DEMOCRACY AND HUMAN RIGHTS

HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 25 YEARS AFTER "DAYTON"

(The Remedy for the Bloody Conflict as Today's Ground for Human Rights)

Dejan Lučka

December 2020



Thusly, 25 years after adoption, citizens in B&H have human rights protected in paper by constitutions, laws and international legal documents, but there is almost no human right that is not being violated.



The discrepancy between the de iure and the de facto state is constant in the attitude of B&H towards human rights.



From the behaviour in the last decade, it is clear that international community is ready to intervene only when it comes to ethnic problems and frictions that occur among the political representatives of the constituent peoples, but not when it comes to human rights violations not related to ethnic strife.



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Content

ı	FROM CONFLICT TO HUMAN RIGHTS	4
II	HUMAN RIGHTS IN PRACTICE	6
1	RIGHT TO LIFE AND PROHIBITION OF TORTURE	6
2	JUDICIARY, RIGHT TO FAIR TRAIL AND PROTECTION OF PROPERTY	7
3	FREEDOM OF EXPRESSION, ASSEMBLY AND MOVEMENT, RIGHT TO PRIVACY AND FREEDOM OF MEDIA	8
4	DISCRIMINATION	9
5	SOCIAL JUSTICE AND QUALITY OF LIFE	10
6	SPECIFIC AND MARGINALISED GROUPS	11
	CONCLUSION	14

FROM CONFLICT TO HUMAN RIGHTS

The General Framework Agreement for Peace in Bosnia and Herzegovina is a document that marked the end of the tragic conflict in Bosnia and Herzegovina (hereinafter: B&H). Annex IV of this Agreement defines the Constitution of B&H, while Annex VI provides the framework for the Agreement on Human Rights. In addition to military, technical and civilian issues, a very important part of the Dayton Package was to ensure respect for human rights in the future, through the Constitution itself, but also to ensure additional international agreements that should be applied in the reality of Bosnia and Herzegovina.

Today, 25 years after Dayton, human rights in B&H are guaranteed at the domestic level by the Constitution of B&H, the Constitution of Republika Srpska, the Constitution of the Federation of B&H, the Statute of Brčko District and the constitutions of cantons in the Federation of B&H. In addition to domestic legislation, international legal instruments related to human rights are also used in B&H. Some of these instruments are: the Convention for the Protection of Human Rights and Fundamental Freedoms, international covenants on civil and political, economic, social and cultural rights, the Convention on the Rights of Persons with Disabilities, the Convention and Protocol Relating to the Status of Refugees and many others.

Human rights in B&H are required to be protected by domestic authorities. This applies to all bodies within Republika Srpska (hereinafter: RS), the Federation of B&H (hereinafter: FB&H), the Brčko District (hereinafter: BD), cantons, municipalities and the state itself. Protection of rights can be sought before domestic courts, and individuals who believe that their rights have been violated have the right to appeal to the *Constitutional Court*. There is also the *Institution of Human Rights Ombudsman of B&H*, which deals with the protection of the rights of individuals and legal entities. When it comes to parliaments, there are commissions, committees and bodies at various levels that deal with human rights issues. At the level of B&H, the executive

power lies with the *Ministry of Human Rights and Refugees*, which, among other things, monitors the implementation of international conventions and other documents in the field of human rights and protects human rights and freedoms. At the level of entities, the BD and cantons, there are various ministries and departments that implement the protection of human rights as a part of their activities. Also, there are special agencies and centres that are in charge of protecting and monitoring the observance of certain human rights, such as the *Personal Data Protection Agency in B&H*, *Agency for Gender Equality of B&H* or *gender centres* of RS and FB&H. In addition to these bodies, other bodies have been created in B&H at various levels, which in some way deal with human rights.

In general, there are numerous public bodies within the B&H system that have the authority to protect, monitor implementation or take care of human rights. However, the question is how purposeful their work is and whether they truly protect human rights. The large number of bodies dealing with rights does not automatically mean they protect them well, because these bodies are perceived as "trophies" of political parties, and not as a place where people who truly wish to fight for basic rights should work. It is often the case that those who violate the rights of others or support and encourage state violations of the fundamental rights of citizens work in such bodies.

In addition to the protection from domestic authorities, the human rights of B&H citizens are also protected at the international level. Thus, protection is provided by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), which is prescribed by the Constitution of B&H to be directly applied in B&H, and has priority over all other law. However, when it comes to practice, it is often the case that public authorities do not apply the ECHR in the right way, guided solely by domestic law, outdated views or ignorance. That is why many cases end up before the Constitutional Court of B&H (hereinafter: CC B&H), and

later before the *European Court of Human Rights* (hereinafter: ECtHR). As of 2019, 11,558 applications were sent through the ECtHR, and 83 verdicts were passed in relation to B&H. They predominantly include violations of the right to property, the right to a fair trial and non-enforcement of decisions.

B&H has also acceded to many United Nations (hereinafter: UN) instruments, which protect human rights, some of which provide an opportunity to initiate proceedings before international bodies, such as the Human Rights Committee or the Committee against Torture. Within the protection of human rights, there is also the Human Rights Council (hereinafter: UNHRC) whose mission is to globally promote and protect human rights, and it is authorised to respond to massive and systematic human rights violations by initiating special procedures. There is also the Universal Periodic Review, a mechanism assigned to the UNHRC in order to monitor human rights in UN member states, and then there is the Office of the United Nations High Commissioner for Human Rights, which is the UN's leading human rights entity. The United Nations has so far issued a number of recommendations to B&H in order to improve human rights. B&H has met certain requirements and recommendations and has certainly made progress in relation to the post-Dayton situation of 1995, but progress in respecting and promoting human rights has been in a practical status quo since the arrival of the new millennium.1

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¹ Overview – Statistics ECHR 1959 to 2019, [Public Relations Unit of European Court of Human Rights: 2019]; Univerzalni periodični pregled – UPR, [Ministarstvo za ljudska prava i izbjeglice, (Can be found on: http://www.mhrr.gov.ba/ljudska_prava/default.aspx?id=8830&lan qTag=bs-BA, Accessed on 1/11/2020 at 10:58)].

