> Article 2 repeats formulation from Universal Declaration, while Articles 14 and 19 guarantee equality to all persons in court procedures, that is, right to participation in public life. Article 26 of the Covenant stipulates that „All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>7</sup> Article 2

<sup>8</sup> Article 2



European Convention on Human Rights and Fundamental Freedoms (ECHR) offer protection of the rights to all citizens of state-parties to the Convention. One of the strongest international mechanisms for protection, due to its strict mechanisms of application, ECHR guarantees broad spectrum mainly of civil and political rights, including:

- Right to life (Article 2), life without violence (Article 3), life without slavery (Article 4)
- Freedom of opinion (Article 9), expression (Article 10) and right to freedom of assembly (Article 11)
- Freedom of movement (Protocol 4, Article 2)

All persons living in the Council of Europe's state-parties enjoy right from the Convention regardless of sex, race, color, language religion, political or other opinion, national or social origin, and association to national minority, property or some other status. At the time of war or other public threats to the nation, state-parties may reduce their obligation to such measure which is strictly necessary, however, excluding right to life and right to life without torture or slavery. General Secretariat of the Council of Europe must be informed on any step back from obligations.

Following becoming member of the Council of Europe in April of 2002, BiH ratified ECHR, and took over obligations at regional level, in conformity with Article 1 of ECHR, to ensure rights and freedoms guaranteed by this Document to all persons in its territory.

Article 14 of ECHR "guaranties enjoyment of the rights and freedoms envisaged by the Convention and prohibits discrimination based on sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Protokol 12. To the Convention ratified by BiH on 29.07.2003, which entered into force on 1 April 2005, broaden prohibition of discrimination to rights and freedoms contained in the Convention to „enjoyment of all rights envisaged by legislation...“. The first court decision that applied Protocol 12 is Court decision in the case *Sejdić and Finci vs Bosneiai Herzegovina*.

In certain areas prohibition of discrimination is regulated by EU Directives. Directives constitute EU legislative act by which the state-parties are required certain results without guidelines in which way such results are to be achieved:

- "Directive on racial equality" – Directive by EU Council 2000/43/EC of 29 June 2000., which applies principle of equal treatment to all persons regardless of racial or ethnic origin"
- "Directive on employment" – Directive by EU Council 2000/78/EC of 27 November 2000., which establishes general framework for equal treatment regarding employment and profession

- “Directive on equal salary” – Directive by EU Council 75/117/EC of 10 February 1975 on harmonization of of legislation of member states regarding application of principle of equal salaries for males and females.
- “Directive on gender equality” – Directive by EU Council 2000/113/EC of 13 December 2004 which applies principle of equal treatment of males and females in accession and getting of goods and services
- “Directive on burden of proof” – Directive by EU Council 97/80/EC of 15 December 1997 on burden of proof in the cases of gender based discrimination.
- “Directive on racial equality” – Directive by EU Council 2000/43/EC of 29 June 2000., which“
- „Directive on equal treatment in employment“ – (revised) – Directiva 2006/54/EC of European Parliament and EU Council of 5 July 2006 on appliucation of equal opprtunities of males and females regarding employment and profession. This Directive constitute BiH obligation on its way to accession to EU.

- **Domestic regulations**

BiH Constitution prescribes that „Bosnia and Herzegovina and both of its entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms...“<sup>9</sup>, and that „rights and freedoms envisaged by European Convention on Human Rights and Fundamental Freedoms and its Protocols shall be directly applicable in Bosnia and Herzegovina“ These acts have priority over all other laws.“<sup>10</sup>

Further, BiH Constitution determines that „enjoyment of rights and freedoms envisaged in above mentioned article or international treaties listed in Annex I of the Constitution ensures to all persons in BiH without any discrimination based on any ground such as sex, race, color, language, religion political or other opinion, national or social origin, association with national minority, property, birth or other status“.

The Law on Prohibition of Discrimination, which entered into force on 5 August 2009, creates comprehensive framework for civil and administrative regulations for protection against discrimination. Apart from prohibition of unequal treatment based on any ground, the Law makes distinction between direct and indirect discrimination, so the following is determined as special forms of discrimination: „harassment, sexual harassment, mobbing, segregation, issuing orders to the others to commit discrimination, assistance to committers on the occasion of discrimination and victimization. The Law also defined the area of its application, and central institution for protection of discrimination defined by the Law is Institution of Human Rights Ombudsman of Bosnia and Herzegovina. Additionally, the Law determines administrative and court procedures for protection against discrimination including petty offence penal provisions for treatment contrary to the Law and non compliance with recommendations issued by Ombudsmen Institution.

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<sup>9</sup> Article II 1 and 2 of BiH Constituion - Hum,an Rights and International Standards

<sup>10</sup> Article II 1 and 2 of BiH Constitution - Human Rights and International Standards

Unfortunately, in application of the Law on Prohibition of Discrimination there is repeated practice that legislation is adopted easily, while there lacks effective measures targeted to their application. Although Article 7, paragraph 5, of the Law on Prohibition of Discrimination prescribes that in the budget of Institution of Human Rights Ombudsman of BiH shall be incorporated a special budgetary item necessary for functioning of special department/special departments for combat discrimination, it was not included in the budgets for 2010 and 2011 due to financial restrictions imposed on Ombudsmen Institution through temporary financing. These restrictions are particularly reflected in promotion of the Law, monitoring of court procedures related to discrimination, investigations of discrimination and harmonization of legislation.

