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# YOUTH RULE OF LAW LAB



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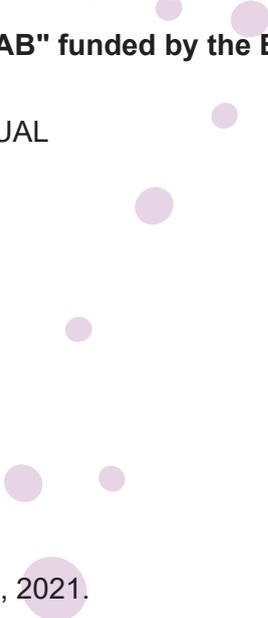


# **YOUTH RULE OF LAW LAB**

**ASSOCIATION OF WOMEN JUDGES IN BOSNIA AND HERZEGOVINA**  
for the Project "Youth Rule of Law LAB" funded by the European union

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# 1 INTRODUCTION

## Fundamentals of the legal and constitutional system in Bosnia and Herzegovina

Knowledge of the legal system as well as the constitutional order of Bosnia and Herzegovina is the basis for a better understanding of the various areas of law that we face in everyday life in this country. Despite the continuing long running judicial reform in Bosnia and Herzegovina, there is still a lack of general knowledge about the legal system and its individual segments as well as the constitutional system. This is one of the reasons for the evident trend of distrust of the judicial institutions of Bosnia and Herzegovina in society, which has been present for many years.

In order for the legal system to be effective in practice, all persons who seek protection of their rights and for the exercising of those rights must be provided with effective legal protection. In this context, it is the duty of all of the courts as well as the public authorities to act in a manner that ensures respect and provides every person with a sense of legal certainty and faith in the legal system. All laws must be interpreted and applied in such a way that enforces the rights of citizens that are guaranteed by both domestic laws and ratified international instruments.

The issue of the organisation of Bosnia and Herzegovina is certainly a very complex one. In

such a legal system, citizens are often unaware of the role of various judicial institutions as well as their own rights and the mechanisms for the protection of these rights. This results in the failure to achieve greater protection of rights of citizens and their more active involvement in the legal system. Namely, if community members know and understand their rights and obligations then they are better able to make a significant contribution towards strengthening democracy and social cohesion.

The basic principles of the legal structure of the state and the political organisation of Bosnia and Herzegovina were agreed through the General Framework Agreement for Peace in Bosnia and Herzegovina (often called the Dayton or the Paris Agreement) that was initialled in Dayton (USA) on 21 November 1995 and signed in Paris on 14 December 1995. The Constitution of Bosnia and Herzegovina is therefore part of that agreement. In addition to the preamble, Annex 4 contains 12 articles that determine a number of issues including, amongst others, the basic principles of continuity, democracy, trade in goods, services, capital, human rights and basic freedoms as well as the competencies and relations between institutions. The Constitution of Bosnia and Herzegovina has not been officially translated from English into the official languages of Bosnia and Herzegovina and nor has it been published in the 'Official Gazette of Bosnia and Herzegovina'. This means that state institutions continue to use different unofficial versions of the text of the Constitution.

Paragraph 2 of Article 2 of the Constitution of Bosnia and Herzegovina is particularly significant as it states that the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR) and its protocols will be applied directly in Bosnia and Herzegovina and will have "priority over all other laws." This



means that long before Bosnia and Herzegovina ratified the Convention (2002) and regardless of its international legal aspect the ECHR and its protocols have been part of the formal and substantive constitutional law of Bosnia and Herzegovina and have therefore applied since the Constitution of Bosnia and Herzegovina came into force on 14 December 1995.

The organisational framework of the judicial system in Bosnia and Herzegovina is based on four judicial systems:

- Bosnia and Herzegovina court system,
- entity judicial system of the Federation of Bosnia and Herzegovina,
- entity judicial system of Republika Srpska,
- judicial system of Brčko District of Bosnia and Herzegovina.

At the state level there are the following:

- Constitutional Court of Bosnia and Herzegovina,
- Court of Bosnia and Herzegovina,
- Prosecutor's Office of Bosnia and Herzegovina.

In the Federation of Bosnia and Herzegovina (hereinafter, FBiH) there are the following:

- Constitutional Court of the FBiH,
- Supreme Court of the FBiH,
- Federal Prosecutor's Office,
- municipal and cantonal courts
- cantonal prosecutors' offices.

In Republika Srpska (hereinafter, RS) there are the following:

- courts of general jurisdiction (basic courts, district courts and the Supreme Court of RS),
- courts of special jurisdiction (district commercial courts and the Higher Commercial Court).

Brčko District of Bosnia and Herzegovina (hereinafter, Brčko District) has the following:

- Court of Appeals,
- Basic Court
- Prosecutor's Office of Brčko District.

In addition to the basic tasks related to the protection of constitutionality, the Constitutional Court of Bosnia and Herzegovina has a more direct connection with the judiciary, namely the legislature, in certain types of disputes. The Court decides on appeals against the judgments of the

supreme courts of the entities and in some way assumes the role of the Supreme Court of Bosnia and Herzegovina. The Constitutional Court has sole jurisdiction to decide on any dispute between the two entities or between Bosnia and Herzegovina and one or both of the entities or between the institutions of Bosnia and Herzegovina arising under the Constitution of Bosnia and Herzegovina. The mentioned jurisdiction is not limited to these disputes. The decisions of the Constitutional Court are final and binding.

According to the 2004 Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter, HJPC), the HJPC is an independent and autonomous body. The HJPC has the task of ensuring an independent, impartial and professional judiciary (courts and prosecutors' offices) in Bosnia and Herzegovina.

The HJPC has the authority to conduct the following:

- appoint holders of judicial office,
- conduct disciplinary proceedings against holders of judicial office,
- supervise their professional development,
- decide on issues of incompatibility,
- decide on temporary referrals,
- participate in the budget determination procedure for courts and prosecutors' offices,
- determine the criteria for the evaluation of judges and prosecutors, etc.

The system of judicial power can be presented in a simplified way when it comes to the judicial systems in the entities and in Brčko District. The judicial system is characterised by multi-level decision-making, whereby citizens, in most cases, exercise their rights by going through the courts. This starts from the lowest first instance (municipal/basic) courts through to the courts that decide on appeals (cantonal/district and the Court of Appeal of Brčko District) and in specific cases up to the supreme courts of the entities or the Court of Appeal of Brčko District. This ensures the right of citizens to have their case reviewed by a higher court, which provides a greater guarantee of achieving a fair end to a dispute. Logically, the multi-stage nature through which the right to a legal remedy comes to the fore affects the length of court proceedings. Yet the number of court proceedings that end in the first instance (when the parties do not file a legal



remedy against a court decision) is not negligible.

Although conducted before the same courts, it is necessary to emphasise at the outset the broad difference between court proceedings. There are civil proceedings (in the broadest sense, disputes related to property, family law, status, commercial, etc.) and criminal proceedings (criminal and misdemeanour). In civil proceedings the interested parties initiate and have the main say in the proceedings (representing independently or through a legal representative - a lawyer of their choice) and the existence of the proceedings depends on their interest. In proceedings that are criminal in nature the state expresses its interest in sanctioning a perpetrator for certain illegal acts (criminal offences or misdemeanours) and the competent body (e.g., the prosecutor's office) initiates the proceedings *ex officio*, regardless of whether an injured person wishes to prosecute the perpetrator. In the first type of proceedings primarily the individual legal interest is ensured whereas the second ensures the wider social interest (expression of social condemnation of undesirable behaviour).

If their rights guaranteed by the Convention have been violated before the regular courts, citizens can seek redress through the Constitutional Court of Bosnia and Herzegovina. Some of the 'more important' rights related to court proceedings arising from the ECHR are the right to a fair trial, the right to an effective remedy, the prohibition of discrimination, the right to property, the right to family life, home and correspondence, and the right to freedom of expression. If a citizen considers that the violation of his/her right under the ECHR has not been remedied in the proceedings before the Constitutional Court of Bosnia and Herzegovina then he/she can apply to the European Court of Human Rights in Strasbourg (France) for protection.

The ECHR is also a very important source of law at the level of the European Union, where basic human rights are an integral part of the fundamental principles of European Union law. It is very important that citizens of Bosnia and Herzegovina have such powerful protective instruments at their disposal.

## Basic standards of the rule of law

The term 'rule of law' implies a system of political power based on respect for the constitution, laws and other regulations both by citizens (addressees of legal norms) and by the holders of state power (addressees of legal norms). All laws and other regulations as well as the actions of the holders of power should be based on a law, namely a law based on a regulation. This expresses the constitutional principle of constitutionality and legality.

The International Commission of Jurists states, "The rule of law is not only the formal use of legal instruments, but also the rule of justice and the protection of all members of society from the excessive power of those in power."

Without the rule of law human rights cannot be realised and without human rights the rule of law is a technical mechanism without a value guideline. The United Nations (hereinafter, UN) definition of the rule of law implies respect for human rights, "The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."

Rule of law sounds abstract and yet put simply it amounts to a state based on the rule of law allowing laws (that are public and accessible to all) to always and equally apply to all (no matter how politically connected) with an independent judiciary to protect citizens from abuse of power by the state. It is evident that the role of a strong and independent judiciary is crucial in ensuring the rule of law and that shortcomings in the functioning of this pillar of state power (even if it were just a misperception) negatively affect citizen trust in the state. This is why the structure of the rule of law is swaying. In this field, Bosnia and Herzegovina will have to work hard to achieve the standards achieved by European Union Member States in the field of rule of law.

When we speak about the values of the European Union in relation to the rule of law it is indisputable



that the European Union has at its disposal a number of instruments to ensure the rule of law in all Member States and that this affects all citizens directly. This implies that all members of society are equal under the law and that they can exercise their rights before independent and objective courts. Many Member States have high standards for the rule of law but there are also certain challenges, which vary from one Member State to another. Rule of law is one of the fundamental values on which the European Union is built and crucially it is not just an abstract phrase but the key basis for exercising the rights and freedoms of citizens.

