



**THE AIRE CENTRE**  
Advice on Individual Rights in Europe

# **How Far Have We Come and Where Do We Go from Here?**

## **Gender Equality in the Judiciary of Bosnia and Herzegovina**

An Overview of Situation





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### **An Overview of Situation**

December 2020

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<b>Editor:</b>	Dalida Tanović
<b>Author:</b>	Kosana Beker
<b>Translation:</b>	Senada Kreso
<b>Design</b>	Kliker Dizajn



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# EXECUTIVE SUMMARY

The aim of this Report, which is a part of a broader project realised by the AIRE centres, is to develop capacities of higher courts in Bosnia and Herzegovina for a more efficient mainstreaming of gender equality in the judicial proceedings and practice, as well as to strengthen the role of women in the highest courts of the country, especially at a decision-making level. To achieve this project goal, the first activity was to get an overview of the situation of gender equality in the BiH judiciary, using the method of gathering the existing researches and reports, analysing their findings and recommendations and the areas they have identified for a further work, followed by validation interviews with male and female judges and other stakeholders (High Judicial and Prosecutorial Council, non-governmental organisations, international organisations) to secure synergy and avoid the overleaping of activities.

The overview of the situation has shown that, in the past 10 years, significant efforts have been made in BiH to develop domestic legal, institutional and political framework for the implementation of principles of gender equality that are mostly aligned with the international standards. However, the implementation of legislation is still a challenge, and it is necessary to take measures in that respect. One needs to point out that, by the end of October 2020, the High Judicial and Prosecutorial Council of BiH adopted the Strategy for Improvement of Gender Equality in the BiH judiciary, which is an example of a good practice in the region.

Men vs. women ratio shows that, in the judiciary of BiH, there are more women, both in the positions of judges and among the non-judicial staff, where this disproportion is even more emphasised. There are women in managerial positions, but not in the proportion that corresponds to their representation. That is why it is necessary to take measures to achieve parity, i.e. as equitable representation of women and men as possible, both as judges and among non-judicial staff, and to ensure that women and men are equally represented in the managerial positions in judiciary. In BiH, a lot of research activities have been conducted, including the research of jurisprudence, mostly in the areas of gender stereotypes and prejudice, domestic violence and gender-based violence, armed conflict-related sexual violence and, to a somewhat lesser degree, researches have been conducted in the areas of discrimination and mobbing. Training of Holders of the judicial functions are organised regularly, while it is necessary to further sensibilise them relating to the issues of gender equality and gender prejudice and stereotypes, which are still present and widely spread in the BiH society and, consequently, reflected on the BiH judiciary. The overview of the situation shows that some groups of individuals,

particularly women from groups that are marginalised on multiple grounds, are often faced with obstacles in terms of access to justice, due to their poverty, unfavourable social status, ignorance and the like. Furthermore, the Coronavirus pandemic has brought about problems and challenges in terms of access to justice, that has been made difficult, particularly for women exposed to violence, while it also has negative impact on women employed in the judiciary, who are subject to a double burden of obligations, both professional as well as the private ones.

At the end of this Overview, the Conclusions and Recommendations for improvement of the position of women and realisation of the principle of gender equality in the BiH judiciary have been given, together with some recommendations that would be carried out in the forthcoming period by the AIRE Centre, in agreement and/or in the partnership with other stakeholders.



# INTRODUCTION

This report has been made as a part of the project of „Strengthening of Judicial Capacities for the Implementation of the European Convention on Human Rights and its Standards in Bosnia and Herzegovina (BiH)“, that has been carried out by the AIRE Centre, and funded by the Embassy of the United Kingdom in Sarajevo. Given that gender inequality is a problem that is present in all legal systems in the world, BiH and the wider region are not an exception in that respect. The aim of this project is to develop the capacity of higher courts in Bosnia and Herzegovina to effectively integrate gender equality in the legal proceedings and their case law as well as to strengthen the role of women in the highest courts, especially at the level of decision-making.

A focus of the work of the AIRE Centre in BiH is on several courts, i.e.: [The Constitutional Court of BiH](#); [The Court of BiH](#); [The Supreme Court of FBiH](#); [The Supreme Court of the RS](#) and [The Appellate Court of Brčko District](#), with a special focus on the Constitutional Court of BiH and the Court of BiH.

Our initial preparations have relied on the existing analyses and researches relating to gender equality in the judiciary. This Report reflects the efforts to gather and consolidate the existing research activities and reports, in order to secure that our project and our planned activities add up to the work of other organisations, instead of overlapping with them. In addition, the desk research enables further use of the results and recommendation from previous researches, i.e., a planning of future and deeper research of specific themes. The desk research has identified the missing areas, the areas where research has not been done so far, which would be useful to conduct, with the view of the jurisdiction of the courts in our focus, as well as the existing challenges relating to the realisation of gender equality in those areas. Furthermore, the desk research has dealt with what has been done so far in terms of education of judges on gender equality, in relation to a position of women and men in courts, as well as the judicial and non-judicial staff in the context of gender equality and prohibition of discrimination against women.