Such approach to an newly established mechanism, for which globally there is a low level of legal practice, significantly impacts to effective application of the Law and decrease possibility of Ombudsmen Institution fully to carry out its legally determined obligation. As the result of such situation, although the Law was adopted for more than two years ago, just one final court decision has been taken in relation to discrimination, and this decision was taken by Cantonal Court in Mostar,<sup>11</sup> including one first instance decision taken by Municipal Court in Livno.<sup>12</sup>

**Citizens are very little informed on possibility to address Ombudsmen Institution and discrimination is not reported in real measure in which it really takes place, and there is a very small number of citizens who decide to request court protection in the cases of violation of the right.**

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<sup>11</sup> No: P 58 0 P 056658 09 P

<sup>12</sup> No: 68 0 P 017561 11 P

## ACTIVITIES UNDERTAKEN ON PROMOTION OF THE LAW AND COOPERATION WITH THE INSTITUTIONS

**Importance of promotion of the Law on Prohibition of Discrimination and role of the ombudsmen in its application is clearly seen from analyses prepared in 2011 and covering 1600 citizens from 17 BiH cities, which shows that that 70% citizens are completely unaware of what is BiH Ombudsmen Institution, and out of the rest of 30%, who said they knew about Ombudsmen institution, only 64% provided correct or partly correct answers<sup>13</sup>.**

In context of promotion of the Law itself, and acquainting competent institution and the public with its content, Ombudsmen activities were limited due to lack of financial resources. Therefore, Ombudsmen Institution did promotion of the Law mainly through activities organized by other organizations and institutions.

Representatives of the Department for Elimination of All Forms of Discrimination participated in series of workshops organized by the OSCE throughout BiH, where they presented and promoted the Law and their mandate to representatives of non-governmental sector, providers of free legal aid, representatives of public institutions and civil society (**3-4 March 2011, Sarajevo; 10, 12, 17, 19 May 2011, Sarajevo, Banja Luka, Tuzla, Mostar**).

Apart from general promotion of the Law Pored, some of the workshops were designed for to certain vulnerable categories of citizens. **Most of participants of the workshop dedicated to discrimination of disabled persons (5 September 2011, Mostar, and 26 October 2011, Banjaluka) expressed unhappiness due to lack of financial and institutional support by competent authorities, unequal treatment of war military invalids and civil victims of war and „miserable“ reimbursement for other care and assistance.**

**Participation of representatives of the Department in workshop on rights of LGBT population (2 December 2011, OSCE, Sarajevo) led to assessment the participation useful by other participants, since the main number of associations of this category was not acquainted with organization, competencies and the way of functioning of Ombudsman Institution, which could be reason for small number of complaints filed with Ombudsmen Institution by this population.**

On the occasion of presentation of results of projects related to monitoring of criminal proceedings from the area of of sexual and gender violation, organized by Associated Women from Banjaluka and Helsinki Parliament of Citizens Banjaluka, with support of the UNDP (**11 November 2011, Banjaluka**), recommendations were adopted relating **changes of legal provisions covering this category of population including introduction of urgent court procedures for this type of criminal offences, so that victim (or damaged party) could**

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<sup>13</sup> Analyses done by organization Omladinskog resursnog centra (ORC) from Tuzla, in cooperation with other youth organization members of BiH, ALMANAH 2011, <http://www.omladina-bih.net/download/Almanah%202011.pdf>, str. 22.

**get status of party to procedure, to introduce in all courts technical possibilities for protection of vulnerable vastnesses, as well as to continued education of judges and prosecutors from the area.**

At round table organized by Helsinki Committee for Human Rights of BiH (**25 November**, Banja Luka), consolidated conclusion was that **initiative should be addressed to High Judicial and Prosecutors Council to establish evidence on court procedures initiated in accordance with the Law on Prohibition of Discrimination.**

Representatives of the Department for Elimination of All Forms of Discrimination participated in conferences dedicated to combat against discrimination that are held abroad, and had their presentations:

- **28-29 March, Prague:** participation in workshop on the role of governmental institutions from 17 countries of the region in human rights protection, in promotion and protection of women's rights and gender equality, which was organized by OSCE/ODIHR
- **19-25 May, Varna:** participation in Women's Human Rights Training Institute, session and education on women's rights organized by Bulgarian Gender Institute for Human Rights
- **27-30 May 2011, Belgrade:** Participation (in capacity of observers) in conference the Balkan Justice: Equality for sexual minorities, organized by Williams Institute University from Los Angeles
- **9-11 June, Ohrid:** participation in regional conference of Ombudsmen dedicated to application of the Law on Prohibition of Discrimination in the region and establishment of National Preventive Mechanisms (NPM).
- **29 November – 1 December, Belgrade:** Sub-regional workshop on strengthening of national capacities of European and Central Asia countries for implementation of recommendations by Human Rights Mechanisms (international conventions' organs, special procedures and universal periodical reports).

From **27-29 September 2011** Ombudsmen Institution organized and hosted thematic workshop held in Sarajevo and named „The Role of Human Rights National Mechanisms in Protection Against All Forms of Discrimination“ under Council of Europe's PEER TO PEER PROJECT II, attended by 33 Council of Europe's member countries. Thematic items were related to rights of immigrants, Romas and LGBT population, and the conclusions were targeted to strengthening of human rights national mechanisms with a view to elimination all forms of discrimination of above mentioned categories.

Additionally, representatives of the Department for Elimination of All forms of Discrimination celebrated human rights week<sup>14</sup> through radio talk show on RTRS-a (**6 December**, Banja Luka) dedicated to occurrences of discrimination in BiH society, participation in debate of law faculty students and students of political sciences of Banjaluka

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<sup>14</sup> 5-10. December, 2011.

University (**7 December**, Banja Luka), participation on anti-discrimination program (AD) organized by Media Center Sarajevo (**10 December**, Sarajevo), as well as participation in Human Rights Fair in Music Pavilion (**10 December**, Banja Luka).

Within program activities of related associations, BiH Ombudsman Institution was presented by information that at least 13 lawsuits were initiated related to discrimination in BiH<sup>15</sup>; that web portal<sup>16</sup> for public information on various aspects of discrimination and protective mechanisms in BiH is constructed and running, with support of organization Civil Rights Defenders a team of 13 BiH young journalists is created, educated to report discrimination, and a guide for journalist on how to report about this problem is in preparation.