The goals and values that the European Union promote are multiple, but above all they comprise the following:

- advocating for peace and well-being, freedom, security and justice for all citizens;

- sustainable development based on stable economic development;
- the fight against discrimination;
- respect for cultural and linguistic diversity.

If Bosnia and Herzegovina wishes to become a member of the European Union then it must respect and promote the values of the European Union, including human dignity, freedom, democracy, equality, human rights and the rule of law.

Independence of the judicial system is a key indicator of the level of the rule of law in a democratic country and plays a crucial role in the protection of human rights and freedoms, in accordance with recognised international standards.

**In conclusion, we can sum up as follows:**

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The legislation in the entities, Brčko District and at the state level need to be harmonised because laws in the same area often prescribe differently in the same matter and this leads to legal uncertainty.

Additional engagement on the reform of the judicial system throughout Bosnia and Herzegovina is necessary in order to contribute towards achieving greater efficiency and functionality of the judiciary, ensure legal certainty and the rule of law and the adoption of laws with clear legal solutions in line with European standards and trends.

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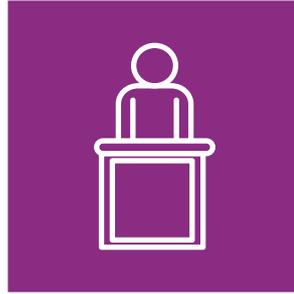
Promote the importance of the direct applicability and the supra legal force of the ECHR within the legal system in Bosnia and Herzegovina. Create awareness among citizens that the ECHR and its protocols ensure values such as fundamental human rights and that such rights are not subject to any form of restriction arising from the applicable regulations in this country (the entities and Brčko District).

Young people (pupils and students) should be educated through regular teaching activities about the importance of the rule of law in Bosnia and Herzegovina as a basic guarantor of the development of democracy and respect for human rights. It is important to acquire knowledge about the goals and values of the European Union at an early stage through regular education, given that Bosnia and Herzegovina aims to achieve European Union membership.

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# THE RIGHT TO ACCESS JUSTICE AND THE RIGHT TO A FAIR TRIAL

## Roles and responsibilities (duties of judges, prosecutors, etc.)

### The concept and role of the prosecutor and the injured party

The basic right and duty of the prosecutor is to detect and prosecute perpetrators of criminal offences. The prosecutor takes the necessary measures to detect and conduct the investigation, find the suspect, lead and supervise the investigation and manages the activities of the authorised officials who find the suspect and collect statements and evidence. The prosecutor issues summons and other orders and proposes the issuance of summonses and orders to the pre-trial judge when necessary (e.g., when the prosecutor needs data from a bank or a telecom operator or when it is necessary to follow certain persons through telecommunications, etc.). The prosecutor also establishes the facts necessary for deciding on a property claim, proposes the issuance of a criminal warrant, issues and represents an indictment in court, declares legal remedies and performs other tasks.

The injured party may also act as a prosecutor, under the conditions prescribed by the Criminal Procedure Code; however, this only applies in RS. This situation occurs when after confirming the indictment the prosecutor states that he/she shall withdraw from the indictment up until the end of the main trial. The court then asks the injured party if he/she wishes to take over the criminal prosecution and represent the indictment. If the injured party wishes to do so then he/she has the same rights as the prosecutor, with the exception of those rights that the prosecutor has as a state body.

Roles and responsibilities (duties of judges, prosecutors, etc.)

Trial and types of court proceedings

Structure and jurisdiction of the courts

The right to access justice and judicial statistics

What 'Equal rights for all' means



The injured party has the right to submit a proposal and evidence for the realisation of a property claim, to challenge the verdict in relation to the court's decision on the cost of the criminal procedure and the court's decision on a property claim, engage a lawyer, attend the pre-trial hearing and the main trial and to file a complaint.

### The concept and role of the judge

The term 'judge' appears in criminal proceedings, but there are several types each of which has its own role. A **pre-trial judge** is a judge who acts during the investigation in cases when it is prescribed by law. The judge can, for example, issue orders to search an apartment, other premises and movables or order the seizure of items, including letters, telegrams and other consignments, order the storage of temporarily seized items and documentation, order the opening and review of temporarily seized items and documentation, issue orders to a bank or other legal entity or telecommunications operator, order the return of temporarily seized items, determine special investigative actions and expert witness reports, issue orders to bring or impose prohibitive measures and issue or terminate detention orders.

A **preliminary hearing judge** is a judge who, after the indictment is filed, acts in cases prescribed by law. He/she has the powers of a pre-trial judge as well as the role of confirming or rejecting all or some counts of an indictment. The latter involves studying each count of the indictment and the evidence submitted to him/her by the prosecutor in order to establish the existence of reasonable suspicion, after which the judge decides on any previous objections. If the accused pleads guilty then the judge, in the presence of the prosecutor and the defence counsel for the preliminary hearing, enters a guilty plea into the minutes. The preliminary hearing judge then forwards the case to the judge or trial chamber to which the case was assigned for scheduling of the main trial. The judge also returns the evidence that supports the allegations in the indictment to the prosecutor.

The **president of the trial chamber** holds hearings and presides over the trial. It is his/her duty to ensure a comprehensive examination of the case and to remove any obstacle that could delay the proceedings. The presiding judge helps to clarify matters and brings decisions on the

motions of the parties. It is his/her duty to maintain order in the courtroom and to uphold the dignity of the court proceedings. Immediately after the opening of the session, the judge can warn trial audience attendees to behave respectfully and not to interfere with the work of the court. The judge can order the removal of any audience attendee from the session. If the judge deems that there are justifiable reasons then he/she can order that no recording of one or more parts of the main trial are made (in cases where recording is allowed). The judge also decides on the punishment for disturbing the order of the court.

The president of the trial chamber opens the session and announces the case of the main trial, asking the accused to provide personal data to establish his/her identity and warns the accused of the need to monitor the course of the trial carefully. The presiding judge informs the accused that he/she can present facts and propose evidence in his/her favour during the trial. The judge informs the accused, witnesses and experts that he/she can provide explanations regarding their testimony and instructs the accused that he/she can give testimony during the evidentiary proceedings as a witness. The judge, namely the president of the chamber, will prohibit any question and the answers to such a question if it has already been asked and can refuse to present it as evidence. The presiding judge is obliged to protect the witness from insults, threats and attack. After the closing arguments, the presiding judge announces that the main trial is over and the court withdraws to deliberate and vote to reach a verdict.

The preliminary hearing judge cannot participate in the continuation of the same proceedings. The presiding judge and members of the trial chamber cannot be involved in the same procedure either as a pre-trial judge or a preliminary hearing judge. The pre-trial judge cannot participate in further phases of the trial proceedings.

**Judges in civil proceedings** act as single judges or as part of a trial chamber. The role of a judge in civil proceedings is very important and the effective exercise of judicial protection depends on the active role of the judge. When it comes to the conduct of a judge in civil proceedings, the primary obligation of the judge or trial chamber is to respect the procedural rules, namely the basic principles of procedure prescribed under procedural law, as



a guarantee of legality in terms of treatment and equality before the law. The judge must manage the procedure in a way that ensures that decisions on the requests of the parties are based on oral, direct and public hearing. The judge must ensure that the procedure is carried out without delay (principle of efficiency), at the least possible cost (principle of economy) and that any abuse of procedural rules is prevented.

According to the Law on Courts of the FBiH and of Brčko District, an expert associate can lead the procedure and decide (in the first instance) in non-litigious and executive matters and small claims in cases assigned to him/her by the president of the court when so provided for under the law.

According to the Law on Courts of RS, an expert associate and senior expert associate can assist a judge in his/her work, draft court decisions, study legal issues, case law and legal literature and draft legal agreements as well as perform other professional tasks independently or under the supervision of the judge and according to the his/her instructions.

### **The concept and role of a lawyer (defence counsel)**

A lawyer is a person who is registered in the directory of lawyers of the Bar Association and who has taken the oath of office and practices law, where the bar is an independent and autonomous service that provides legal assistance to individuals and legal entities professionally and conscientiously in accordance with the Constitution, the Law and general acts of the Bar Association and maintains the lawyer-client privilege.

Lawyers or defence counsel, as properly designated in criminal proceedings, are persons who have the obligation to represent the interests of their client (suspect, accused or convicted person) who are often referred to as the 'defendant'. The defence counsel must take all necessary measures to establish the facts and gather evidence in favour of their client (suspect or the accused) in the protection of his/her rights. In case of an apartment and/or other premises search, as well as search of persons, the suspect has the right to inform his/her defence counsel. However, in exceptional circumstances the search can be carried out without the presence

of the defence counsel. The prosecutor is obliged to inform the defence counsel about the opening of temporarily seized items and/or documents.

The Criminal Procedure Code (CPC) contains articles dedicated to the defence counsel and regulates their relationship with the defendant as well as the rights and obligations they have in criminal proceedings in general. Above all, it regulates the rights and obligations of defence counsel as well their relationship with the defendant.

The suspect or accused already has the right to a defence counsel in the investigation phase and throughout the entire procedure up until sentencing before the courts, both regular and extraordinary. Defence counsel can be hired by the defendant, his/her legal representative, spouse or cohabitant, blood relative in direct line to any degree, adopter, adoptee, brother, sister or foster parent and can be appointed ex officio. As a rule, there is one defence counsel; however, there can be more, but under the condition that only one of them has the status of the main defender. Likewise, multiple defendants can have one defence counsel. Yet this is only allowed if their defences are not in conflict/collision. If it is necessary to submit written material to a defendant who has several members of his/her defence counsel then it is sufficient to submit the written material to just one of them.

The CPC prescribes who cannot act as a defence counsel. Namely, the defence counsel cannot be the injured party, spouses or extramarital partners of the injured party or the prosecutor, a blood relative in direct line to any degree, in a collateral line to the fourth degree or by an in-law relative to the second degree. A defence counsel cannot be a person who is called to be a witness in the same procedure, a judge or prosecutor in the same procedure or a person who in any way abuses contact with the defendant.