Once the areas that require a further work have been identified, further activities and interventions, which could be conducted within the AIRE Centre Project, have been recommended. These recommendations have undergone a process of validation, through 17 in-depth interviews with judges and non-judicial staff employed in the courts at all levels of the BiH judiciary. The in-depth validation interviews were conducted from 24 July to 4 September 2020. Various online

platforms and programmes (Zoom, Viber, Skype) were used for those interviews, each of them lasted for an hour on average. The total of 17 individuals participated in the interviews, out of which there were 14 women and 3 men. The participants were judges from courts at all levels of the judiciary, as well as the representatives of HJPC, CEJP of the FBiH, one foreign foundation and two women's non-governmental organisations.

The in-depth validation interviews have covered several themes, which are included in the guide for in-depth semi-structured interviews:

- » Gender equality in the BiH judiciary;
- » Gender stereotypes and prejudice;
- » The research done so far on gender equality in the judiciary;
- » Access to justice/judiciary;
- » Proposals for further research and activities.

After the analysis of those validation in-depth interviews, recommendations for further interventions and activities were finalised. The final draft of the document was sent to all the participants so that they could make their final comments. Their feedback to the content and quality of the document were very positive.

Finally, during December 2020, an online meeting was held with representatives of HJPC and Swedish experts to exchange information on plans for measures and activities relating to gender equality in the judiciary in order to be able to work in synergy with the aim of making the greatest possible contribution to the improvement of gender equality in the BiH judiciary.

# GENDER EQUALITY IN BOSNIA AND HERZEGOVINA – A BRIEF OVERVIEW

In the past ten years, significant efforts have been made in BiH in the area of development of legal, institutional and political framework for the implementation of the principle of gender equality that is aligned with the international standards.

## Legal framework for gender equality in BiH

Bosnia and Herzegovina is a signatory of all nine universal international human rights treaties.<sup>[1]</sup> In addition, it is a signatory of the most of the Council of Europe conventions.<sup>[2]</sup> In this respect, the entire international legal framework for prohibition of discrimination and for gender equality has been implemented in BiH.

The Constitution of BiH<sup>[3]</sup> (Article II.1) stipulates that Bosnia and Herzegovina and its both entities shall secure the highest level of internationally recognised human rights and fundamental freedoms. It is very important to add that it stipulates (Article II.2) that the rights and freedoms envisaged in the European Convention on the Protection of Human Rights and Fundamental Freedoms are directly applied in Bosnia and Herzegovina, and they have a priority over all other laws. The enjoyment of the rights and freedoms as stipulated in the Constitution or international treaties enumerated in the Constitution, shall be secured for all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article II.4). Furthermore, it is stipulated (Article III.3.b) that the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the entities. In Annex I to the Constitution additional human

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- [1] More information is accessible on the website of OHCHR: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=22&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=22&Lang=EN)
- [2] More information is accessible on the website of the Council of Europe: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/BOS?p\\_auth=ZqQ6urrO](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/BOS?p_auth=ZqQ6urrO)
- [3] The Constitution of Bosnia and Herzegovina, Annex IV of the Framework Agreement for the Peace in Bosnia and Herzegovina, „Official Gazette of BiH“, No. 25/2009 – Amendment I, accessible on: <https://www.paragraf.ba/propisi/bih/ustav-bosne-i-hercegovine.html>

rights agreements, including the CEDAW Convention, that shall be applied in BiH, are enumerated.<sup>[4]</sup>

Although many international treaties are relevant for gender equality and women's rights, the two most important international documents are definitely the Convention on Elimination of All Forms of Discrimination against Women (the so-called CEDAW Convention), which is a sort of universal catalogue of women's rights, and the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence (the so-called Istanbul Convention). Both documents have been ratified by BiH.

The first Law on Gender Equality in BiH was adopted in May 2003, and amended in 2009, while in 2010 a consolidated text of the Law on Gender Equality was adopted and it is still in force.<sup>[5]</sup> This law regulates, promotes and protects gender equality, guarantees equal opportunities for all citizens in public and private life, and prohibits a direct and indirect discrimination on the basis of sex in all spheres of the society. The Law on Prohibition of Discrimination<sup>[6]</sup> adopted in 2010, completed the legal framework of gender equality, and improved mechanisms of protection from discrimination aligned with the EU Directives, while amendments to this law passed in 2016 improved the definition of discrimination, extended the list of grounds for discrimination (age, disability and sexual orientation) and strengthened the position of victims of discrimination in the context of effective

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[4] These are the following human rights documents: 1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 4. 1957 Convention on the Nationality of Married Women; 5. 1961 Convention on the Reduction of Statelessness; 6. 1965 International Convention on the Human Rights Elimination of All Discrimination Forms of Racial Discrimination; 7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 8. 1966 Covenant on Economic, Social and Cultural Rights; 9. 1979 Convention on the Elimination of All Forms of Discrimination against Women; 10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 12. 1989 Convention on the Rights of the Child; 13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 14. 1992 European Charter for Regional or Minority Languages; 15. 1994 Framework Convention for the Protection of National Minorities.