A part of promotional activities was dedicated to faculty lecturing, mainly to the students of law and political sciences (**17 October**, Bihać, **29 October**, Banja Luka, **13-14, November**, Brčko). The students were lectured on the role, importance and activities of the BiH Ombudsman Institution in the field of human rights and application of the Law on Prohibition of Discrimination, series of lecturing were organized by Association for Democratic Initiatives and Initiative by the Youth for Human Rights from Sarajevo in cooperation with the OSCE and international human rights organization „Civil Rights Defenders.“

Promotion of the work of the Institution on suppression of discrimination was also performed through statements for TV and radio shows, participation in such shows and giving the statements, through provision of information to various scientific and research centers in the country and abroad, submission of reports to the Ministry of Human Rights and Refugees of BiH on BiH Ombudsmen Institution's activities in the field of human rights and protection against discrimination (**6 May**), including submission to UN High Commissariat for Human Rights in Geneva, related to racial discrimination (**30 May**).<sup>17</sup>

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<sup>15</sup> Data covers only lawsuits by the NGO „Vaša prava“

<sup>16</sup> [www.diskriminacija.ba](http://www.diskriminacija.ba) project of Media Center Sarajevo funded by Sorosh Open Fundadion, and portal [www.andtidiskriminacija.ba](http://www.andtidiskriminacija.ba) supported by Civil Rights Defenders and Association for Democratic Initiatives.

<sup>17</sup> The Submission is available at web site of BiH Ombudsman Institution.

## HANDLING OF COMPLAINTS AND STATISTICS

Handling of individual complaints is the most significant form of human rights. Institution of Human Rights Ombudsman in 2011 received 191 complaints about discrimination. Apart from complaints from 2011 the Department transferred 81 cases from 2010 and 1 case from 2009 so total of complaints dealt with by the Department in 2011 was 273 cases. In reporting period the Department resolved 88 cases from 2011 and 40 from 2010, deciding to close (102) or issuing recommendation (26), or through restitution of the right during the time of investigation. It is necessary to mention that a certain number of cases resolved during investigation was resolved through mediation, encouraging friendly outcome or mediation between dispute parties, and there were ways that responsible organ correct its action following first addressing by the Ombudsman, which will be illustrated through concrete examples in the following Chapter.

In the cases where investigation confirms violation of right, Ombudsmen Institution issue recommendation aimed to adoption of measures and restitution of the right violated.

Annex VI, Article 5, paragraph 4) of Dayton Peace Accord prescribes obligation of responsible party, in indicated time period, in writings inform Ombudsmen Institution in which way it shall implement recommendation.

In reporting period the Department for Elimination of All Forms of Discrimination issued 26 recommendations.

Office	Complaints filed	Pending cases	Resolved cases
Banja Luka	77	28	49
Brčko	23	15	8
Mostar	6	4	2
Sarajevo	81	56	25
Livno	4	0	4
<b>Total</b>	<b>191</b>	<b>103</b>	<b>88</b>

### Review of complaints received by the Department for Elimination of All Forms of Discrimination

In 2011 number of complaints increased (41%) in comparison with previous year. There is possibility that intensive promotional campaign undertaken by the Institution as well as by the other organization from area of human rights protection and combat against

discrimination impacted to increased number of complaints. For comparison, in 2010 135 complaints were received and in 2009 156 discrimination complaints were received

In 2009 main number of complaints was related to discrimination based on ethnic ground (53), and in 2010 significant decrease of such complaints occurred (14), and at the same time number of complaints regarding mobbing increased (32). In 2011 trend of increasing of mobbing complaints continued (41), and out of total of (43) in only a minor number of cases violation of the right was determined (4).

Effectiveness of work of the Department on individual complaints is directly linked to human resources of the Department. Although the Ombudsmen determined priority through involving of trainees to strengthen capacities of the Department for Elimination of All Forms of Discrimination unfortunately the need for involvement of employees of this Department in dealing with complaints falling in competence of other departments significantly impacted on functioning of this Department.



<b>Forms of Discrimination</b>	<b>Banja Luka</b>	<b>Brčko</b>	<b>Mostar</b>	<b>Sarajevo</b>	<b>Livno</b>	<b>Total</b>
<b>Mobbing</b>	14	9	1	17		<b>41</b>
<b>Harassment</b>	6	0	1	4		<b>11</b>
<b>Based on ethnic origin</b>	22	6	1	12	2	<b>43</b>
<b>Gender based</b>	1			4		<b>5</b>
<b>Based on social status</b>	4	1		1		<b>6</b>
<b>Based on education</b>	2	2	1	6		<b>11</b>
<b>Based on membership in trade union</b>	5	1		1		<b>7</b>
<b>Based on age</b>	5			2		<b>7</b>
<b>Based on sexual expression or orientation</b>	1			2		<b>3</b>
<b>Based on social origin</b>			1	1		<b>2</b>
<b>Based on place of residence</b>	1	1		3		<b>5</b>
<b>Religion based</b>	2	1		1	1	<b>5</b>
<b>Based on political or other opinion</b>	3			1		<b>4</b>
<b>Based on association with national minority</b>	6			1		<b>7</b>
<b>Property based</b>	3			1		<b>4</b>
<b>Other</b>	2	2	1	24	1	<b>30</b>
<b>Total</b>	<b>77</b>	<b>23</b>	<b>6</b>	<b>81</b>	<b>4</b>	<b>191</b>

**Review of complaints received on office-to-office base and forms of discrimination**

<b>Discrimination referred to in (Article 2, paragraph 2, of the Law on Prohibition of Discrimination )</b>	<b>Banja Luka</b>	<b>Brčko</b>	<b>Mostar</b>	<b>Sarajevo</b>	<b>Livno</b>	<b>Total</b>
<b>Employment</b>	33	15	3	46	2	99
<b>Membership in professional organizations</b>	2	1		1		4
<b>Education</b>	2			3	1	6
<b>Training</b>				1		1
<b>Housing</b>	11	2		1	1	15
<b>Health</b>	2		1	6		9
<b>Social protection</b>	5			8		13
<b>Goods and services designed to the public and public places (5 of which is related to the police)</b>	2			8		10
<b>Performing of economic activities and public services</b>	18	4	1	2		25
<b>Other</b>	2	1	1	5		9
<b>Total</b>	<b>77</b>	<b>23</b>	<b>6</b>	<b>81</b>	<b>4</b>	<b>191</b>