CPC stipulates when a suspect or the accused must have a defence counsel. A suspect must have a defence counsel present during the first interrogation if he/she is deaf or dumb or suspected for a crime punishable by long-term imprisonment. The suspect or the accused must have defence counsel when declaring a motion to order custody, while custody lasts, after an indictment has been issued for a crime punishable by ten years



imprisonment or a heavier sentence. The accused must have a defence counsel at the time the indictment is served.

Defence counsel can be assigned to the suspect or the accused in the interests of justice if the court finds that this is required because of the complexity of the case, the mental health of the suspect/accused or other circumstances. In this case, the suspect or the accused will be invited to choose his/her defence counsel from a presented list, otherwise the defence counsel will be appointed by the court. The suspect/accused can hire another defence counsel if, for example, the assigned defence counsel performs his/her duties irresponsibly or there is some form of disagreement between them that could affect the quality of the defence and the interests of the suspect/accused.

When there are no conditions for mandatory defence but proceedings are conducted for a criminal offence punishable by imprisonment of three years or more or when the interests of justice so require, regardless of the sentence imposed, the court shall appoint a defence counsel to a suspect/accused upon his/her request if according to his/her financial situation he/she cannot bear the cost of the defence throughout the entire procedure.

The defence counsel has certain rights and obligations during the procedure. Above all, during the investigation, he/she has the right to review the files and the obtained items that are in favour of the suspect. After the indictment is filed, the defence counsel and the suspect/accused have the right to inspect all documents and evidence and the suspect/accused has the right, as a detainee, to free and undisturbed connection with his/her defence counsel. The suspect/accused and his/her defence counsel can, up until the end of the main trial, namely a trial in front of the second instance court, negotiate with the prosecutor on the conditions for admitting guilt for the act for which the suspect/accused has been charged.

When criminal proceedings are initiated through issuance of an order to open an investigation, at the beginning of the interrogation the suspect will be instructed inter alia to engage counsel of his/her choice and that the counsel can be present during his interrogation and that he/she has the right to counsel without compensation. In certain cases, under no circumstances can a suspect

waive the right to defence counsel if his/her defence is mandatory. If the suspect or accused is in custody then he/she has the right to communicate immediately orally or in writing with his/her defence counsel. During the interview the suspect, namely the accused, and the defence counsel can be observed but their conversation cannot be listened to and must be treated as confidential.

When an indictment is filed and confirmed and when a verdict is rendered the deadline for appeals begins. All decisions with the right to appeal, including all appeals filed by the opposing party, must be delivered to the defence counsel (if the accused has a defence counsel) and to the accused.

Once the court has rendered its judgment, the opportunity to appeal is given. An appeal against the verdict or decision of the court can be filed by the defence counsel along with a request for retrial and a request for protection of legality (protection of legality only applies in RS) as extraordinary legal remedies.

The rights and duties of the defence counsel shall not cease in the event of revocation of the power of attorney until the pre-trial judge, the judge or the panel relieves the defence counsel of his/her rights and duties.

It is clear from all of the above that the defence counsel plays an active role in helping the defendant to participate in the criminal proceedings on an equal footing with the prosecutor and before the court, although the defendant does not have the necessary knowledge of the criminal field and law in general. In this way, the court is facilitated in its communication with the suspect or accused and his/her rights in criminal proceedings are protected. This is particularly important because a violation of the right to defence is prescribed as a significant violation of the provisions of the criminal procedure, which entails the revocation of the first instance verdict.



## Trial and types of court proceedings

### • What is a trial?

A trial is a procedure before a court regulated by the Constitution and the Law. Trials are presided over by judges who have been elected to that position in our country by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC).

### • What is a judicial proceeding?

Judicial proceedings are proceedings prescribed by law before a court. In court proceedings decisions are made on the rights and obligations of natural and legal persons or on the committing of a criminal offence and the guilt of a certain person.

The jurisdiction of the courts is determined by the laws on courts adopted at the level of the entities, Brčko District and the state,<sup>1</sup> through umbrella laws that determine the organisation, jurisdiction, financing and judicial administration as well as other laws determining the conduct of the courts.

### • What are court proceedings?

We distinguish three types of court proceedings: civil and criminal proceedings and administrative disputes.

- Civil proceeding is the common name for litigation, executive and non-litigation proceedings.

Civil proceedings are one of the proceedings through which judicial protection of civil rights is exercised. It implies the existence of a dispute between the parties to the proceedings. According to the rules of civil procedure, courts discuss and decide on disputes concerning the basic rights and obligations of citizens, on personal and family relations of citizens and on labour, property and other civil disputes unless otherwise provided for under the law when the court decides according to the rules of some other procedure.

Civil proceedings are the regular route of legal

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<sup>1</sup> Law on Courts;

protection in civil matters. They are initiated through a lawsuit and exceptionally through a proposal in a divorce lawsuit. Municipal courts in the FBiH and the basic courts in RS and in Brčko District and the Court of Bosnia and Herzegovina are courts of first instance. District courts in RS and cantonal courts in the FBiH, the Brčko District Court of Appeals, and the Appellate Division of the Court of Bosnia and Herzegovina are courts of second instance that decide on appeals against the decisions of the courts of first instance. Extraordinary legal remedies are followed by the Supreme Court of the FBiH, the Supreme Court of RS and the Appellate Division of the Court of Bosnia and Herzegovina.

Non-litigious procedure is the procedure for applying non-litigious legal norms to non-litigious legal matters, such as deciding on personal, family or property issues. The characteristic of this procedure is that there is no dispute involved. Municipal and basic courts act as courts of first instance in non-litigious matters.

Executive proceedings are initiated in the case of a court decision ordering the defendant to fulfil his/her obligation to the other party or to undertake some other behaviour that he/she does not want to do voluntarily within the period specified by law. Executive proceedings are initiated at the proposal of the aggrieved party and exceptionally as ex officio. Municipal and basic courts act as courts of first instance in executive proceedings.

District courts in RS and cantonal courts in the FBiH, the Brčko District Court of Appeals and the Appellate Division of the Court of Bosnia and Herzegovina act as courts of second instance before which appeals against decisions of first instance courts are decided. Second instance courts decide on appeals against decisions of the courts of first instance.

Civil proceedings are therefore initiated through a lawsuit/proposal by a natural or legal person or authorised body, while in exceptions the court can initiate non-litigious and executive proceedings ex officio in cases determined by law.

Because of their general social nature, civil proceedings are the most numerous court proceedings.



- Criminal proceedings determine whether one person has committed a criminal offence and whether he/she is guilty of a criminal offence. Criminal proceedings are initiated ex officio by the competent prosecutor. In criminal matters the courts of first instance are the basic and municipal courts (cantonal and district courts), depending on the amount of punishment threatened for the criminal offence and the Court of Bosnia and Herzegovina within its jurisdiction.

Criminal proceedings under domestic law also include special criminal proceedings.

Special criminal proceedings include proceedings for the issuance of a criminal warrant, proceedings for criminal offences against legal persons, proceedings for the application of security measures, confiscation of the proceeds of crime and revocation of suspended sentences, proceedings for revocation or termination of security measures and the legal consequences of a conviction, the procedure for providing international legal assistance and the execution of international agreements in criminal matters, the procedure for issuing a warrant and publication, and the procedure against minors.

- An administrative dispute is a dispute over the legality of an act issued by an administrative body. It is initiated by an individual or a legal entity that considers that one or more of his/her/its rights has been violated by an act issued by an administrative body. In administrative disputes, the courts of first instance are the district and cantonal courts, the Basic Court of Brčko District, and the Administrative Division of the Court of Bosnia and Herzegovina.

## PROCEEDINGS AGAINST MINORS AS A SPECIAL PROCEDURE

### Criminal proceedings against juveniles in general

As around the world, juvenile offenders have a special status in the justice system and legislation in Bosnia and Herzegovina. This is because they are in adolescence and therefore the most sensitive stage of human development, making the transition from childhood to adulthood. Criminal proceedings against juveniles in the FBiH, RS and

Brčko District are conducted in accordance with the provisions of special laws for juveniles (the laws on the Protection and Treatment of Children and Juveniles in Criminal Proceedings) and initiated before the Court of Bosnia and Herzegovina. The Criminal Procedure Code of Bosnia and Herzegovina contains provisions relating to proceedings against juveniles.

These comprehensive laws, according to which all participants involved in criminal proceedings are obliged to act, prescribe special rules for the treatment of minors and young adults in conflict with the law.

Criminal proceedings under these laws can be conducted against a juvenile. A juvenile is a female or male child who has reached the age of 14 at the time of committing a criminal offence, is criminally responsible but has not yet reached the age of 18. A child who has not reached the age of 14 at the time of committing a criminal offence is not criminally liable and therefore no criminal proceedings can be instituted against the child.

These laws also apply to adults when they are tried for crimes committed as minors. They also apply to young adults who were 18 years of age at the time of committing a crime but are under 21 years of age and whose mental development is not deemed to be at a level that could be considered adult.

Unlike the function of criminal proceedings instigated against adults, which are intended to ensure that no innocent person is convicted and that the perpetrator is sentenced to a criminal sanction prescribed by law for a particular crime, the purpose of criminal proceedings against minors is primarily protective and re-educational. The goal is to eliminate the causes of such behaviour in juveniles who demonstrate behavioural problems and to help them to develop into functional individuals.

Criminal proceedings instigated against a juvenile are conducted in his/her best interests and intended to promote his/her sense of dignity and personal value and enable the juvenile to express his/her opinion. The goal is to rehabilitate and socially reintegrate the juvenile and ensure his/her constructive role in society.



All persons involved in criminal proceedings against juveniles must be specialised in the treatment of juveniles. Prosecutor, judges, defence counsel and police officers for juveniles must be persons with an affinity for this type of work with children and have specialised knowledge on the rights of the child and juvenile delinquency as well as other knowledge and skills that make them competent to work on cases of juvenile delinquency.