HUMAN RIGHTS IN PRACTICE

1. RIGHT TO LIFE AND PROHIBITION OF TORTURE

With the end of the war, the **right to life** was once again present in everyday life. However, even after so many years, cases such as those related to the deaths of David Dragičević or Milan Vukelić show in practice that the competent authorities in B&H do not properly protect the right to life.

David Dragičević was a student from Banja Luka who was found dead in March 2018. His death occurred under unexplained circumstances. It was only stated that David was killed, and that the prosecution initiated an investigation against unidentified persons on suspicion that they committed David's murder (after enormous public pressure). The public authorities first stated that David committed suicide after he committed theft. To date, the institutions have not yet revealed who the killer was, whether they had accessories, what were the motives for the murder, how the murder was committed, whether civil servants participated in his death, etc. Milan Vukelić was killed in November 2007 by a bomb planted under his car. Before the murder, Vukelić spoke publicly about state of crime and the "construction mafia", as well as the threats he received. Although the police claim to have examined countless witnesses and processed a handful of evidence, the perpetrators of Vukelić's murder are yet to be identified and prosecuted.

Although obliged to conduct an effective investigation and prosecute the murderer(s), B&H authorities working to resolve these and many other cases do not provide sufficient guarantees to fully protect this fundamental human right, while the families of the murdered are left to search for evidence themselves. In certain unsolved cases, there are indications that even civil servants were involved, which, along with a lack of proper investigation, casts serious doubt on the desire of public authorities to protect the right to life.

When it comes to the conduct of the police and the prohibition of torture, inhuman or degrading treatment or punishment, many complaints are precisely in regard to violation of this human right. An indicative example of the violation of this prohibition by police officers are the events from December 2018 in Banja Luka, when the police started beating the people gathered on Krajina Square, who gathered with the goal of solving the murder of David Dragičević. A very similar example is the police violence against women from the settlement of Kruščica near Vitez, who fought to prevent the construction of two small hydro power plants and the destruction of the river.

When it comes to conditions in detention centres and prisons in B&H, the treatment of the rights of persons deprived of their freedom is in some instances in opposition with human rights standards. There are allegations of maltreatment of prisoners by the staff, as well as violence among prisoners, which is a particular problem at the Zenica Penitentiary. An illustrative example of the conditions in which the prisoners live is the conversation that the Delegation of the European Committee for the Prevention of Torture and Inhuman Treatment or Punishment had with three young men in Banja Luka, who were arrested in September 2015. All three said police officers "beat them with their hands, feet and batons even though they did not resist" and that "inspectors repeatedly beat them and slapped them at the police station because they wanted them to confess to other crimes." One young man claimed that they put a gun in his mouth, while another recounted how they "gave him several shocks with a hand-held electric shock device [...] and handcuffed him to the radiator overnight." Effective investigations into allegations of maltreatment are not conducted regularly and torture goes largely unpunished, even by human rights bodies. In addition to the situation regarding prisoners, violations of this right also occur in other state-run institutions. A shocking example comes from the Institute for the Care of Mentally Disabled Children and Youth Pazarić², where children were tied to furniture and radiators, and many of them spent most of the day and night in such position.³

2. JUDICIARY, RIGHT TO FAIR TRAIL AND PROTECTION OF PROPERTY

The problems faced by the B&H judiciary, from controversial decisions to frequent scandals, create a public image of a system that is bad, inefficient and corrupt. According to the monitoring of the *Organization for Security and Co-operation in Europe in B&H*, the final index result for the response of the judiciary to corruption in B&H in 2019 is extremely poor and amounts to only 18.27 out of a possible 40 points.

Regarding the **right to a fair trial**, non-execution of final court judgments is one of the plagues of the system in B&H, which also violates the **right to property**. Authorities do not enforce many court rulings in the country, and the court system itself is burdened with a large number of pending cases. Also, the return of property nationalized during the Second World War and after its end, is very slow and there are no appropriate laws and mechanisms to return the confiscated property.

There are still glaring examples of violations of the **right** to a fair trial within a reasonable time in B&H. For example, in one recent case the criminal proceedings lasted longer than 17 years, in another case the compensation proceedings lasted 42 years, while in the

2 The very name of this institution is not in line with Convention on the Rights of Persons with Disabilities.

third case the civil proceedings lasted 25 years. Even the CC B&H is of the opinion that "the violation of the right to a fair trial is part of the systemic shortcomings in the organisation of the judiciary." From 2013 to 2018, the CC B&H received over 5,700 appeals concerning the issue of "reasonable time", of which 85% of appeals established a violation of this right. Due to this problem, the CC B&H even denied citizens the right to appeal, and concluded that the authorities need to be given additional time for corrections, stating that they will not individually decide on appeals that raise the issue of lengthy court proceedings.

In a considerable number of cases, especially when it comes to domestic violence, prosecutors also conduct their investigations slowly and inefficiently, which deters many victims of violence from reporting.

When it comes to **transitional justice**, application of criminal regulations is inconsistent, which produces legal uncertainty. Punishments for committed crimes are often inadequate, and war crimes trials "are unable to establish the full truth about events during the period under review, due to a number of legal and procedural restrictions." In these proceedings, the victims and their needs are in the background and they are perceived as "objects" or as witnesses, and not as someone who should receive justice for endured damage. Twenty-five years after the end of the war, there are numerous unsolved war crimes cases in B&H. Given the fact that more and more witnesses and perpetrators of crimes are passing away, the big question is whether justice will be served and perpetrators of crimes punished.⁴