**Review of complaints received on office-to-office base and forms of discrimination**

<b>Name of Department</b>	<b>Realized</b>	<b>Cooperation realized</b>	<b>Partly realized</b>	<b>No answer</b>	<b>Non- realized</b>	<b>Total</b>
06 – Department for Elimination of All Forms of Discrimination	6	7	2	5	6	26

**Review of degree of implementation of recommendation of 31.12.2011.**

<b>Ground of discrimination in cases where Ombudsmen Institution issued recommendations</b>	<b>Number of recommendations</b>
<b>Sexual harassment</b>	1
<b>Mobbing</b>	7
<b>Ethnic origin</b>	4
<b>Association with national minority</b>	2
<b>Education</b>	2
<b>Sexual expression and orientation</b>	1
<b>Gender</b>	2
<b>Place of residence</b>	2
<b>Place of birth</b>	1
<b>Other</b>	4
<b>All other grounds (total)</b>	<b>26</b>

#### **Review of recommendation according to grounds of discrimination**

Non-compliance with Ombudsmen recommendations related to violation of the Law on Prohibition of Discrimination results in petty offence responsibility of natural and legal persons, monetary penalties up to 10.000 KM, security measure related to prohibition of activity and other sanctions envisaged by the Law.

## **OMBUDSMAN'S OBSERVATIONS CONCERNING CERTAIN FORMS OF DISCRIMINATION**

This chapter comprises individual characteristic cases of different forms of discrimination the most frequently reported to the Ombudsman Institution. The highlighted cases serve for illustration purposes only and they do not reflect the whole picture of discrimination in various forms.

- **Nationality (ethnicity)-based discrimination**

Analysis of complaints received by the Department for elimination of all forms of discrimination in 2011 indicates the existence of ethnicity/nationality-based discrimination in Bosnia and Herzegovina. According to the records of the Ombudsman there were 43 complaints of nationality-based discrimination, out of which 16 was received in 2011, while the rest originated from previous years.

In 2011, most of complaints related to the ethnicity/nationality-based discrimination in employment and public competition, housing sector being not regulated, guaranteed right to property and public bodies procedure.

The sole basis for the registration of a complaint within the Ombudsman is the complainants' allegation as presented in their complaints. Practice, however, often proves it to be unsubstantiated. This is particularly important when we speak of nationality-based discrimination and difficulties in establishing of its existence. It is difficult to find if somebody is treated differently in pursuance of any of their rights only on the basis of their national/ethnic origin. In finding evidence of such form of discrimination an important factor are statistics, which are, unfortunately, limitedly available in BiH for the fact that the last census was held in 1991. The fact is that the Law on Prohibition of Discrimination provides that burden of proof lays on the alleged perpetrator/violator of the rights, but lack of public awareness of the importance and strength of this provision diminishes its practical implementation, so that the Ombudsman Institution often receives general or partial answers to its inquiries and communication with respondent parties, which slows down the procedure. It often happens that a complaint is registered within the Department for elimination of all forms of discrimination, but further investigation proves the existence of some complainant's right violation, which cannot be regarded as discrimination, or the existence of discrimination which cannot be proved.

In the reporting period representatives of the Department for elimination of all forms of discrimination paid a couple of visits to some municipalities in order to make spot-checking of the allegations concerning certain vulnerable groups' discrimination and to promote amicable solution finding between disputed parties in accordance with Article 18 of the Rules of Procedure for the functioning of the Institution of the human rights Ombudsman of Bosnia and Herzegovina.

Analysis of situation on the ground shows that returnees and internally displaced persons are often exposed to social exclusion or unequal access to social services since measures are not in place to ensure sustainable return.

- **Mobbing**

According to legal provision, mobbing is „ every form of non- physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee’s working conditions or professional status as a consequence.“

In 2011 the Ombudsman Institution registered 41 case related to mobbing. Although this number of complaints is relatively high, it has not been a real indicator of the situation in BiH. The fact is that there are many citizens exposed to mobbing today, but they neither address the Institution nor seek court protection out of fear of losing their jobs. Comparing statistics of this and previous years, it is evident that mobbing cases are increasing which is a consequence of difficult economic situation, high unemployment rate, badly regulated labor market and lack of capacity of relevant inspections.

Mobbing victims are also exposed to stress since mobbing has influence on their health. They often attach expert opinion of a psychologist, psychiatrist or other relevant experts, as well as the depositions of witnesses to their complaints lodged before the Institution. Extenuating circumstance for mobbing victims is in fact that burden of proof lays on alleged perpetrator. In practice, perpetrator is a person in a position of power and they do everything to deny presence of mobbing invoking their rights guaranteed by internal and general legislative documents.