Institutions participating in proceedings against minors are obliged to act as a matter of urgency in order to complete the proceedings as soon as possible. When taking action in the presence of a juvenile, it is essential to consider the level of maturity, personal characteristics and the need to protect the juvenile's privacy so that the conduct of criminal proceedings would not have an adverse effect on his/her physical, mental or cognitive development. The juvenile must have a defence counsel throughout the entire procedure. The right to privacy of a juvenile offender is respected at all stages of the proceedings and therefore it is forbidden to publish the name or any other information that could reveal the identity of the juvenile to the media.

### **Preparatory procedure**

Preparatory proceedings are the stage of an investigation into a criminal offence committed by a suspect who is a minor and it is counterpart to the investigative proceedings in a criminal procedure against an adult. During the preparatory proceedings, in addition to the facts related to the crime, the prosecutor obtains a social history and other data related to the personality of the juvenile and his/her behaviour, living environment and circumstances.

Before initiating the preparatory proceedings, the prosecutor for juveniles is obliged to consider the application of educational recommendations and alternative measures in order to divert from the usual criminal proceedings and to influence the proper development of the juvenile and strengthen his/her sense of personal responsibility through the application of certain orders and prohibitions.

During the preparatory proceedings, the prosecutor can propose to the judge that he/she order that the juvenile be placed in a temporarily shelter or

similar institution for the reception of juveniles if this is deemed necessary to separate the juvenile from the environment in which he/she lives or to provide help, protection or accommodation. This is necessary to eliminate the danger of recidivism. To ensure the presence of the juvenile and the smooth conduct of the criminal proceedings, the juvenile can be subject to prohibitive measures under strict conditions and detention, but only as a last resort.

In the event that after the end of the preparatory proceedings the prosecutor finds that there is no evidence that a juvenile has committed a criminal offence then he/she shall issue an order to suspend the preparatory proceedings.

After examining all of the circumstances related to the committing of the criminal offence and the level of maturity and other circumstances related to the personality of the juvenile and the circumstances in which he/she lives, the prosecutor submits a reasoned proposal for imposing an educational measure or sentence on the juvenile to the judge for juveniles.

The prosecutor's proposal contains the personal data of the juvenile, a description and the legal name of the criminal offence, the evidence from which it was adjudged that the juvenile committed the criminal offence, an explanation that should include an assessment of the juvenile's level of maturity and reasons justifying the application of the proposed educational measure or sentence of juvenile imprisonment.

### **Decision-making of the court according to the reasoned proposal**

For all criminal offences committed by a juvenile, the court of first instance (municipal/basic court) has subject matter jurisdiction and, regardless of the criminal offence, a single judge conducts the procedure.

After receiving the prosecutor's proposal, the judge is obliged to consider the possibility of not prosecuting the juvenile and instead applying the educational recommendations. If he/she does not apply the educational recommendations then the judge acts according to the prosecutor's proposal and conducts the appropriate procedure.



A sentence of juvenile imprisonment and institutional measures shall be imposed only after the main trial has been held in accordance with the provisions of the Criminal Procedure Code. Other educational measures can be imposed during the session.

The public is always excluded when a juvenile is tried. The course of criminal proceedings against a juvenile and the decision made in that procedure as well as video and audio recordings of the proceedings will not be published. The final decision of the court can be published, but without stating the name of the juvenile or other data from which his/her identity could be established.

The prosecutor, juvenile, defence counsel, parents and or guardians of the juvenile are invited to the session and a representative of the guardianship authority is informed about the session and may also attend. The session must be attended by the prosecutor, the juvenile and his defence counsel.

The session is a semi-formal meeting where the prosecutor reads and explains the proposal and briefly presents the evidence and personal data of the juvenile as well as the reasons justifying the proposal for imposing a sanction; this is done in the presence of the juvenile, the defence counsel, parent or guardianship representative. At the session with the juvenile and other participants, the juvenile's behaviour, personal circumstances, the criminal offence and the consequences of the criminal offence are discussed, enabling the juvenile to clearly express his/her opinion.

After the session, the judge makes the decision on imposing an educational measure on the juvenile. The operative part of this decision only states the measure to be imposed. The explanation of the decision shall contain a description of the act and the circumstances that justify the application of the imposed educational measure.

When deciding on the trial, the judge can deviate from certain rules of law on the main trial if he/she considers that their application would not be expedient in a particular case. In addition to the juvenile, the prosecutor, defence counsel and a representative of the competent guardianship authority must be present at the main trial. The parents or guardian of the minor are also be

summoned to the main trial.

The judge for juveniles is not bound by the prosecutor's motion regarding the sanction. Juveniles can be sentenced to educational measures, juvenile imprisonment or security measures for the criminal offence they committed. Only educational measures can be imposed on a younger juvenile, while in exceptional cases an older juvenile can be sentenced to juvenile imprisonment in addition to educational measures.

The verdict sentencing a juvenile to a term of juvenile imprisonment is counterpart to the verdict reached in criminal proceedings against an adult.

### **Criminal sanctions against minors**

The purpose of criminal sanctions against minors is to provide protection, help and supervision as well as general and professional training. The aim is to influence the development of minors and to strengthen their sense of personal responsibility and to ensure their education and proper development so that they are able to reintegrate into society.

The purpose of juvenile imprisonment is also to encourage a juvenile perpetrator of a criminal offence not to commit criminal offences in the future and to motivate him/her to influence other juveniles not to commit crimes.

In each case, it is considered which educational measure is adequate for the juvenile and in his/her best interests. The personal characteristics and circumstances of the juvenile, extent of social behavioural disorders and other characteristics of his/her personality and life circumstances are of primary importance. The gravity of the criminal offence and the motives that led him/her to commit the crime are deemed secondary.

The judge for juveniles has a wide range of educational measures at his/her disposal and the possibility to combine them in order to find an adequate answer for each specific juvenile and his/her behavioural problems with the aim to eliminate harmful factors and encourage re-education.

**Warning and guidance measures:** A court reprimand, special obligations or referral to an



educational centre for a certain number of hours during the day (14-30 days) or uninterrupted stay (15 days to three months) are imposed when necessary and with the intention to provide sufficient influence on the minor in terms of improving his/her behaviour.

**Intensified supervision measures:** Enhanced supervision by parents, adoptive parents or guardians, intensified supervision in the second family and intensified supervision by the competent social welfare body are imposed when measures of more permanent upbringing and re-education need to be applied for the upbringing and development of minors. Appropriate professional supervision and assistance is provided but complete separation of minors from their previous environment is not necessary.

**Institutional measures:** Referral to an educational institution, referral to a correctional facility or referral to a special institution for treatment and training are imposed on a juvenile for whom more permanent and intensive measures of upbringing or treatment should be taken through his/her complete separation from his/her previous environment.

Institutional measures include the severe educational measure of deprivation of liberty but are applied as a last resort. They can last only for as long as necessary to achieve the purpose of the educational measures within the limits determined by law.

Only a criminally liable older juvenile who has committed a crime with a prescribed prison sentence of more than five years can be punished through juvenile imprisonment. This stands in the case of serious consequences of a criminal act and a higher degree of criminal responsibility and when it is not deemed justifiable to impose an educational measure. However, in addition to the purpose of punishment, the sentence of juvenile imprisonment also has a protective and re-educational role. A sentence of juvenile imprisonment cannot exceed ten years and is imposed for full years or months.

### **Supervision over the execution of criminal sanctions against juvenile offenders**

Supervision and control over the execution of an

educational measure is performed by the judge who imposed the educational measure. At least once a year, the judge and the prosecutor directly supervise and control the execution of educational measures by analysing the reports submitted by the institutions that implement certain educational measures. Judges and prosecutors visit juveniles placed in prison at least twice a year. They conduct interviews with treatment staff and the juvenile in order to ascertain the course of execution of the educational measure and the goals of the treatment.

### **EXECUTIVE PROCEDURE**

What is an executive procedure and what is done?

The goal of every court procedure is the same and that is to execute a verdict, which basically is the execution of an obligation or right established by a court.

Yet despite the existence of final court decisions and the decisions of other authorities the holders of rights determined by those decisions must reinitiate court proceedings if there was no voluntary fulfilment of an obligation.

Why? Because the voluntary deadline for fulfilling the obligation is at the disposal of the taxpayer but without any specified sanction.

Sanctions in the case of non-compliance, such as fines, only appear when executive proceedings are initiated, since the decision on enforcement is subject to legal remedy, as is the decision on the sanction; this again implies additional time.

Executive proceedings are regulated by the Law on Enforcement Procedure, but the provisions of the Law on Civil Procedure also apply accordingly. In the executive procedure there is a single judge. Executive proceedings are initiated on the basis of a proposal submitted by the person requesting its enactment (the execution creditor) and against the one who is obliged to act in response to the request (the execution debtor).

This procedure can be initiated on the basis of an executive document (a court or other public authority decision that has acquired the status of enforcement), but it can also be initiated on the basis of an authentic document such as a bill of exchange.



This procedure can also end with an agreement, namely an agreement between the parties, to resolve the dispute in a faster and cheaper manner, in accordance with the principles of the more efficient and economical conduct of the procedure.

The proposal seeks the settlement of a dispute related to an obligation or the fulfilment of an act determined by the judgment:

- payment of receivables for employment (salary, recourse, hot meals, etc.),
- emptying of business premises and repossession by the claimant,
- refraining from doing something (such as allowing the peaceful use of a common path to the instigator's field, which would mean refraining from certain activities such as unloading sand on the road or stacking construction material).

Execution is proposed for a specific case and can be determined in line with the following:

- cash benefits of the execution debtor (salary, pension, etc.),
- payment of receivables on another basis (damage, debt),
- real estate owned/co-owned by the execution debtor,
- movables (such as items found at the address of the execution debtor).

Execution is often ordered in the case of the implementation of a divorce settlement in order to regulate the manner of fulfilment of parental obligations and the rights of both parents, including the right of the parent to whom the child was not assigned to see the child.