Sila i nepravda, [Banjalučki centar za ljudska prava: 2019, (Can be found on: http://www.blchr.org/sila-i-nepravda/, Accessed on 3/11/2020 at 10:15)]; O. Matavulj, Ubice su još na slobodi: MUP i Tužilaštvo RS 13 godina bez odgovora ko je ubio Milana Vukelića, 2020, [Novosti: (Can he found https://www.novosti.rs/republika-srpska/vesti/933172/ubice-josslobodi-mup-tuzilastvo-13-godina-bez-odgovora-ubio-milanavukelica, Accessed on 3/11/2020 at 10:22)]; Dejan Lučka, Freedom of Expression and Freedom of Assembly in Bosnia and Herzegovina in 2018 and 2019 Through the Case of the "Justice" for David" Group (FEJfD), [Banjaluka Centre for Human Rights, Banja Luka: 2019]; Izveštaj Vladi Bosne i Hercegovina o posjeti Bosni i Hercegovini Evropskog komiteta za sprečavanje mučenja i nečovječnog ili ponižavajućeg postupanja ili kažnjavanja (CPT) od 29. 09. do 09. 10. 2015. godine, [CPT/inf (2016) 17], 5-6, 13-14; Godišnji izvještaj o rezultatima aktivnosti Institucije ombudsmena za ljudska prava Bosne i Hercegovine za 2019. godinu (GIO2019), [Institucija ombudsmena za ljudska prava Bosne i Hercegovine, Banja Luka: 2020], Pages 62-63; Nives Jukić, Ljubinko Mitrović, Jasminka Džumhur, Specijalni izvještaj o stanju u prostorijama za zadržavanje u pojedinim policijskim upravama u Bosni i Hercegovini, [Institucija ombudsmena za ljudska prava Bosne i Hercegovine, Banja Luka: 2019], Pages 16-43; Beta, N1 Sarajevo, Poslanica objavila dokaze o zlostavljanju dece u Zavodu Pazarić Sarajeva, [N1: 2019, (Can be found http://rs.n1info.com/Region/a545551/Zlostavljanje-dece-u-Zavodu-Pazaric-kod-Sarajeva.html, Accessed on 4/11/2020 at 17:22)].

Dejan Lučka, Demokratska izgradnja i demografska obnova Bosne i Hercegovine – Nacrt za poboljšanje demokratskih kapaciteta, uslova života i društvene klime za građane u Republici Srpskoj, Federaciji Bosne i Hercegovine i Brčko Distriktu Bosne i Hercegovine (DDBiH), [Fondacija Fridrih Ebert Bosna i Hercegovina, Banjalučki centar za ljudska prava, Banja Luka: 2019], Pages 59-60; Procjena potreba pravosuđa u procesuiranju korupcije kroz praćenje rada na . krivičnim predmetima (ARC) – Treći godišnji izvještaj o odgovoru pravosuđa na korupciju: Sindrom nekažnjivosti, [Misija OSCE-a u BiH: 2020], Pages 49-53; Izvještaj o stanju ljudskih prava u 2019. godini – Bosna I Hercegovina – Izvještaji o stanju ljudskih prava u zemljama u 2019. godini (IOLJPBiH), [Biro za demokratiju, ljudska prava i rad, Ministarstvo vanjskih poslova SAD: 2020], Pages 5-6; Slučaj Almir Šabančević, [AP 6162/18, 25. 6. 2019]; Slučaj Š. K. i D. O, [AP 579/12, 27. 11. 2015]; Slučaj Z. K. i S. H, [AP 2373/11, 18. 11. 2014]; Slučaj Asmir Krbuljić i drugi, [AP 2341/15, 10. 5. 2017], § 41-45; Mato Tadić, "Pravo na suđenje u razumnom roku predmeti i praksa Ustavnog suda BiH", Pravo na suđenje u razumnom roku, [Ustavni sud Bosne i Hercegovine, The Aire Centre, Sarajevo: 2020], Pages 105-110; Slučaj Milenko Milanović i drugi, [AP 1356/17, 6. 11. 2018], § 82; Goran Šimić, "Suđenja za ratne zločine u Bosni i Hercegovini", Tranzicijska pravda u Bosni i Hercegovini, [Helsinški odbor za ljudska prava u Republici Srpskoj, Bijeljina 2013/2014], Pages 26-31; Follow-up Report on the Human Rights Committee's Concluding Observations on Bosnia and Herzegovina, [TRIAL International: 2020], § 8, 16; Dragan M. Popović, Vodič kroz tranzicijsku pravdu u Bosni i Hercegovini, [Razvojni program Ujedinjenih nacija u BiH: 2013], Pages 31-32.

3. FREEDOM OF EXPRESSION, ASSEMBLY AND MOVEMENT, RIGHT TO PRIVACY AND FREEDOM OF MEDIA

Freedom of expression is generally respected in B&H. However, it is noticeable that certain groups, especially those coming from the ruling political parties, want to limit this right. Hence, during the initial period of the COVID-19 epidemic, an attempt was made to restrict freedom of expression. One of several cases in B&H in this regard happened in Prijedor, when the Prijedor Police Administration filed a misdemeanour case against cardiologist Maja Stojić Dragojević for violating the Decision on Punishing the Publication of False News and Spreading Panic. The case against her was filed because of her statement that there were not enough ventilators, beds or intensive care services in RS, as well as for the claim that RS is not ready for the upcoming crisis. It was later established that her claims were true. Furthermore, certain persons suffered consequences at their jobs in public institutions due to the public expression of their views.

Although hate speech is not protected by freedom of expression, it is ever present in the B&H public. It is often used in speeches of politicians and public figures and it is widely used on social media. During the election campaign, it has become an unavoidable "prop" of many parties. More often than not, it either remains unpunished or there is a lack of real effort by the authorities to punish those who are known to use it. It is evident that the balance between hate speech and the right to freedom of expression has shifted in B&H in favour of freedom of expression. The video of the political party "Ujedinjena Srpska" could serve as an example. The video was released in September 2020, in which members of certain nations in B&H are portrayed in a stereotypical and insulting way, using hate speech. This party was initially banned from running in the elections due to this video, but the decision was annulled by the decision of the Court of B&H.