**EXAMPLES:**

*In reporting period representatives of the Department carried out monitoring of the court proceedings held before the Municipal Court in Sarajevo and Primary Court in Banja Luka. In both cases it was about allegations of mobbing exercised by the management presented in complaints lodged by the employees of the public RTV services. In the first case (Ž-SA-06-870/10) the public service was recommended to return the complainant to her previous working post subject to dispute and to initiate mediation procedure to establish amount of pecuniary and non-pecuniary damages to be paid as a compensation for discrimination. In the second case (Ž-BL-06-435/10) on request of the Gender Center of the Government of the Republic of Srpska and Association of Journalists of BiH the Institution carried out monitoring of the too lengthily proceedings because of the change of judges, comprehensiveness of evidence and exemption requests, which has adversary effects to the complainant’s situation.*

*In cases Ž-SA-05-509/11 and Ž-BL-06-255/11, complainants faced threats of being fired for their addressing the Ombudsman Institution and relevant inspection seeking protection of their labor-related rights. Such treatment of the employer is continuation of unequal treatment, for which we use a comparative law term of **victimization**. For that reason, ombudspersons filed request for initiation of misdemeanor proceedings before the relevant municipal courts.*

*In case Ž-SA-04-330/10 recommendation was issued saying that „ill-founded claim of discrimination and turning to the Ombudsman Institution“ cannot provide grounds for disciplinary proceedings against complainant.*

Despite the obvious increase in number of cases involving discrimination, only few cases are pending before courts so that we cannot mention relevant case-law with regard to mobbing. In any case, all the complainants addressing the Ombudsman Institution receive legal advice on their rights and obligations and possibility of judicial and other protection. If a complaint is well-founded investigation procedure is initiated. Alleged perpetrator is asked to plea, and advised on their obligation to co-operate with the Institution and submit required answers. Once the investigation is done, the Ombudsman issue appropriate decision which could be a recommendation including measures to be taken by the perpetrator. Since mobbing became actual only a couple of years ago, it is necessary to educate the public and include as much experts as possible into this issue (labor medicine specialists, neuropsychiatrists, psychologists, lawyers etc.) in order to identify mobbing in practice as early as possible in order to act preventively. For that reason Ombudspersons welcome establishment of a health institution in Tuzla that will assess influence of mobbing to human health that will be one of important evidence in establishing presence of mobbing.

- **Gender-based discrimination**

In addition to the Law on Prohibition of Discrimination which includes gender-based discrimination and regulates general issues related to discrimination, *gender-based discrimination is also regulated by the Law on Gender Equality*, which provides for prohibition of direct and indirect gender based and guaranties equal opportunities for all in private and public life. *Implementation of this Law is generally inefficient since other legislation is not harmonized with this Law.* Impossibility of implementation was the reason for the adoption of amendments to the basic wording of this Law, which lead to the adoption of the Law on Amendments to the Law on Gender Equality<sup>18</sup> whereby notions of direct and indirect discrimination were defined better, as well as sexual harassment, violence and victimization. This raised expectations that the Law implementation would be more efficient in the period following the adoption of the said amendments. *Unfortunately, no significant step forward was registered in the implementation of this Law in 2010 and 2011.*

*Gender based discrimination is still present* as a result of lack of harmonization of the Law on Gender Equality that was expected within the period of 6 months from the date of the adoption of this Law in June 2003. This is particularly related to the Election Law of BiH,<sup>19</sup> since the results of the elections in BiH held in 2010 indicate the decrease in participation of women in legislative bodies. This came as a result of non-efficient implementation of Article 15 of the Law on Gender Equality which provides that “state bodies at all levels of organizations of authorities, and local self- government bodies shall ensure and promote equal gender representation in process of managing, decision making and representation”.

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<sup>18</sup> “Official Gazette of BiH” no.: 102/09

<sup>19</sup> In 2010. adopted was the Law on Amendments to the Election Law of BiH („Official Gazette of BiH” no.: 23/01, 7/02, 9/02, 52/02, 4/04, 20/04, 25/05, 528/05, 62/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10) which amended more significantly Article 4.19 para (4) which reads as follows: „ Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest integer”.

*Election results indicate that the aim promoted by the cited legal provision has not been achieved.*

According to the information obtained from the Election Commission it could be concluded that participation of women in parliaments at all levels in BiH was significantly reduced compared to the results of the elections held in 2006 although candidates lists comprised more women than before. Results of the last elections show that women were present only in 83 positions or 17,01% compared to 488 positions in total for which elections were organized. In the Parliamentary Assembly of BiH women have 11 places or 19,2%. In the National Assembly of the Republic of Srpska women have 16 places, which is 19,2% out of 83, while they hold 17 places in the Parliament of FBiH out of 81. Even Election Committee itself has not been appointed in accordance with provisions of the Law on Gender Equality since there is only one woman out of 7 members. Gender inequality is particularly present in the area of economy and natural resources management as it could be seen from the fact that management structures of the companies in the area of telecommunications, hydro-energy potentials, natural and financial resources mostly include male persons.

#### EXAMPLES:

*During the competition for High School Center Principal in Kotor Varoš it was required that the candidate has 5 years of work experience. At the moment of submitting her application Complainant (Ž-BL-06-665/11) had 5 years, 0 months and 26 days of service including her one-year long maternity leave utilized in this period. According to the relevant Ministry which was consulted during the public competition procedure, Complainant did not have 5 years of work experience since she spent one year on maternity leave. The Ombudsman Institution addressed the Ministry indicating the provisions of the relevant convention of the International Labor Organization related to maternity protection and prohibition of discrimination in labor relations during maternity leave. The Ministry replied saying that the opinion is not a document with legal force, and that they simply made distinction between the notions of „work experience“ and „length of service“ and reassured their compliance with provisions prescribing prohibition of gender based discrimination after which Complainant relinquished appeal.*

*In case no. Ž-SA-06-1349/10 a woman complained of the Rulebook on Filling in Positions in Primary and Secondary Schools in Sarajevo Canton which includes criterion according to which additional points are granted to candidates who were members of the BiH Army – HVO during the war. Following the investigation conducted, Ombudspersons held that this Rulebook is discriminatory with regard to women and younger candidates, so that they recommended the Ministry of Education and Science of Sarajevo Canton to harmonize this Rulebook with provisions of the Law on Prohibition of Discrimination and Law on Gender Equality. However, this recommendation has not been complied with so far. In a similar case (Ž-SA-06-721/11), the Department opened investigation as to the allegations that priority in employment in primary and secondary schools and pupil dormitories in Zenica-Doboj Canton is given to soldiers disabled in war, demobilized soldiers and members of killed soldiers families, as well as members of families of soldiers who died or disappeared. Members of these categories get points above all other criteria. The Ombudsman Institution through its investigation is trying to establish if such*

*positive discrimination, that is, affirmative measures for the above categories are reasonable, objective and proportionate to the aim intended to be achieved.*

Other complaints of gender based discrimination are mostly related to cases involving sexual harassment and gender based violence, particularly from the aspect of insufficient protection of victims. Ombudsmen have found that employers do not take efficient measures for prevention of this form of violence, and that victims are further victimized as their claims are generally not trusted.