Here, unfortunately, the verdict is often not fulfilled and this always makes the execution procedure more complicated. One example is when the verdict establishes that one parent can see the child from 6 p.m. to 8 p.m. every other Wednesday at a shopping centre that has a playroom. In this case, the following persons participate in the enforcement process: a bailiff, a social worker and the court police.

Can you imagine a situation like that?

Situations like this are rare but still occur. For a court decision to achieve its ultimate goal in the protection of a subjective right of the parties or in the protection of legality it is necessary to ensure the possibility of its execution. According to the provisions of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to a fair trial includes the right to enforce court decisions immediately after they become final as otherwise such decisions would have no effect.

### Structure and jurisdiction of the courts

The judicial system in Bosnia and Herzegovina comprises of a complex structure of courts, given the complexity of the state system. Bosnia and Herzegovina consists of two entities in the form of the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) and the autonomous region of Brčko District of Bosnia and Herzegovina (Brčko District) and each of these units has its own judicial system.

In the FBiH there are municipal and cantonal courts as well as the Supreme Court of the Federation of Bosnia and Herzegovina. In RS there are basic and district courts, district commercial courts, the Higher Commercial Court in Banja Luka and the Supreme Court of Republika Srpska. The judicial system in Brčko District consists of the Basic Court and the Court of Appeals. At the state level there is the Court of Bosnia and Herzegovina with its Appellate Division.

The municipal, basic, cantonal/district, the Court of Appeals of Brčko District and the supreme courts are courts of general jurisdiction, while commercial district courts, the Higher Commercial Court in Banja Luka and the Court of Bosnia and Herzegovina are courts of special jurisdiction.

The organisation and the jurisdiction of courts is prescribed by several relevant laws, namely [the Law on Courts in the Federation of Bosnia and Herzegovina](#), [the Law on Courts of Republika Srpska](#), [the Law on the Court of Bosnia and Herzegovina](#) and [the Law on Courts in Brčko District of Bosnia and Herzegovina](#).



The answer to the question of which court will preside in a certain dispute depends on whether the court has the right to act in a particular case, namely whether it has jurisdiction and whether the parties can seek protection of their rights before that court. The right of a court to act in a certain legal matter is called jurisdiction. Within the jurisdiction of the courts, there are territorial and subject matter jurisdictions. Territorial jurisdiction refers to territory. Thus, municipal and basic courts have jurisdiction to try defendants for criminal offences committed in one or more municipality within their jurisdiction. They are also competent to preside over lawsuits initiated by citizens residing in the same territory filed against each other or against a company or association or against the state authorities.

Issues from people's everyday lives, such as property, family and status issues, are resolved in front of municipal/basic courts. In these courts, for example, inheritance is divided, land registers are kept (in the FBiH), decisions are made on property lawsuits, on encumbrances, lawsuits for debts and damages, employment rights, marriages are divorced and child support is determined, guilt for many crimes is examined and misdemeanour proceedings are conducted. Business entities are registered and bankruptcy proceedings are conducted and companies are liquidated before the municipal courts in the FBiH, while the district commercial courts deal with these matters in RS.

Therefore, municipal and basic courts are the first step in exercising citizen rights. However, territorial jurisdiction is not unlimited. If a citizen (or another person) and the plaintiff do not reside in the same territory then the plaintiff is obliged to sue the defendant before the court that has jurisdiction over the territory in which the defendant resides. In this way, the position of the defendant is sought to be alleviated. This is because historically the defendant is considered to be at a disadvantage if brought before a court in the place where the plaintiff resides, based on the perception that a court in the place of residence of the plaintiff is more likely to be subjective and therefore biased in favour of the plaintiff. However, this rule is not without exception. In cases involving damage the court where the defendant resides has territorial jurisdiction as does the court where the damage occurred. In this case, the plaintiff has the option

to choose the court where he/she wishes to file the lawsuit. If the subject of the dispute is real estate, the court in whose territory the real estate is located will always have territorial jurisdiction.

Subject matter jurisdiction relates to the jurisdiction of the court that should adjudicate with respect to a certain type of case. Basic and municipal courts do not have jurisdiction over every crime committed. Municipal and basic courts are competent to preside over first instance cases for criminal offences for which the law prescribes a fine or imprisonment of up to ten years as the main punishment. Cantonal/district courts have jurisdiction to reside over criminal offences punishable by more than ten years of imprisonment or longer terms of imprisonment. The exception is the Basic Court of Brčko District of Bosnia and Herzegovina, which is competent to preside over all criminal offences prescribed by the Criminal Code of Brčko District. Cantonal/district courts also have jurisdiction to decide on all administrative disputes.

Cantonal/district courts and the Court of Appeals of Brčko District of Bosnia and Herzegovina also have second instance jurisdiction to decide on appeals against the decisions of municipal/basic courts (cantonal/district courts). In the FBiH and RS the supreme court decides on appeals against the decisions of cantonal/district courts and decides on other regular and extraordinary legal remedies, if it is determined by law. The Appellate Division of the Court of Bosnia and Herzegovina has second instance jurisdiction to decide on appeals against the decisions of the Court of Bosnia and Herzegovina.

There are two types of district courts in RS: district commercial courts and district courts. The most important function of cantonal (FBiH) and district courts (RS) is to appeal against all types of decisions of the basic and municipal courts. These courts (cantonal and district courts) decide on these appeals, namely they review the decisions of municipal/basic courts on appeals. A party who is dissatisfied with the decision of a municipal or basic court can file an appeal with the cantonal court or the district court against the decision. This is the principle of two stages of decision-making, the meaning of which is that at least two courts, first instance and second instance, participate in resolving each decision.



The aim of applying this principle is to ensure the uniformity of court decisions in order to achieve equality in the protection of citizen rights. The cantonal and district courts therefore have the task of harmonising case law. The task of the supreme courts in the entities is also to harmonise case law. Yet unlike cantonal and district courts they are not first instance courts and can only adjudicate on appeals and appeals filed to review the decisions or actions of cantonal/district courts or in the case of a review or other extraordinary remedies and decisions made by the municipal and basic courts. In this case, there are three stages of court decision-making, and the supreme courts represent the last instance of protection of citizen rights.

The Court of Bosnia and Herzegovina and the Constitutional Court of Bosnia and Herzegovina are courts at the state level. The Court of Bosnia and Herzegovina provides legal protection to citizens who believe that their rights have been violated by an administrative act of an institution in Bosnia and Herzegovina. The Court of Bosnia and Herzegovina adjudicates in cases involving labour disputes between workers in the institutions of Bosnia and Herzegovina and the institutions. The court adjudicates over criminal cases on the basis of proceedings initiated by the Prosecutor's Office of Bosnia and Herzegovina. These are cases of war crimes, organised crime, etc. In proceedings before this court, the second instance is secured through a decision of the appellate panel within the Appellate Division to which the appeal is lodged and which considers the appeal. The panel must consist of judges who took no part in the first instance proceedings.

In addition to those listed in the judicial system of Bosnia and Herzegovina, there is the Constitutional Court of the Federation of Bosnia and Herzegovina, the Constitutional Court of Republika Srpska and the Constitutional Court of Bosnia and Herzegovina. Yet these courts deal with relevant constitutional issues, assessing issues of the compliance of adopted laws and other acts with the entity constitutions. These courts deal with the most complex issues in which law and politics permeate. The Constitutional Court of Bosnia and Herzegovina also decides on appeals issued by citizens on issues pertaining to the violation of fundamental human rights guaranteed by the Constitution that arise from court proceedings

throughout Bosnia and Herzegovina. Of particular importance are the decisions of the Constitutional Court on the right to a fair trial and these decisions are based on the case law of the European Court of Human Rights. The European Convention on Human Rights is an international treaty and the signatory countries, including Bosnia and Herzegovina, commit themselves to the application of high standards of human rights protection as well as the right of their citizens to apply to a special court (the European Court of Human Rights). Citizens can apply to this court only after they have exhausted all legal remedies of the domestic judiciary. Although it is an international court, its decisions are binding on all state institutions and therefore the judiciary of Bosnia and Herzegovina.

### **The judicial system of Bosnia and Herzegovina consists of the following:**

- three constitutional courts (Constitutional Court of Bosnia and Herzegovina, Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska);
- Court of Bosnia and Herzegovina;
- two supreme courts in the entities (Supreme Court of the Federation of Bosnia and Herzegovina and the Supreme Court of Republika Srpska);
- 16 cantonal and district courts (10 in the FBiH, five in RS and one in Brčko District);
- 52 municipal and basic courts (32 in the FBiH, 19 in RS and one in Brčko District);
- five district commercial courts in Republika Srpska;
- the Higher Commercial Court in Banja Luka;
- around 1,000 judges.

## **Right to access justice and judicial statistics**

### **The right to access justice**

The right to access justice is one of the most important aspects of human rights, which is guaranteed in Bosnia and Herzegovina at both the constitutional and legislative level.

The right to access justice is also enshrined in international law. The most eminent example of this is the European Convention for the Protection of Fundamental Human Rights and Freedoms, to



which Bosnia and Herzegovina is a signatory. In the said Convention, the right to access justice is stipulated in Article 6. The latter is the most common subject of proceedings brought before the European Court of Human Rights in Strasbourg and accordingly quite extensive practice has been developed in the interpretation of this right. Access to justice is also among the central legal issues addressed by the Council of Europe. Several declarations of that international organisation emphasise that the efficient functioning of the judiciary is one of the fundamental conditions for the establishment of the rule of law.

One of the basic conditions for exercising the right to access justice is the establishment of a system of free legal aid within court and other proceedings. This includes the cost of representing a party, the cost of presenting evidence and ensuring sufficient information on court proceedings and how to exercise certain subjective rights.