When it comes to **media freedoms**, journalists in B&H are under constant pressure, as well as intimidation. Verbal attacks have become commonplace, and cases of threats to the media, hacking of websites, political, institutional and economic pressure and defamation are often occurrences. An example of a serious attack on journalists is the assassination attempt on Vladimir Kovačević, a Banja Luka journalist, in August 2018. Five days later, certain pro-government media even described him as a pro-opposition journalist, and falsely alleged that he received \$80,000 from USAID for the Internet portal. In the atmosphere that prevailed in those days in

Banja Luka, a text with such content could only further outline the target at the head of journalist Kovačević. It is clear that the authorities have not provided sufficient protection for journalists and proper enforcement in response to cases of threats and attacks on journalists, and have not refrained from making statements that could create an environment unsuitable for freedom of expression.

The **right to privacy** is often violated by public authority or public institutions. There were several occasions when the public media published personal data of citizens and institutions asked for data that they should not ask for. There were even irregular censuses conducted in order to collect data, such as in Trebinje, justifying it by the need for social mapping. Examples of violations of the right to privacy are numerous, and some of the violations occurred in the early days of the COVID-19 pandemic. Thus, the authorities in Canton 10 began to regularly publish the personal data of persons in selfisolation, while the RS authorities published the names and surnames of citizens who violated the measure of self-isolation. Personal Data Protection Agency in B&H issued a decision ordering the removal of such lists, but it also expressed the opinion that it is not illegal to publish a minimum of data on persons who violate regulations.

The problem with public gatherings in B&H is that institutions view public gatherings primarily as a security issue rather than a basic human right, and that public bodies act to limit, prohibit or disrupt gatherings that criticise poor government performance, police repression or violations of law by civil servants. Due to arbitrary interpretation of regulations by public officials, noncompliance with international standards (e.g. lack of legal standards on spontaneous assembly), bureaucratisation of the registration process, shifting too much of the "burden" on the organisers, and lack of assistance to citizens whose rights are violated, freedom of assembly is limited in B&H. An example of preventing free assembly was evident during the protest of the residents of Kruščica in August 2017, when the members of the Support Unit of the Ministry of Internal Affairs of the Central Bosnia Canton used excessive force to disperse the protesters. Also, the situation with the members of the group "Justice for David" represents a unique example of a serious violation of the right to freedom of assembly. Namely, after the police intervention in December 2018, this group was repeatedly banned from gathering in Banja Luka, without real reasons based on human rights standards. When it comes to freedom of movement, this right was suspended in the first half of 2020 in B&H, by bans on

movement for a certain period of time. The authorities were fast to resort to the strictest measure of encroachment on fundamental rights, without reconsidering other more lenient options, and the CC B&H assessed in its decision that the authorities' actions violated human rights due to disproportion in restricting rights.

In the fight against COVID-19, certain acts were not even passed by the competent authorities. An illustrative example is when the RS citizens were punished for violations related to non-compliance with curfew based on the *Conclusion of the Republic Emergency Situations Headquarters*, which was passed by a body that did not have jurisdiction. In addition to all of this, the measures were inadequately reasoned and reduced to repressive prescribing of proper conduct with the threat of punishment, while government officials were the first to disregard the prescribed measures, along with the members of their parties. An additional problem was the selectivity and discrimination in punishment for violating the measures, which led to great doubts about their justification.⁵

Banjalučki centar za ljudska prava, Ljudska prava u periodu COVID-19 – Utvrđeni propusti u ostvarivanju ljudskih prava u Bosni i Hercegovini, [uz podršku Misije OEBS-a u Bosni i

Hercegovini, Banja Luka - Sarajevo: 2020], Pages 11-12, 16, 43-45; Slučaj Lejla Dragnić i A. B., [AP-1217/20, 22. 4. 2020]; Jovana Kisin, Mjere po mjeri zakona, [Gerila: 2020, (Can be found on: https://www.gerila.info/kolumne/advokat-jovana-kisin-mjere-pomjeri-zakona/, Accessed on 23/11/2020 u 13.16)]; Dejan Lučka, Kako smo sistematski uništeni od vlasti, [Buka: 2020, (Can be found on: https://www.6yka.com/novosti/dejan-lucka-kako-smosistematski-unisteni-od-vlasti, Accessed on 21/11/2020 u 12.01)]; Često kršenje privatnosti u BiH, [BN: 2018, (Can be found on: https://www.rtvbn.com/3894871/cesto-krsenje-privatnosti-u-bih-, Accessed on 5/11/2020 at 18:02)]; Tanja Topić, Političke spletke nad grobom dečaka, [Vreme: 2018, (Can be found on: https://www.vreme.com/cms/view.php?id=1610889, Accessed 5/11/2020 at 18:27)]; Rješenje, [Agencija za zaštitu ličnih/osobnih podataka u Bosni i Hercegovini, Sarajevo: 24. 3. 2020]; Milovan Matić, Građani RS pod nadzorom vlasti: "Trumanov šou" by Dodik family, [Buka: 2019, (Can be found on: https://www.6yka.com/novosti/gradani-rs-pod-nadzorom-vlastitrumanov-sou-by-dodik-family, Accessed on 5/11/2020 at 19:00)]; COVID-19: States Should Not Abuse Emergency Measures to Suppress Human Rights – UN Experts, [OHCR: (Can be found https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx? NewsID=25722&LangID=E, Accessed on 5/11/2020 u 18.17)]; Danijel Kovacevic, Bosnia Trying to Censor Information About Pandemic, Journalists Say, [Balkan Insight: 2020, (Can be found https://balkaninsight.com/2020/04/08/bosnia-trying-tocensor-information-about-pandemic-journalists-say/_Accessed on 5/11/2020 at 18:41)]; Ljiljana Kovačević, Širenje istine ili panike: Korona virus kao alibi za policijsku represiju, [Žurnal: 2020, (Can be found on: _https://zurnal.info/novost/22882/korona-viruskao-alibi-za-policijsku-represiju-, Accessed on 5/11/2020 at 18:33)]; Ljubinko Mitrović, Jasminka Džumhur, Nives Jukić, Specijalni izvještaj o iskustvima u primjeni zakona o slobodi

pristupa informacijama u Bosni i Hercegovini, [Institucija

ombudsmena za ljudska prava Bosne i Hercegovine, Banja Luka:

2019]; Müslüm Gündüz v. Turkey, [Application no. 35071/97, 14. 6. 2004], § 22; Drugi preliminarni izvještaj o dugoročnom

posmatranju Lokalnih izbora 2020. godine u BiH (za period 7. 9 -

8. 11. 2020), [Koalicija za slobodne i poštene izbore - Pod lupom:

2020], Page 15; Franjo Dragičević, "Govor mržnje, izborni proces

4. DISCRIMINATION

The problem of **discrimination** is one of the burning major issues in B&H, which is very often associated with other violations of certain rights. Discrimination is a regular occurrence, found even in the very *Constitution of B&H*, as well as in legal documents, and it can be seen at every step, from the day-to-day life to the highest instances of government. Representatives of different levels of government are often its patrons through direct engagement or tacit agreements.