- **Discrimination of national minorities**

National minority is a part of population – citizens of BiH not belonging to either of three constituent peoples, with identical or similar ethnic origin, traditions, customs, beliefs, language, culture and spirituality in addition to similar history or other characteristics.

Roma in Bosnia and Herzegovina are in a very difficult economic and social situation since most of them is unable to secure their existence without social welfare. They mostly do not have health insurance, only few of their members are employed or have some stable source of income and a lot of their children do not attend school. Roma are also the most discriminated national minority, and they experience unequal treatment in the area of employment, education, public services provision and access to public gathering places. Number of complaints lodged within the Institution does not nearly reflect real number of discrimination cases involving Roma members as they live on social margins, which implies their lack of access to legal remedies and mechanisms for the protection of their rights.

**EXAMPLES:**

*On 25.05.2011 the Ombudsman issued a recommendation to the individual A.D. (Ž-BL-06-85/11) to comply with provisions of the Law on Prohibition of Discrimination since he would not let Roma members to be served in his hospitality facility. Recommendation was not complied with so that the aggrieved party initiated court proceedings in order to establish discrimination and to claim compensation of damages. Municipal Court in Zavidovići in its judgment dated 2.12.2011 quashed the claim since discriminatory motives of the respondent party could not be established. The Ombudsman Institution hopes that appellate proceedings would find violation of the rights and indemnify the complainant.*

*Having been informed of the allegations of discrimination of Roma tenants in a dwelling building in Gradiška Municipality, representatives of the Department made a field visit (on 13 November, Gradiška), explained the mandate and authorities of the Institution, gave information on legal provisions on the absolute prohibition of discrimination on any grounds including the affiliation with national minorities and distributed promotion material related to the Law on Prohibition of Discrimination in BiH. In addition to that, representatives of the Institution asked the tenants to provide guarantees that they will restrain from incidents including the minor incidents involving calling names to their Roma neighbors.*



*In case no. Ž-BL-06-429/11, members of Roma national minority complained of discrimination committed by their neighbors, communal police and Police station Brod. This was related to the fact that they collect secondary raw material from the local landfill and stock some of such material in their backyard. Following the Ombudsman's intervention, police initiated internal control to establish fact about their officers actions, nuisance caused by neighbors also seized to happen and complainants relinquished further proceedings before the Ombudsman.*

*Association „Zemlja djece“ Tuzla addressed the Institution claiming that on 11. 10. 2011 on local Internet portal<sup>20</sup> published anonymous reader's article entitled “Young beggars more and more aggressive”, which includes racist opinions toward Roma people. Among the comments there were many racist and inciting replies calling for actions such as “extermination”, “lynch”, “expedition and deportation from the town”, “pushing in wagons and gas release” and like. Administrator was asked to remove the challenged text from the portal or to censor it in part comprising discriminating views. However, it has not been removed, but it remained on the portal unchanged.*

*During the meeting with different Roma associations in the region of Brčko District, representatives of Department for elimination of all forms of discrimination were informed that the Government of Brčko District in the reporting period allocated funds to support employers who hire Roma members in their companies. Representatives of Roma associations mentioned that no company from the District applied for these funds. .*

- **Other forms of discrimination**

In contravention of all international documents, Constitutions of BiH and the Law on Prohibition of Discrimination, persons with disabilities are discriminated in BiH in many ways.

Following the complaint No. Ž-SA-06-471/11, but also some other complaints, Ombudspersons have established that the applicable legislation regulates the rights of disabled persons differently depending on whether they became disabled in war or peace. Procedure and terms and conditions for the establishment of their status of the disabled persons are different for these two groups of the disabled as well as the enjoyment of their entitlements based on their disability where the disabled by war have higher compensations than those who became disabled in time of peace.

What is evident with regard to the disabled is discrimination based on the place of residence. So the entitlements of such persons established and recognized in one entity are not transferrable and would not be recognized on the territory of the other entity, so that change of place of residence is detrimental for them.

EXAMPLES:

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<sup>20</sup> [www.tuzlarije.net](http://www.tuzlarije.net)

*In reporting year first final and binding judgment was delivered in BiH pursuant to the provisions of the Law on Prohibition of Discrimination. It is about a child E.B. with impaired development which was not included in regular teaching process, with explanation that the budget did not provide for funds for an assistant. Recommendation of the Ombudsman established the existence of **discrimination based on handicap** and required for the funds to be found to enable the child to follow regular teaching process. Recommendation was not complied with so that court protection was sought. First-instance court delivered its judgment which became final and binding in 2011 after the Cantonal Court in Mostar upheld this judgment.*

*After not being selected in a public competition for the selection of Teaching Fellow at the Faculty of Forestry of the University of Banja Luka, incumbent G.M. complained to the Ombudsman. Explanation for lack of his selection was that he finished his studies when he was 31 year old although he was the only candidate who met the criteria. The Ombudsman Institution recommended the University and the Faculty of Forestry to take into account prohibition of **discrimination in this case age-based** and to finish the competition process in accordance with positive regulations. On 17.10.2011 Dean of the Banja Luka University informed the Ombudsman that the said recommendation would not be complied with since the public competition procedure had been finished and that adoption of new Statute which would guarantee the highest standards in human rights is under way.*