However, the provision of free legal aid and exemption from the cost of the proceedings are not the only aspects of ensuring the right of access to justice. Access to justice, regardless of the financial means of the participants in the proceedings, is fully possible only if the court proceedings are sufficiently simple and transparent, if the provision of legal protection does not take an unreasonably long time (especially given the urgency of certain types of proceedings) and if broad sections of the public have sufficient information about the courts, judges, court proceedings and court decisions and about the place and manner in which they can exercise the subjective rights guaranteed by the legal order. The judiciary is primarily a service for its users and therefore legitimate public expectations are directed towards the state in order to establish a system in which the services provided by the courts and other participants in the judiciary will not be overly expensive, time consuming or of poor quality.

Thus, aspects of the right to access justice in the broader sense are the transparency of the system, simplicity of procedures, availability of information and the cost of providing legal protection as well as the right to have decisions within a reasonable time.

## Judicial statistics

At its session held on 29 May 2008, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) adopted the Rulebook on Internal Judicial Operations. The rulebook regulates the organisation and manner of the internal operations of municipal, basic, cantonal and district courts, the courts in Brčko District, the Court of Bosnia and Herzegovina and the supreme courts in the entities as well as other issues important for internal judicial operations. Among other things, it prescribes the obligation of each court to prepare a report on its work and to maintain court statistics.

As proposed by the European Commission for the Efficiency of Justice (CEPEJ), continuous monitoring of the timeframes of various court proceedings would prevent the accumulation of cases older than three years. The main goal of judicial statistics is to facilitate the efficient functioning of the judicial system and to contribute to the management of public judicial policies.

It should enable decision-makers and court practitioners to obtain relevant information on judicial efficiency and the quality of the judicial system. This applies in particular to the following:

- workloads of the courts and judges,
- the time required to deal with that load,
- quality of court decisions,
- number of human and financial resources required by the system to address the upcoming workload.

Based on general data on the courts and the number of cases and their duration as well as on other relevant data on the courts and the judicial system, the following instruments can be taken as indicators and benchmarks on the efficiency of the courts:

- general information on the courts and court proceedings,
- data on the types of cases,
- information on the time frames for the proceedings.

The introduction of the electronic system CCMS has facilitated the following:

- collection of relevant information on the efficiency of judicial bodies,



- the duration of proceedings (and the average and the estimated duration of cases),
- the amount of backlog items,
- other relevant statistical information on the efficiency of the judicial system.

## What 'equal rights for all' means

### • Equal rights

Equal rights for all include the enjoyment of freedoms and protection in the same way, including personal, civil, political, economic and social rights, the protection of personal data and anti-discrimination laws.

The notion of equal rights through access to justice, according to international and European human rights law and our constitution and national legislation, equates to the obligation to guarantee every individual the right of access to the courts. Equal rights through access to justice include several key human rights, such as the right to a fair trial,<sup>2</sup> and the right to an effective remedy, namely a complaint by a dissatisfied party.<sup>3</sup>

Courts are established by and apply the law and must be permanent, independent and impartial and include an inter-trial procedure.

Access to justice enables individuals to protect themselves from the violation of their rights, to correct civil violations, to hold the executive accountable and to defend themselves in criminal proceedings. Thus, the rule of law includes civil, criminal and administrative law. Access to justice is both a procedure and a goal and is crucial for individuals seeking to benefit from other intangible and substantive rights. The path to equal justice for all is established through the implementation of equal rights for all, because there is an unbreakable link between rights and justice.

### • Equal justice

There are a number of theoretical determinations of justice. The closest definition of justice from the aspect of its achievement in court proceedings is that it represents a value principle that determines the relationship between rights and obligations and which court should give final judgment. Justice is also the concept of fair and moral treatment of all persons.<sup>4</sup>

Observed from the aspect of the courts in performing their function, equal justice implies making the same decisions in the same factual situations, ensuring equal and law-based treatment for all parties in the proceedings, enabling the parties appearing before the court during the court proceedings the same rights to access the court, the right to a fair trial (an impartial and independent judge), hearing (proposing evidence), a trial within a reasonable period, a law-based decision and the right to an effective remedy.

It is only through the implementation of all of these steps that justice for all without exception, favouritism or discrimination on any grounds (gender, racial, national, social, economic or political) can be achieved. If any of the above steps is not implemented in the same way when deciding on someone's right or obligation then equal justice is not served.



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<sup>2</sup> Article 6 of the European Convention on Human Rights and Article 47 of the Charter of the European Union.

<sup>3</sup> Idem, Article 13 and Article 47.

<sup>4</sup> Definition source Wikipedia.



# WHY IS A STRONG JUDICIAL SYSTEM AND THE RULE OF LAW IMPORTANT TO YOU?

## The rule of law and the fight against corruption

What is corruption?

A simple definition of corruption that spans history and is adopted in all legal systems is as follows: An abuse of position or given power for personal gain.

What can we conclude or learn from this definition?

We can conclude the following: Abuse primarily refers to a position in the state system or legal authority held by a person who because of this position has the authority to make independent decisions that can cause specific consequences in society (positive or negative) and who can decide on employee rights. We must not forget that the state system in each country and therefore in Bosnia and Herzegovina is based on an established legal system, which includes the adopted laws in that country. This is the basis for the state system and relates to the rule of law.

Do not confuse the terms 'law' and 'rights' that apply to individuals or groups seeking to exercise a right in accordance with the existing legal system.

When associated with the legal system in a state 'law' is used as a collective term that simply put is a set of different regulations as the highest legal act along with various bylaws that apply in one state and are based on the constitution of that particular state. The quality of the rule of law in a country is also measured in terms of the consistency of the enforcement of such laws. Problems associated with the rule of law in Bosnia and Herzegovina relate to inconsistencies in the enforcement of laws and a failure to implement decisions of the Constitutional Court of Bosnia and Herzegovina

- The rule of law and the fight against corruption
- Rule of law and access to education, employment and business opportunities
- Rule of law and human rights and freedoms



and the decisions of the European Court of Human Rights.

Rule of law also relates to the functioning of the judicial system in a country, because the quality of the judicial system is associated with uniform court practice (legal attitudes and penal policy). This is a problem in Bosnia and Herzegovina because there is a lack of consistency in that area. The level of inconsistency is linked to the characteristics of Bosnia and Herzegovina as a society in transition, which means that our society is still developing and that in many areas we have not yet reached European or universal standards.

When we speak about the rights of individuals or groups of citizens who seek to exercise some of their rights in Bosnia and Herzegovina (employment rights, right to property and the prohibition of discrimination, etc.) we must consider that their rights are observed in relation to current regulations, namely it is assessed through administrative proceedings or proceedings in front of the courts whether the right indicated by the claimants or lawsuit has been violated or endangered.

According to research conducted by Transparency International in 2018<sup>5</sup>, the state of Bosnia and Herzegovina is considered to have a high level of corruption. Yet the question remains whether this is simply a matter its citizens perception of corruption within the system in Bosnia and Herzegovina or whether it is actually present. We can answer both questions. In 2002, Bosnia and Herzegovina ratified two very important international conventions. The first is the Criminal Law Convention and the second is the Civil Law Convention on Corruption. Furthermore, in 2005, Bosnia and Herzegovina ratified the United Nations Convention against Corruption (UNCAC). In addition to these important conventions, Bosnia and Herzegovina has adopted many other conventions related to corruption. This should mean that Bosnia and Herzegovina as a state is ready to fight this scourge, but it is not so simple in reality. Corruption tends to be invisible or difficult to detect and is mostly detected when it is deeply rooted in society. The examples below show us why:

**1. Traffic situation:** The driver of a vehicle commits

<sup>5</sup> Transparency International, Corruption Perception Index 2018, (2018). Available from [www.transparency.org](http://www.transparency.org).

an offence and is stopped by a police officer who explains to the driver what he did wrong (he failed to fasten his seat belt) and then writes a misdemeanour warrant. The driver begs him not to do so and suggests an agreement saying, "Forgive me this time. I will not commit any more offences. Here is BAM 20 for you to have coffee."

How could the police officer react?

In several ways:

1) He could take the money and warn the driver to be more careful when driving, 2) he could refuse the money and continue writing the misdemeanour warrant or 3) he could refuse the money and immediately order the driver to report to the police station for questioning because it is a criminal offence to try to bribe an official.

Which of these situations represents a realistic reaction by a member of the police in Bosnia and Herzegovina?

The first reaction is the most common, because everything is resolved between two people and the police officer and the driver both profit through this. This is why corruption is invisible but at the same time present and talked about. The driver could boast that he solved the problem by bribing the police officer, while the police officer could tell his friends that he in practice can easily solve all cases of traffic violations and possibly instruct his friends about the easiest and most profitable way to solve such a problem. Everyone needs money, given the small salaries.

The other two reactions of the police officer relate to problems in practice. In the second reaction of the police officer the driver could ask for a court decision and claim in front of the court that he did not commit the misdemeanour offence. In this case, the court would have to decide between two opposing statements. The third reaction relates to an even greater problem. If the police officer reports the driver for attempted bribery there is the issue of evidence, which would have to be decided upon in both the prosecution and the criminal court proceedings. Again, one statement against another and an uncertain outcome in court.

Through this example we can conclude that corrupt behaviour in a society is influenced by the culture and morals that are supported in that society. Many will think that the third reaction of the



police officer would have been excessive, that it was unnecessary to report the driver for corruption for such a simple and harmless situation and that it would have been sufficient to refuse the money. Yet a far larger number of citizens in our society would support the first reaction of the police officer, which is characteristic of society in this country, whereby the above example is considered as 'not being a form of corruption'. What does this mean? In Bosnia and Herzegovina many citizens and authorised persons participate in corruption each day, regardless of its form.

**2. At the doctors:** A doctor tells a patient that he needs leg surgery but that there is no room because the ward is crowded and that he should wait for a call. The patient answers, "Will this small fee (BAM 300) help me to be a priority for the operation?" The doctor could react in three different ways, as in the previous example and with the same conclusion.

**3. In college:** A female student is not very well prepared for an exam and the professor tells her that she cannot pass but that he is ready to help if the student goes out with him to a restaurant for dinner or a party. In your opinion, if the student accepts the professor's proposal and thereby overcomes the problem that she had with taking the exam does this constitute a form of corruption?