Members of various vulnerable categories, such as members of the Roma population, persons with disabilities or members of the LGBTI+ population, often experience discrimination. Likewise, other citizens are affected by discriminatory behaviour on daily basis, especially in terms of discrimination in employment, work and working conditions, gender discrimination, and equal participation in public life. **Mobbing** appears as a very common type of unequal treatment, and women are regularly asked questions about possible pregnancies and family planning during job interviews, while some are even asked to sign a statement that they will not fall pregnant in the next two years.

A specific type of discrimination can be found in B&H, related to elections and the electoral process, which was established in the *Dayton Agreement* itself, and which systematically violates the human rights of virtually all citizens in the electoral process. B&H is a state that discriminates against all its citizens in the election process: constituent peoples, national minorities and those who do not declare their nationality, based on ethnicity and residence in matters related to the candidacy for the *House of Peoples of the B&H Parliamentary Assembly* and the *B&H Presidency*. The judgments of the ECtHR ordered the elimination of discriminatory provisions, the abandonment of the ethnic model of election and the establishment of the principle that everyone has the right to be elected and to

i pravo na slobodu izražavanja", Sveske za javno pravo, [Fondacija Centar za javno pravo, Sarajevo: 2019], Page 37; Ljubinko Mitrović, Jasminka Džumhur, Nives Jukić, Specijalni izvještaj o pravu na slobodu mirnog okupljanja, [Institucija ombudsmena za ljudska prava Bosne i Hercegovine, Banja Luka: 2020], Pages 49-52; FEJfD; Tijana Dušej Ristev, Protest s igračkama u Banjaluci: "Nije zabrana javnog okupljanja, već i slobode govora", [BBC: 2019, (Can be found https://www.bbc.com/serbian/lat/balkan-50570390, 5/11/2020 u 11.23)]; Slučaj Lejla Dragnić i A. B., [AP-1217/20, 22. 4. 2020]; Dejan Lučka, Novinari kao glineni golubovi – slučaj Kovačević, [Capital: 2020. (Can he found https://www.capital.ba/novinari-kao-glineni-golubovi-slucajkovacevic/, Accessed on 18/11/2020 u 17.02)]; Jasminka Džumhur, Nives Jukić, Ljubinko Mitrović, Specijalni izvještaj o položaju i slučajevima prijetnji novinarima u Bosni i Hercegovini, [Institucija ombudsmena za ljudska prava u Bosni i Hercegovini, Banja Luka: 2017], Pages 27-29.

vote, under equal conditions. This discrimination has not been removed from the B&H legal system.

The issue of the language also represent an issue that is often in the public spotlight. The RS Constitution stipulates that the official languages are the languages of the Serbian, Croat and Bosniak people, while the FB&H Constitution stipulates that languages are standardised as Croatian, Bosnian and Serbian, and in both constitutions, Cyrillic and Latin are official letters. In issuing documents in these three languages, there is an uneven practice in the country, and the language provisions are not properly respected. In FB&H, the use of Cyrillic and Serbian is rare, while in RS this is the case with Croatian and Bosnian, while the use of Latin letter is more or less standard. Although everyone in B&H understands each other perfectly, the issue of language has become a major political problem, which has been unsuccessfully addressed through institutions and through legal mechanisms.6

5. SOCIAL JUSTICE AND QUALITY OF LIFE

Social differences in B&H have become so great that the gap between rich and poor is greater by the day. According to the World Bank, there is currently 16.9% of people living in poverty in B&H, and a large portion of the population lives in poor conditions and poverty and faces daily social exclusion, great insecurity and inequality. We cannot say that there is social justice in B&H, in its true and full meaning, but only its outlines and indications.

The idea of "social rights" is not taken very seriously by the ruling parties, and 25 years after Dayton political "elites" continuously create a society of social inequality in which they sometimes prescribe

Sejdić and Finci v. Bosnia and Herzegovina, [Applications nos. 27996/06 and 34836/06, 22. 12. 2009]; Zornić v. Bosnia and Herzegovina, [Application no. 3681/06, 15. 7. 2014]; Pilav v. Bosnia and Herzegovina, [Application no. 41939/07, 9. 6. 2016]; Šlaku v. Bosnia and Herzegovina, [Application no. 56666/12, 26. 5. 2016]; Baralija v. Bosnia and Herzegovina, [Application no. 30100/18, 29. 10. 2019]; DDBiH, Pages 53-54, 68-69; Odluka o raspisivanju i održavanju Lokalnih izbora 2020. godine u gradu Mostaru, [Centralna izborna komisija Bosne i Hercegovine, 23. 7. 2020, broj: 05-1-02-2-660-2/20]; Nevena Petrušić et al., Primena antidiskriminacionog zakonodavstva i krivičnopravna zaštita studija slučaja, praksa i preporuke, [Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, Beograd: 2012], Page 36; Analiza odgovora pravosuđa na izazove diskriminacije u Bosni i Hercegovini, [Misija Organizacije za evropsku bezbjednost i saradnju u Bosni i Hercegovini], Pages 14-17; GIO2019, Page 114; Lejla Gačanica, Rodno zasnovana diskriminacija u oblasti rada u Bosni i Hercegovini, [Helsinški parlament građana Banja Luka, Banja Luka: 2019], Pages 40-41; Specijalni izvještaj o upotrebi službenog jezika i pisma u Bosni i Hercegovini, [Institucija ombudsmena u Bosni i Hercegovini, Banja Luka: 2017], Pages 71-72.

certain social rights, but do not endeavour to respect them in practice. At the same time, citizens have too many everyday problems in trying to survive and do not have the strength to protest. As a consequence, the social injustice is building a society where those at the very top gain absolute power, which rarely anyone can oppose.