*Case no. Ž-BL-06-690/11 was initiated ex officio since a Foundation from Lukavac published an advert for filling-in the position of a pedagogue limiting the age of candidates entitled to apply to the age between 31 and 40. After receipt of the first letter of the Ombudsman whereby he was reminded of prohibition of **discrimination based on age**, director of the said Foundation cancelled the public competition procedure and informed the Ombudsman that the Rulebook comprising challenged provisions was amended and brought in line with requirements prohibiting discrimination.*

*In case no. Ž-LI-06-201/11 the Ombudsman initiated investigation on the alleged **discrimination based on religious affiliation** since municipal authorities of Glamoč prevented a nun from being a manager of a kindergarten. During the intervention of the Ombudsman judgment of Municipal court in Livno was delivered which held that there was discrimination in this case and provided for non-pecuniary damages to be paid to the petitioner.*

*Based on information obtained from media, case no. Ž-SA-06-1255/11 was introduced and it was related to **discrimination based on language** after a German language teacher gave the lowest mark (1) to an eight-grade pupil who wrote his translation of a text from German to Serbian in Cyrillic script. In his reply to a letter sent by the Ombudsman the mentioned school's Principal said that the school pedagogue discussed this matter with the subject teacher twice reminding her of the obligation to implement the applicable Rulebook on marking, to register all periodic control tests and to take care of gravity of tasks given to the pupils and equality in script use. Following that, the relevant inspector in charge of German language teaching related matters, an employee of the Republic Pedagogic Institute came to inspection after which, according to the last letter sent to the Ombudsman by the Principal, there were no complaints neither oral nor written of this teacher's work.*

*With regard to the different taxation in two entities, in case no. Ž-SA-04-1498/10 after the conducted investigation the Ombudsman established that different taxation of employees working in the same institution represents **discrimination based on place of residence**. The Federal the Ministry of Finance was asked to initiate amendments to the Law on Income Tax and to put citizens of BiH which are considered non-resident persons in the Federation of BiH in the same legal position like those who are residents so they can enjoy the same rights. In its reply the Ministry of Finance claimed that activities were initiated for the adoption of amendments to the Law on Income Tax in both entities. The Ombudsman Institution will follow up realization of this recommendation and mention it in its annual report.*

## STRENGTHENING OF CAPACITIES FOR PROTECTION AGAINST DISCRIMINATION

Expectations of citizens from the Ombudsman Institution as a „central institution for the protection from discrimination“ and particularly, given its obligations established in Law, are very high. For that reason the Ombudsman emphasize to the **parliaments** that financial and human resources of the Department for elimination of all forms of discrimination need to be strengthened through the separate budget lines necessary for its functioning.

Stronger strategic approach in prioritizing and ensuring of continuity of activities taken on priority realization can contribute to more efficient protection of citizens in cases involving discrimination, with particular emphasis on improvement of cross-department co-operation in cases of multiple human rights violations including also discrimination. Distribution of responsibilities and communication lines, both internally and with external partners should be further developed. There are also processes and instruments for sharing of know-how which are currently not developed and not efficient. Engagement of the Ombudsman Institution in the process of awareness rising on human rights international standards is still very insignificant. Therefore, there is a general need for training and capacity building within the Institution. However, given the restrictions in budget that should primarily be used to the benefit and for the needs of the citizens, elimination of weakness points in this Institution should be organized by means of international voluntary contributions, in particular through the active participation in human rights protection institutions, primarily the International Coordinating Committee (ICC), European Ombudsman Institute, Mediterranean group of human rights protection mechanisms and like. There remains need for the engagement and exchange of international recognized best practices aimed at strengthening of local capacities and achievement of maximal results in ensuring human rights protection in BiH. Awareness raising among general public about the role of the Ombudsman Institution is very important for the prevention of discrimination since lack of knowledge of the mandate and powers of the Institution could create unrealistic expectations among citizens. Knowing this, the Ombudsman of BiH should maintain permanent consultations with civil society, bodies and authorities and open dialog with citizens.

The Ombudsman Institution acts in relatively favorable surrounding. Carrying out of its mandate is one of very important preconditions for the establishment of rule of law, which is the objective of the authorities. This should be the reason for the ***authorities to keep supporting the Ombudsman Institution, which means support to its independence, especially financial independence, and compliance with recommendations and special reports of the Institution.***

Based on the powers of the Institution as set out by the Law on Human Rights Ombudsman of BiH and the Law on Prohibition of Discrimination, the Ombudsman Institution will ***continue with the activities on strengthening of its capacities in order to provide the efficient protection and promotion of human rights.*** Particular attention will be paid to further ***strengthening of co-operation with the institutions and bodies of Bosnia and Herzegovina, international organizations, NGOs and citizens.*** In the next period efforts will be made to ***develop special programs of staff training in the area of discrimination*** as

a form of human rights violation, and to ensure participation of the employees at training sessions organized by the Council of Europe, UN organizations and other national institutions for human rights protection and, depending on the budget available, the Institution will organize its own education contents either for the staff or the citizens.

In processing concrete complaints related to discrimination, the Ombudsman Institution will keep ensuring timely solution finding and information of complainants on progress while seeking fair procedure to all the parties concerned. In order to learn magnitude of discrimination in BiH society, the Institution intends, subject to funds availability, to carry out survey on discrimination as a form of human rights violation conducting an efficient and impartial investigation and try to gain higher level of confidence of the applicants and citizens in general in professionalism of the Institution. Particular attention will be paid to the assessment of frequency of human rights violations in form of discrimination, following the number of recommendations issued to the authorities about the cases of discrimination, and compliance with these recommendations. Significant measures to be implemented by the Ombudsman in order to raise awareness of citizens on prohibition of discrimination will be linked to information of the public on cases of non-compliance with recommendations of the Ombudsman, organization of meetings with relevant authorities in order to ensure rule of law and compilation of good practices in the area of discrimination.