Many will feel that this situation does not relate to corruption because it cannot be materially linked to money or goods as a form of bribery. Yet the answer to this question is yes. This situation does relate to corruption because it involves personal gain, regardless of the fact that no money or gifts were exchanged. Although the student accepted the professor's proposal, the professor abused his position of power for personal interest.

Here are some examples of corruption in a company or institution. A large number of cases related to corruption are conducted before the courts and prosecutor's offices in Bosnia and Herzegovina. The crime of corruption is classified into cases of high, medium and petty corruption.

*High corruption* is recognised by the type of corrupt criminal offence and the persons accused

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<sup>6</sup> Item 13 of Article 1 of the Criminal Code of Bosnia and Herzegovina ('Official Gazette of Bosnia and Herzegovina', nos. 3/2003, 32/2003, corr. 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018); Criminal Code of the Federation of Bosnia and Herzegovina ('Official Gazette of the FBiH', nos. 36/2003, 21/2004, amended 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017); Criminal Code of the Republika Srpska ('Official Gazette of Republika Srpska', nos. 64/2017 and 104/2018); Criminal Code of Brčko District of Bosnia and Herzegovina ('Official Gazette of Brčko District', No. 19/2020 - consolidated text).

of the criminal offence of receiving and/or giving bribes and abuse of office and authority in certain situations (persons in positions of power such as directors of companies and institutes, authorised officials in ministries and in state bodies) as well as organised crime);

*Medium sized corruption* (relates to authorised officials in companies who break the law and are unscrupulous in the conduct of their duties and responsibilities);

*Petty corruption* takes place mostly among citizens. One example is when a citizen pays some obligation at a counter and the citizen promises some service to the clerk to let him/her cross the line or gives the clerk a gift of lesser value in order to achieve his/her goal).

Criminal law in Bosnia and Herzegovina prescribes several criminal offences related to corruption. Bosnia and Herzegovina as a country is interesting because there are four criminal laws and four criminal procedure laws in force, which is not a characteristic of other countries in the world. These are the Criminal Code of Bosnia and Herzegovina (applicable to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina), the Criminal Code of the Federation of Bosnia and Herzegovina (applicable in the territory of the FBiH), the Criminal Code of Republika Srpska (applicable in the territory of Republika Srpska) and the Criminal Code of Brčko District<sup>6</sup> (applicable in the territory of Brčko District). Fortunately, the criminal procedure laws are almost identical. As far as criminal law is concerned, this is not a problem in trial and decision-making practice because universal principles relating to the recognition of the crime of corruption are based on the conventions that Bosnia and Herzegovina has ratified.

What does the OSCE say about corruption?

Corruption poses a serious challenge to Bosnia and Herzegovina because it undermines citizen trust in the political system, prevents investment and wastes public resources.



- Although the authorities are taking positive steps to combat corruption, recent research shows that corruption is still widespread. For example, according to the latest Corruption Perceptions Index of Transparency International, Bosnia and Herzegovina is ranked 89th out of a total of 180 countries covered by this research<sup>7</sup>.
- Successful prevention of corruption in Bosnia and Herzegovina is a complex process that requires a strong judiciary, modern technology, a comprehensive legal framework and citizen engaged.
- No individual or state and therefore no membership of an international organisation or institution makes society immune to corruption. Yet partnerships, capacity building and possible alliances between and within international and local organisations and institutions should lead to better results in the fight against corruption.
- The fight against corruption is a long-term process in which the OSCE Mission to Bosnia and Herzegovina remains strongly committed.<sup>8</sup>

### Rule of law and access to education, employment and business opportunities

Rule of law is certainly a key aspect of democracy and yet given the lack of political will, the level of resistance among institutions and the unfavourable environment for society, in its full form it remains a major challenge for many countries.

Education is certainly one of the main factors important for the creation of modern human activities based on knowledge. Education and investment in education is crucial for 'social inclusion', namely for providing additional opportunities for those who are excluded, the unemployed and the poor. Yet we should know when we speak about education that education as a concept has multiple meanings. Education means the institution, process, content and result of organised and/or random learning within the function of the development of various cognitive abilities. Yet it also means the acquisition of various knowledge, skills, abilities and habits

<sup>7</sup> Transparency International, Corruption Perception Index 2018, (2018). Available from [www.transparency.org](http://www.transparency.org).

<sup>8</sup> Conclusions from the annual conference on anti-corruption: Prevention of Corruption through the application of Information and Communication Technologies, held at the Hotel Novotel (Bristol) in Sarajevo on 27 March 2019.

such as reading, writing, arithmetic and general knowledge of the physical, social and economic environment.

Organisation of the education and the training process includes all the necessary activities, methods, participants, time, place and resources. The education system in Bosnia and Herzegovina is not given sufficient importance, in spite of it being a crucial pillar of the approach to social inclusion and education. When it comes to access to education the most vulnerable categories of children are children with special needs, returnee children, children from families in a state of social need and Roma children. The Roma population in Bosnia and Herzegovina is particularly vulnerable. Roma children tend not to enrol in primary school because, among other things, they do not have a birth certificate and therefore no identification document. The high level of illiteracy among this population leads to the conclusion that the parents are not aware of the importance that education plays in their children's development. Children with special needs or more precisely children who have developmental difficulties or suffer from chronic disease and are therefore sentenced to staying in hospital or at home also constitute groups of children who sometimes either do not enrol or who leave primary education.

Education should prepare children for living independently and for coping in society and help strengthen their competitiveness as individuals in the labour market. It is not possible to get a job without acquiring qualifications, the lack of which increases the risk of falling into the vicious circle of ignorance, unemployment and poverty. The chain of inclusion (inclusion) begins with education because it enables an individual to enter the labour market, which in turn enables financial independence. This helps prevent the occurrence of poverty and at the same time provides a better quality of life. There are many risk factors related to social exclusion that are directly related to education and the most common causes are a poor financial situation in the family and unsatisfactory systemic solutions for different levels of education. Additional risk factors for exclusion from education are health problems, physical or mental disabilities



and belonging to a minority group (such as Roma) or as returnees to a particular area or region.

There are many reasons for dropping out of primary or secondary school. One of the reasons is a bad economic situation in the household, which often means that the parents are unable to finance their child's education. Many children in Bosnia and Herzegovina also suffer because of difficult access to school because they live in remote or isolated areas that often do not have access roads for motor vehicles. Insufficiently developed awareness and insufficient information among parents about the need for children to be educated is another factor that prevents children from enrolling in primary school. This reason is characteristic for parents with a low level of education as well as for parents who have problems related to their intellectual development. A large percentage of children from families in a state of social need also drop out of secondary school. Families with unemployed parents and families where only one parent is employed suffer from low income and therefore cannot provide their children with the means to continue their education.

The education system in our country lacks common standards for different levels of education as well as for the training of teaching staff and the evaluation of their performance. Curricula are outdated and are not aligned with the needs of the country, which has led to a large skills mismatch and is a major barrier to graduates entering the labour market. Quality accreditation of institutions for higher education and new study programmes as well as the development of common standards in education should be ensured. Bosnia and Herzegovina must harmonise regulations at all levels with the framework laws on education, especially in terms of the mandatory application of a common core curriculum. It is necessary to ensure social inclusion at all stages of education.

In accordance with the constitutional and legal framework, the two entities and Brcko District are mainly responsible for social policy and employment. In the FBiH, competencies are divided between the federal and cantonal levels. Competencies at the state level are exercised primarily through internal coordination based on constitutional responsibilities on the issue of representing Bosnia and Herzegovina and

assuming obligations at the international level.

The ministries in charge of social policy and employment have been established at the entity and cantonal levels and in Brcko District. At the state level, there is no specific ministry for social policy and employment; however, the Ministry of Civil Affairs of Bosnia and Herzegovina is responsible for 1) determining the basic principles for the coordination of activities, 2) harmonising the plans of the competent entity bodies and 3) defining international strategy in the field of health and social protection, pensions, labour and employment. Regulations at the state level exclusively regulate the employment status of civil servants and employees in state institutions.

In terms of labour law, competencies belong to the entities, cantons and to Brcko District, while the employment status of civil servants and employees working in the institutions of Bosnia and Herzegovina is regulated at the state level. Labour laws are in force in the entities and in Brcko District. In addition to civil servants, they apply to all employees and guarantee them a minimum level of protection of employee rights and regulate issues such as the conclusion or termination of employment contracts, non-discrimination, maximum working hours, minimum annual leave, salaries, collective agreements and the peaceful settlement of collective labour disputes. Labour laws in Bosnia and Herzegovina provide the basis for concluding general collective agreements that apply to all employees as well as collective branch agreements.

The Bosnia and Herzegovina Labour and Employment Agency is responsible for international obligations related to employment in coordination with the Ministry of Civil Affairs of Bosnia and Herzegovina and in cooperation with the competent entity employment bureaus and the Brcko District Employment Bureau.

Public employment services are organised at the entity level and in Brcko District, while services are further decentralised at the cantonal level in the FBiH. The Employment Service of the FBiH coordinates the activities of the cantonal public employment services and local offices. The Republika Srpska Employment Bureau coordinates the activities of regional and local offices. Entity



employment services are involved in the overall coordination and development of the methodology, while local offices are mainly responsible for implementing active and passive labour market policies. Brcko District has an Employment Bureau and a local Employment Office.

Employment is one of the basic conditions for ensuring social inclusion. The labour market in Bosnia and Herzegovina has in the last decade been characterised by a high rate of inactivity, unemployment and in particular by long-term unemployment. Despite recording a positive trend, the active employment policies in the labour market require an evaluation of their efficiency and sustainability over a longer period of time. There is a direct link between decent work and economic growth and an improvement in employment. Other goals contribute through their sub-goals towards increased employment, especially those aimed at improving education and gender equality in the labour market.