Unemployment is high in the entire B&H. In August 2020, there were officially 427,593 registered persons in the records of unemployment services, and according to the *B&H Statistics Agency*, the number of employed persons in B&H in July 2020 was 803,326. The Misery Index for 2019 ranks B&H in a very high 7th place in the world, which shows how much unemployment and low standard affect the citizens of B&H.

A high level of corruption, nepotism and "rigging" of job vacancies represent a major problem in the public sector. There is also the problem of availability and efficiency of legal remedies in tender procedures. The most common violations that occur in connection with the **right to work** are violations of competitive procedures in employment, illegality related to termination of employment contracts, non-payment of pension and disability insurance contributions, and non-payment of salaries. Due to the helplessness in which the authorities in B&H put them, citizens, and often entire families, are forced to leave their homes and go to work in other countries.

The possibility of access to health services, as well as their quality are not the same throughout B&H. In the field, the enjoyment and use of rights is difficult for citizens living outside large medical centres such as Banja Luka, Sarajevo, Mostar and Tuzla. Some of the hospitals are in a rundown state, and the renovation of such institutions is mostly done for pre-election purposes, and not in order to truly fight to protect the right to health of citizens. The weaknesses of health services were particularly evident in 2020. Namely, the health care system, which was on very shaky grounds to begin with, was completely exhausted by several months of fighting the COVID-19 pandemic. The lack of professional staff and the lack of inpatient capacity for isolation and hospital treatment of patients was obvious. In addition, there were many suspicious activities in public procurements in health care, and in the midst of the crisis, very expensive respirators were paid and imported from the People's Republic of China, costing about BAM 10.5 million, through the company "Srebrna malina" whose main

activity is growing raspberry [Sic], all with the mediation of the highest officials in the FB&H.

B&H faces many problems when it comes to environment – from factories that pollute the environment by not applying appropriate procedures, methods and filters, to the use of non-renewable energy sources, and direct pollution from vehicles, burning coal and other solid fuels. Thusly, residents of Sarajevo, Tuzla and Zenica live in some of the most polluted cities in Europe. Although measurements in Banja Luka show better air quality, unofficial measurements carried out environmental organisations show that the pollution is very similar to that in Sarajevo. This situation leads not only to citizens falling ill, but according to some estimates, as much as 9% of the total annual mortality in B&H can be attributed to the consequences of pollution.

One good thing for B&H and its citizens is that the rivers are still mostly clean and untouched. They represent one of the largest natural resources in B&H. However, the construction of hydro power plants is planned on many rivers, which will harm the nature and local communities. Citizens are organising against such intentions of investors and the authorities, as in the example of activism of several local communities in Fojnica that protected the river Željeznica by protesting for 325 days until the investor gave up. As with other human rights, the authorities often do not understand the importance of a healthy environment, and civil servants are quick to find own interests in approving pollution and nature damage in B&H, and to issue certain permits to polluters violating protocols and regulations.

Although the situation has improved compared to the previous period, **education** in B&H is still fragmented and defined by "politics, lack of transparency, discrimination, segregation and assimilation." As part of the "Two schools under one roof" system in FB&H, there is segregation of children in certain schools, so children of the same age, who attend the same or similar programs at the same location, are divided on the basis of ethnicity. In addition, in certain schools in the RS, Bosniak children are prevented from calling their mother tongue "Bosnian language", so the name "language of the Bosniak people" is used instead. A similar situation is happening with students of Serbian nationality, who were denied the right to study their mother tongue in Glamoč in the Federation of B&H.

Moreover, education in B&H is not equal and equally available to every child, because there are certain class divisions in the educational framework, where those from wealthier families have much more opportunities for their own development. New issues related to the right to education have emerged during the 2020 emergency measures. Namely, as the classes took place by distance learning, a number of children who did not have technical devices or adequate access to Internet were completely excluded from the educational process. Authorities did not pay excessive attention to reducing the digital divide or enabling equality for children who do not have the necessary conditions. In addition, the syllabus and classes were significantly shortened, which affected learning and the level of knowledge that the students received.⁷

6. SPECIFIC AND MARGINALISED GROUPS

Women are generally marginalised underrepresented in politics and public life. Specific and systemic affirmative actions are largely lacking, and women are still not sufficiently involved in politics and political processes. Legal provisions that enable equality are not effectively applied, and the implementation of laws related to the prevention and protection against gender-based violence is a major problem in B&H. Violence against women is an everyday occurrence, which affects women of all ages, regardless of personal income or level of education, and occurs in all of the country. The number of "protective measures adopted is still low, and the overall system for responding and supporting victims needs to be improved."

2019], Pages 8-9.

Registrirana nezaposlenost u avgustu 2020. godine, [Agencija za statistiku Bosne i Hercegovine, Sarajevo: 2020]; Zaposleni po djelatnostima u julu 2020. godine, [Agencija za statistiku Bosne i Hercegovine, Sarajevo: 2020]; Mirna Sadiković, Zagađenje u BiH: Uzroci, posljedice i šta dalje?, [Radio slobodna Evropa: 2020, he found https://www.slobodnaevropa.org/a/zagadjenje-u-bih-uzrociposljedice-sta-dalje/30374851.html, Accessed on 15/11/2020 at 22:48)]; Upravljanje zagađenjem zraka u Bosni i Hercegovini, [The World Bank: 2019].; Jelena Ivanić, Nataša Crnković, Sloboda rijekama, [Centar za životnu sredinu, Banja Luka], Pages 5, 12-13; Dejvid S. Korten, "Neuspesi sporazuma u Breton Vudsu", Globalizacija - argumenti protiv, [CLIO, Beograd: 2003], Pages 30-31; Poverty Headcount Ratio at National Poverty Lines -Bosnia and Herzegovina, [World Bank, (Can be found on: https://data.worldbank.org/indicator/SI.POV.NAHC?locations=BA Gview=map, Accessed on 21/11/2020 at 23:09)]; Voluntary Review – Implementation of Agenda 2030 and the Sustainable Development Goals in Bosnia and Herzegovina, [2019], page 38; DDBiH, Pages 80-89; Public Opinion in Kosovo, Serbia, Bosnia and Herzegovina, and North Macedonia, [International Republican Institute, Center for Insights in Survey Research:

Cases of pregnant women who were fired from their jobs are also evident, and in certain cases women are not paid equally for the same work. There is insufficient access to free legal aid for women, especially for those from vulnerable groups and rural areas who want to complain about gender discrimination and violence. In addition, there is no comprehensive strategy to eliminate stereotypes that permeate sexist and misogynistic attitudes in the society.