Particular attention will be attached to ***ensuring of monitoring of court proceedings*** related to the cases of discrimination, ***training of the representatives of the authorities at all levels***, and especially police, prosecution and court on international standards, legislation and case-law of discrimination. The Ombudsman Institution will ***address possibility of establishment of a mediation mechanism*** pursuant to the provisions of the Law on Protection of Discrimination. Promotion of best practices in implementation of international human rights standards in cases involving discrimination with intention of continuous raising of level of attained human rights in BiH, establishment of co-operation with professional associations for the human rights improvement, exchange of information and data, and initiation discussions on all the issues important for realization and furthering of human rights in BiH are priorities of the BiH Ombudsman Institution.

Article 8 of the Law on Prohibition of Discrimination defines responsibility of the **Ministry of Human Rights and Refugees** of Bosnia and Herzegovina in the implementation of the Law on Prohibition of Discrimination. Ombudspersons state that this Ministry has not established a central database to comprise cases of discrimination, nor it issued a rulebook on methods of collection of cases involving discrimination within the legal deadline of 90 days. On 24 and 25.03.2011 on Jahorina mountain there was a meeting of a focus task force for finalizing of a Draft Rulebook on collecting the cases of discrimination in Bosnia and Herzegovina. Meeting was organized by the the Ministry of Human Rights and Refugees of Bosnia and Herzegovina in co-operation with UNICEF with participation of representatives of OSCE, High Judiciary and Prosecutorial Council of BiH, the Agency for Gender Equality of BiH, and Institution of Human Rights Ombudsman of BiH.

As a result of work of this task force, prepared was a Draft Rulebook governing the method of collection of information, defines the contents and outline of the relevant form sheet and establishment of a database. Special segment of the work of this task force is realization of co-operation between the relevant institutions where, pursuant to Article 3 para 1 of the Rulebook, all the institutions are obligated to refer to the Ministry of Human Rights and Refugees all reported cases of discrimination regularly and accurately to be used for statistic purposes and further analysis.

Ombudspersons commend holding of consultative meetings and other steps aimed at the establishment of the database and adoption of relevant by-laws as they invite the Ministry to intensify efforts for the final establishment of the unified register on discrimination cases.

While the Ombudsman Institution primarily acts preventively, **court** play main role in sanctioning of cases of infringement of the Law on Prohibition of Discrimination since it finds in its judgments discriminatory actions, order taking of measures to prohibit actions comprising discrimination and establish damages to be paid. They also issue other judgments foreseen by law.

Number of cases involving discrimination registered within the Ombudsman Institution in this year is 191, but this number is lower than the estimated scope of discrimination presence in BiH, since a whole series of indicators imply the presence of a significant imbalance between the number of complaints filed within the Ombudsman and number of proceedings filed before the court.

Efficiency of the court with regard to resolving of cases of discrimination should be reviewed in light of their heavy workload, in particular at first-instance court in larger cities. This fact significantly diminishes the efficiency of the court protection mechanism in cases of discrimination and is partly emphasized by the non-existence of any case-law in this area as well as the insufficiently developed capacities of the judges. For that reason the Ombudsman invites relevant institutions to put maximal efforts in finding mechanisms for the increase of efficiency of judicial institutions so they can carry out their constitutional functions in protection of the individual rights of the citizens. Based on monitoring done in a couple of court proceedings, Ombudspersons could observe unequal treatment by the court to a rather significant degree, which is a consequence of different level of awareness among judges about discrimination as prohibited social phenomenon. This is particularly expressed in cases involving some special forms of discrimination such as mobbing, harassment, sexual harassment or victimization, which can be put in relation with years-long case-law of the European Court of Human Rights prior to entering into force of Protocol 12 when discrimination had not been recognized as a separate form of human rights violation.

**Awareness raising** among citizens, relevant institutions and local communities on necessity of compliance with provisions of the law and international treaties on prohibition of discrimination must remain priority in the next period. In discharge of this task the Ombudsman realized successful co-operation with all the media outlets in BiH through media releases, press statements, attendance in TV and radio shows and reporting on some

individual cases tackled by the Institution. Unfortunately, even two years after the adoption of the Law on Prohibition of Discrimination in BiH Ombudspersons observe that no efficient measures are taken to ensure **permanent capacity building and education** of the employees and officials in administration, but also judges, lawyers and free legal aid agencies to recognize discrimination.

Ombudspersons of BiH specially emphasize necessity of implementation of Article 24 paragraph 2 of the Law which provides for **all the laws and general regulations to be harmonized** with provisions of this Law within a one-year period from its entry into force. Therefore, it is necessary for all the executive and legislative authorities at all levels realize importance of the mentioned provision and analyze legislation and general regulations within their jurisdiction as soon as possible and find out if they are harmonized with the Law on Prohibition of Discrimination. The role of the Ombudsman Institution is important also in context of the promotion of this Law and its content. To this end the Ombudsman has already taken some steps by participating at two round tables and promotion of the Law in media in co-operation with civil society and OSCE Mission to Bosnia and Herzegovina.

Although European countries take special care of the protection from racial discrimination, the Ombudsman Institution in BiH has never received any complaint of racial discrimination, xenophobia and related intolerance. This is a result of specific historic heritage and the fact that discrimination is directed primarily to BiH constituent peoples members in areas where they are minority.

The Institution has not registered complaints of unequal treatment based on different sexual orientation, which could be attributed to their fear from being exposed to judgmental environment and to traditional intolerance toward this category of citizens in addition to the influence of religious organizations. Ombudspersons indicate necessity of intensifying **campaign** of awareness rising about the work of the Institution among **non-privileged categories**: victims of discrimination based on sexual orientation.

Finally, Ombudspersons state that concerned institutions provide information to the Ombudsman and reply to its inquiries so that co-operation with the Institution at all levels of the authorities is satisfactory, while degree of **compliance with recommendations** of the Ombudsman could be higher. The Ombudsman Institution is a preventive mechanism for human rights protection and compliance with its recommendations is primarily in the interest of public authorities since it would prevent lengthily and expensive court proceedings and indemnification of the victims following decisions of the Human Rights Court in Strasbourg.