Equality between women and men in employment and social policy is regulated by the laws on gender equality and non-discrimination as well as by the entity labour laws. These laws contain provisions on gender equality in various areas such as employment, education, training and professional qualifications but the application of anti-discrimination regulations is extremely low in practice. Bosnia and Herzegovina has signed 81 International Labour Organization conventions. Yet the provisions on maternity leave and benefits are not the same throughout the country and there are inequalities when it comes to maternity rights. Women and men have equal property rights as well as equal legal status when it comes to access to finance and services.

Labour laws also regulate the prohibition of discrimination in the workplace. There are no targeted strategies or action plans aimed exclusively at employment discrimination issues. People with disabilities in particular continue to be discriminated against in the labour market. Despite their being allocated to active employment policies, people with disabilities do not have the physical access to work everywhere because of the inadequate infrastructure (sidewalks, public transport, various facilities and public institutions). It can be concluded through all of the above that the labour market in Bosnia and Herzegovina continues to face a number of challenges.

## CONCLUSION:

Bosnia and Herzegovina needs in particular to ensure the following:

- a fully functional system of (re)accreditation of institutions for higher education throughout the country;
- develop a strategy for vocational education and training that will address the needs of the labour market;
- adopt an employment strategy at the level of the FBiH and a nationwide employment strategy as a strategic policy framework, while providing additional capacity for implementation and monitoring;
- introduce a single minimum level of benefit for maternity leave and protection throughout the country, starting with the harmonisation of the definition of leave for mothers, fathers and parents;
- promote social dialogue at all levels and the conclusion of general collective agreements.

## Rule of law and human rights and freedoms

Human rights are the only universal value system that is not confined to its own framework and therefore represents one of the most important achievements of modern philosophy. Human rights as a value system does not provide answers to countless life questions but rather establishes minimum standards for dealing with human relations. These standards are applicable not only to governments, police and military structures but also to business corporations, international organisations and individuals.

The focus of human rights is human life and dignity. A person's dignity is violated when he/she is subjected to torture or forced to live in slavery or misery, which means without a minimum of food, clothing or accommodation. Other economic, social and cultural rights, such as access to primary education, healthcare and minimum social security, including the right to privacy and family life, are also necessary for an individual to lead a dignified life.



Rule of law is a basic principle of the Constitution of Bosnia and Herzegovina, which states that Bosnia and Herzegovina is a democratic state that operates on the basis of the rule of law. The rule of law can in essence be reduced to the concept that 'no one is above the law'.

The Constitution of Bosnia and Herzegovina stipulates that the state and both entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms, that the rights and freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its protocols will be applied directly through other laws in Bosnia and Herzegovina and that Bosnia and Herzegovina and all of its courts, institutions, authorities and bodies shall be managed indirectly by the entities and that operations within the entities shall apply the human rights and fundamental freedoms guaranteed by the Constitution of Bosnia and Herzegovina.

Paragraph 3 of Article 2 (the catalogue of rights) of the Constitution of Bosnia and Herzegovina prescribes that all of the human rights and freedoms contained in the ECHR and its protocols are to be enjoyed by "all persons in the territory of Bosnia and Herzegovina."

This includes the following:

- a) The right to live.**
- b) The right not to be subjected to torture or to inhumane or degrading treatment or punishment.**
- c) The right not to be held in slavery or servitude or made to perform forced or compulsory labour.**
- d) The right to liberty and security of person.**
- e) The right to a fair hearing in civil and criminal matters and other rights related to criminal proceedings.**
- f) The right to private and family life, home and correspondence.**
- g) Freedom of thought, conscience and religion.**
- h) Freedom of expression.**
- i) Freedom of peaceful assembly and freedom of association with others.**
- j) The right to marry and form a family.**

**k) The right to property.**

**l) The right to education.**

**m) The right to freedom of movement and residence.**

The Constitution of Bosnia and Herzegovina stipulates that the rights and freedoms from the Constitution of Bosnia and Herzegovina and international agreements from Annex I to the Constitution of Bosnia and Herzegovina must be ensured, "to all persons in Bosnia and Herzegovina without discrimination on any grounds." This is ensured through the appellate jurisdiction over human rights at the Constitutional Court of Bosnia and Herzegovina (formerly the Human Rights Chamber) and the Bosnia and Herzegovina Ombudsman.

Human rights without a protection mechanism would be a mere proclamation that would make no sense in real life. This is the reason why it is important to become acquainted with the competencies of the institutions that form part of the mechanism that ensures the enjoyment of the fundamental rights and freedoms of each individual. Rule of law is the basic premiss that ensures that citizens enjoy their rights and freedoms.

The Constitution of Bosnia and Herzegovina established the Constitutional Court of Bosnia and Herzegovina, which has jurisdiction to decide on disputes arising in connection with the Constitution between the entities, between one or both entities and Bosnia and Herzegovina and between the institutions of Bosnia and Herzegovina. The Constitutional Court also has so-called appellate jurisdiction.

Within its appellate jurisdiction, the Constitutional Court of Bosnia and Herzegovina decides on matters contained in the Constitution when they become the subject of a dispute resulting from a judgment of any court in Bosnia and Herzegovina. It has jurisdiction over questions referred to it by any court in Bosnia and Herzegovina as to whether the validity of a court decision in a particular case is compatible with the Constitution of Bosnia and Herzegovina, the ECHR and its protocols, the laws of Bosnia and Herzegovina or the existence or scope of a general rule of public international law relevant to the court's decision.



Through its decisions, the Constitutional Court of Bosnia and Herzegovina resolves issues of possible violation of the rights and freedoms proclaimed in the ECHR. In the event that it finds a violation it directly orders the competent authorities to take appropriate measures to eliminate and prevent such a violation.

The Human Rights Commission of the Bosnia and Herzegovina Constitutional Court is the successor to the Human Rights Chamber, which was mandated to consider both alleged and apparent human rights violations and apparent discrimination in relation to the enjoyment of the rights and freedoms provided for under the ECHR and other international agreements. The mandate of the House ended on 31 December 2003. The Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina was established with a mandate to decide on applications received by the Chamber by 31 December 2003.

The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina<sup>9</sup> considers cases related to the poor functioning or violation of human rights committed by any body of Bosnia and Herzegovina, its entities or Brčko District. Cases are formed on the basis of individual complaints initiated by legal or natural persons or ex officio.

Any natural or legal person that has a legitimate interest, regardless of citizenship, race, gender, religion or nationality, can contact the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina. A complaint addressed to the Institution shall not give rise to any criminal, disciplinary or any other sanctions against the submitter. If the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina finds a violation of rights it issues recommendations to the competent authorities to take measures to correct the human rights violation or the poor functioning of the administration. The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina advises citizens on how to utilise legal remedies or refers them to the appropriate institutions.

When it comes to the courts of general jurisdiction, the judicial system in Bosnia and Herzegovina is not unique but rather consists of separate systems at the state, entity and Brčko District level. The

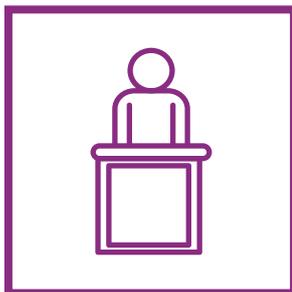
<sup>9</sup> The Institution of the Ombudsman/the Human Rights Ombudsman of Bosnia and Herzegovina.

Law on the Court of Bosnia and Herzegovina established the Court of Bosnia and Herzegovina in 2003. The specificity of the Court of Bosnia and Herzegovina is that it is both a first instance and an appellate court. Given that the Constitution of Bosnia and Herzegovina stipulates that the rights and freedoms guaranteed by the ECHR and its protocols will be directly applicable in this country and have priority over all other laws, all courts have the possibility of direct application of the ECHR. Direct application of the ECHR can, for example, occur if it is a legal issue that is not regulated by domestic law or if the provisions of the domestic law are in conflict with the ECHR. In practice, the most frequent reference to the ECHR occurs in the case of a disputed interpretation of a certain legal norm when its interpretation and application is done in accordance with the ECHR and the case law of the European Court of Human Rights (ECtHR).

The European Court of Human Rights (ECtHR) is an international court based in Strasbourg. It consists of a number of judges, which is equal to the number of member states of the Council of Europe that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECtHR is the final instance for the interpretation of the ECHR. When the ECtHR finds a violation of the ECHR it also imposes an obligation on the relevant state. This obligation can, for example, be that the state must amend its law or eliminate the violation of an individual human right.

One of the problems that Bosnia and Herzegovina faces is precisely the non-implementation of ECtHR decisions, which has been noted in numerous reports by international experts and NGOs. The failure to implement ECtHR decisions not only violates the international obligations of the State but also indicates a serious lack of commitment on the part of the State with respect to the rule of law.





# 4 CONCLUSION

## Why is it important to have an active role in the rule of law?

Rule of law is the basis of all modern constitutional democracies. Namely, the principle of the rule of law has become the dominant organisational model of modern constitutional law and of international organisations. This principle ensures that all public powers are exercised within the limits set by law and in accordance with the values of democracy and fundamental rights under the supervision of independent and impartial courts. The importance of having an active role in the rule of law is to ensure that the system of judicial and political power is based on respect for the constitution, laws and other regulations, both by citizens and by the holders of certain functions.

When summarising why it is important to have an active role in the rule of law, we should start from what the Venice Commission has identified as the elements of the rule of law. Thus, an active role in the rule of law certainly contributes towards the following:

- legality, transparency, accountability and the democratic law-making process;
- legal certainty;
- prohibition of arbitrariness;
- access to justice in front of independent and impartial courts;
- respect for human rights;
- prohibition of discrimination and ensuring equality in law (non-discrimination and equality before the law).

An active role in the rule of law would certainly contribute towards greater efficiency and functionality of the judiciary by ensuring legal certainty and the rule of law and the adoption of laws with clear legal solutions that are in line with European standards and trends.

Instruments that will enhance the autonomy of and respect and integrity for each individual and shall ensure that they are able to express their views and opinions freely and exercise their rights, while respecting all human rights and fundamental freedoms, should be provided through the rule of law.

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