Non-compliance with the rights of persons with disabilities (hereinafter: PWDs) is most visible in the area of the right to accessibility, equality and political participation. Further, the state Law on Prohibition of Discrimination provides de iure protection against discrimination, but PWDs often face discrimination in access to institutions, education, employment, courts, social protection, political processes and health services. In cities, but especially in more rural areas, there are a large number of architectural barriers, psychological and cultural ones. The environment very often limits PWDs in terms of inclusion in the community on an equal footing with others, especially in public and political arena. In addition, inclusive education does not exist in a great number of schools, and most teachers are not aware of the obligation of reasonable accommodation.

Relationships between same-sex partners are not regulated within the regulations in B&H. LGBTI+ persons are prevented from exercising their constitutionally guaranteed rights relating to private and family life, the establishment of a family or the protection of acquired property. When it comes to the respect for human rights and equality of all citizens, the organisers of gatherings aiming to put and emphasis on the unequal position and enjoyment of certain rights of LGBTI+ people encounter great problems. The authorities often act in a homophobic manner, sometimes through direct resistance to the right of assembly of LGBTI+ persons, and sometimes through attitudes that any violence that may occur is "caused" by LGBTI+ persons and their assembly, and not by those who commit violence. Certain institutions impose additional measures for LGBTI+ people gatherings, which often impose the need for substantial financial resources, thusly jeopardising the freedom of assembly.

People from the LGBTI+ community are often victims of homophobia, transphobia and other forms of

intolerance and discrimination, as well as attacks on their physical integrity due to sexual orientation or gender identity. A constant problem is the lack of adequate sanctioning of cases of violence against LGBTI+ people. Even the very announcements and holding of the *Pride March* in Sarajevo resulted in a jump in hate speech towards LGBTI+ people and cases of violence in public space. A typical example of behaviour towards the LGBTI+ community is the actions of Samra Ćosović Hajdarević, a member of Saraievo Canton Assembly. After the announcement of Pride March in 2019, she made a public statement calling for direct discrimination against LGBTI+ people, saying that pride parades aim to ruin the state and the people, and that she wants such "people to isolate themselves and stay away from our children and society." In addition to the interethnic hatred that exists among members of all nations in B&H, the strong animosity of the political leaders of the constituent peoples towards the members of the LGBTI+ community is also very noticeable.

National minorities in B&H face various types of discrimination (such as electoral discrimination) or offensive name-calling (such as the term "Others" used to refer to non-constituent peoples). Roma are the most numerous, most neglected and most endangered national minority in B&H, and in a good part Roma families are in "a situation of chronic multidimensional poverty." The gap between some Roma groups and the rest of the population is so large that in many cases, affirmative action is needed. Roma children are exposed to "dangers of abuse, neglect, violence and exploitation", and their families have fewer available means to offer them protection and support. The employment rate of Roma is very low, and discrimination often occurs during employment due to stereotypes and prejudices. In terms of education, there are key barriers to their access to quality education, such as extreme poverty and poor treatment, which is particularly evident in certain places in the FB&H. Nevertheless, the issue of Roma inclusion in society is a secondary topic for those with decision-making power.

Refugees and migrants regularly face inadequate and inhumane accommodation, disrespect for human dignity, restrictions and violations of rights, stigmatisation, police violence, racism and lack of empathy, while often being treated as commodity rather than people. Migrants and refugees are even linguistically negatively labelled in B&H, the

conceptual distinction between "refugees" and "migrants" is rarely made in public, and the phrase "illegal migrants" is often used.⁸

Stanje dječjih prava, [Unicef: 2020], Page 42.

Položaj romske djece i porodica u Bosni i Hercegovini, [Unicef, Sarajevo: 2013], Pages 10-14; Specijalni izvještaj o položaju Roma u Bosni i Hercegovini, [Institucija ombudmena za ljudska prava u Bosni i Hercegovini, Banja Luka], 18-38; Romi u BiH: Dugačak put do inkluzije, [Voice of America: 2018, (Can be https://ba.voanews.com/a/romska-zajednica-bihfound on: integracija-u-drustvo-inkluzija/4233137.html, Accessed 21/11/2020 at 17:06)]; Višnja Baćanović, Vodič za učešće žena u javnom i političkom životu, [DamaD, Novi Pazar: 2014], Page 61; Radni dokument osoblja komisije, Izvještaj o Bosni i Hercegovini za 2018. godinu (IBiH2018), [Evropska komisija, Strazbur: 2018], 2.2.1; Organizacija za evropsku bezbjednost i saradnju, Anketa o nasilju nad ženama koju je sproveo OEBS – Dobrobit i bezbednost žena, [Organizacija za evropsku bezbjednost i saradnju: 2019], i-iv; Concluding Observations on the Sixth Periodic Report of Bosnia and Herzegovina, [Committee on the against Discrimination CEDAW/C/BIH/CO/6, 2019]; Univerzalni periodični pregled stanja ljudskih prava u Bosni i Hercegovini – III ciklus, [Institucija ombudsmena za ljudska prava Bosne i Hercegovine: 2019], Page 2; Strategija unapređenja društvenog položaja lica s invaliditetom 2017-2026 u Republici Srpskoj, [Vlada Republike Srpske, Ministarstvo zdravlja i socijalne zaštite], 7.1.2, 7.1.4; Strategija za unapređenje prava i položaja osoba s invaliditetom 2016-2021 u Federaciji Bosne i Hercegovine, [Vlada Federacije Bosne i Hercegovine], Pages 18, 19, 32, 33, 34, 40; Concluding Observations on the Initial Report of the of Bosnia and Herzegovina: Committee on the Rights of Persons with Disabilities, [United Nations, Committee on the Rights of Persons with Disabilities, Geneva: 2017]; Darko Pandurević, Delila Hasanbegović, Jozo Blažević, Nejra Agić, Rozi izvještaj 2020 -Godišnji izvještaj o stanju ljudskih prava LGBTI osoba u Bosni i Hercegovini (RI2020), [Sarajevski otvoreni centar, Sarajevo: 2020], Pages 19, 42; Natalija Petrić, Boris Krešić, Gordan Bosanac, Goran Selanec, Fedra Idžaković, Izvan zakona: Pravna regulacija životnih zajednica parova istog spola u Bosni i Hercegovini, [Sarajevski otvoreni centar, Sarajevo: 2016], Pages 9-15, 73-120; RI2020, Page 11; Emina Dizdarević, Povorka ponosa zbog dodatnih zahtjeva za osiguranje u neravnopravnom položaju u odnosu na ostale proteste, [Detektor: 2020, (Can be found on: https://detektor.ba/2020/07/17/povorka-ponosa-zbogdodatnih-zahtjeva-za-osiguranje-u-neravnopravnom-polozaju-uodnosu-na-ostale-proteste/, Accessed on 20/11/2020 at 14:06)]; Jasminka Džumhur, Nives Jukić, Ljubinko Mitrović, Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini, [Institucija ombudsmena za ljudska prava u Bosni i Hercegovini, Banja Luka: 2016], Page 24; RI2020, Page 12; Oslobođenje portal, Samra Ćosović-Hajdarević o povorki ponosa: Želim da se ovakvi ljudi [Oslobođenje: 2019, (Can be found https://www.oslobodjenje.ba/vijesti/sarajevo/samra-cosovichajdarevic-o-povorki-ponosa-zelim-da-se-ovakvi-ljudi-izoluju-446138, Accessed on 21/11/2020 at 21:56)]; Buka portal, Povorka uspješna, ali BiH tek treba obezbijediti punu ravnopravnost i bezbjednost svih građana, [Buka: 2019, (Can be found on: https://www.6yka.com/novosti/povorka-uspjesna-alibih-tek-treba-obezbijediti-punu-ravnopravnost-i-bezbjednost-svih-gradana, Accessed on 21/11/2020 at 22:17)]; Dejan Lučka, Saša Čekrlija, Izbjeglice i migranti u trouglu Bosne i Hercegovine, Hrvatske i Srbije (pravni okvir i analiza stanja u određenim područjima), [Fondacija Friedrich Ebert Bosna i Hercegovina, , Sarajevo: 2020]; "Stanje dječjih prava Bosna i Hercegovina",

CONCLUSION

From today's perspective, the *Dayton Peace Agreement* has fulfilled its primary role. It stopped the war in B&H. In addition, it presented the citizens with a catalogue of human rights and international instruments for their protection. Thusly, 25 years after adoption, citizens in B&H have human rights protected *in paper* by constitutions, laws and international legal documents, but there is almost no human right that is not being violated.

The state bodies understand human rights only as an *idea* that is easily invoked when it goes in favour of their goals, but which is easily attacked and violated, when it does not suit certain interests. There is much talk about human rights in public, but mostly in political sense and in broad terms so that they have already become too general to even pay attention to. In practice, a big problem for the citizens of B&H is that they are not familiar with their basic rights, nor do they know before which institutions they can seek protection. There is also the fear of retaliation in case of complaints of human rights violations, as well as the inability to bear financial costs due to various actions.

Ratification of international human rights documents is carried out as a routine and guided by the principle of accepting as much of them as possible, while not considering the obligations that the state assumes with them. Such a frivolous approach leads to not actually applying many human rights provisions. Institutions often do not understand the way in which they must protect human rights. Politicians and government officials view human rights not as a legal but as a political construction, and officials are not sufficiently familiar with the very concept of human rights and the duties that arise from them. All this leads to a continuous violation of fundamental rights, both at the systemic and individual level. Also, the discrepancy between the de iure and the de facto state is constant in the attitude of B&H towards human rights.

When it comes to violations of rights, they are often interlinked. Thus, the rights to freedom of assembly and freedom of expression, the right to fair trial and the right to property, the right to non-discrimination and special rights of persons with disabilities, women or members of the LGBTI+ community, etc. are violated. Common to all actions in violation of several rights is that the state authorities do not stop when once they start violating them, and it is very easy to go from violating one or two rights, to violating several rights from the human rights catalogue.

B&H is built as a state, but it does not have a system that has the ability, wants and works to respect individuals, their human rights and the society as a whole. On the other hand, the international community, through its channels, but also through the *High Representative*, continues to view B&H as a state under its tutelage. However, from the behaviour in the last decade, it is clear that it is ready to intervene only when it comes to ethnic problems and frictions that occur among the political representatives of the constituent peoples, but not when it comes to human rights violations not related to ethnic strife.

The Dayton Peace stopped the bloodshed and laid the foundations for the respect of human rights, but did not provide a solution to the complicated mechanisms that exist within B&H. These mechanisms are not only of a procedural nature, and they are not entirely the blame of the Constitution of the Agreement. The entire machinery in the country, from the setting of the institutions to the people who manage them, is arranged in such a way that building castles in the air is still put in the foreground, through various promises and never implemented projects, while the building a house on solid ground is on hold. The bricks that need to be built into that house are certainly the ones that should carry the beams of the rule of law, respect for human rights and equal opportunities for all. Dayton, with all its shortcomings, still provides the people in B&H with good binding material to build a house and enables them to live under its roof without inequality, discrimination and violation of rights. The only question is when will someone continue to build the house?

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