[5] „Official Gazette of BiH“, No. 32/10.

[6] „Official Gazette of BiH“, Nos. 59/06 and 66/16

use of protection mechanisms, particularly judicial procedures for the protection from discrimination.<sup>[7]</sup>

In addition to the improved legislative framework, it has been a very positive development that, as of 2006, Gender Action Plans were adopted in BiH. The first Action Plan in BiH was adopted for the period 2006-2011, upon which the Gender Action Plan in BiH was adopted for the period 2013-2017, based on the previous one, as well as on the state and entity development strategies, the European Union's Strategy for Equality of Men and Women and other relevant strategic documents of the Council of Europe, the European Union and the United Nations.<sup>[8]</sup> The Gender Action Plan in BiH for the period 2018-2022 is still in force, and it contains strategic goals, programmes and measures for the attainment of gender equality in all areas of social life, both in public and in private sphere. In this strategic document, priority and transversal (i.e. cross-cutting) areas have been defined, along with the areas relating to the strengthening of the system, mechanisms and instruments for the attainment of gender equality and for the strengthening of cooperation and partnership, which have contributed to a clearer definition of obligations of institutional mechanisms for gender equality and obligations and responsibilities of relevant ministries in each of the priority areas.<sup>[9]</sup> The Gender Action Plan in BiH for the period 2018-2022<sup>[10]</sup> contains three strategic goals within which priorities areas for action have been defined, i.e. programmes and measures required for a realisation of the set goals. These are: Strategic goal 1: Development, implementation and monitoring of the programme of measures for improvement of gender equality within governmental institutions, as per priority areas. Priority areas: Preventing and combating gender-based violence, including domestic violence as well as human trafficking; Public life and decision making; Work, employment and access to economic resources; Education, science, culture and sport; Health, prevention and protection; Social protection and gender and safety; Strategic goal 2: Establishing and strengthening the system, mechanisms and instruments for realization of gender equality per

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[7] The Sixth Periodical Report of Bosnia and Herzegovina on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (2013-2016), Sarajevo, July 2017: [https://arsbih.gov.ba/wp-content/uploads/2017/12/170823\\_VI-periodicni-CEDAW-lzvjestaj-za-BiH-Nacrt.pdf](https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-lzvjestaj-za-BiH-Nacrt.pdf)

[8] Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Agency for Gender Equality, Gender Action Plan of BiH: <https://arsbih.gov.ba/gender-akcioni-plan-bih/>

[9] Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Agency for Gender Equality, GAP Resources: <https://arsbih.gov.ba/gap-resursi/>

[10] Gender Action Plan of Bosnia and Herzegovina for the period from 2018 to 2022: [https://arsbih.gov.ba/wp-content/uploads/2018/11/GAP-BiH-2018-2022\\_B.pdf](https://arsbih.gov.ba/wp-content/uploads/2018/11/GAP-BiH-2018-2022_B.pdf)

priority areas. Priority areas: Co-ordination of implementation and supervision over implementation of the BiH GAP; Monitoring and improvement of applying international and domestic standards for gender equality; Strengthening and co-operation of institutional mechanisms for gender equality; Raising awareness of gender equality in all segments of society; Support to programmes and projects of institutional and extra-institutional partners; Monitoring and assessment of progress in the realisation of gender equality Strategic goal 3: Establishing and strengthening co-operation and partnership per priority areas. Priority areas: Co-operation at regional and international levels; Co-operation with civil society organizations, social partners, academic communities. The strategic goals and priority areas for action defined in this Action Plan are a good indicator of areas where action is required in all segments of the BiH society, its judiciary included.

It is very important that, by the end of October 2020, the High Judicial and Prosecutorial Council has adopted the **Strategy for Improvement of Gender Equality in the BiH Judiciary**,<sup>[11]</sup> which is certainly an example of good practice in the region and a reflection of resolve of the BiH judiciary to make serious efforts in order to achieve gender equality. The plan is to implement the Strategy by *gender mainstreaming*, i.e. by approach to the adoption of policies, laws and programmes taking into account different interests and needs of women and men. Based on the Strategy, all judicial institutions will develop their action plans, while HJPC will coordinate the process of adoption of action plans of the judicial institutions and support them to secure equal access and equality of all male and female citizens before law.

Finally, as for the protection of women from violence, it is important that, after the ratification of the Istanbul Convention, the Government of the Federation of Bosnia and Herzegovina, adopted the Strategy for the Prevention and Combatting Domestic Violence (2013-2017),<sup>[12]</sup> that has expired, but a new Action Plan for the Implementation of the Strategy for the Prevention and Combatting Domestic Violence for the period 2018-2020 is being developed,<sup>[13]</sup> to be followed by a new planning cycle, i.e., the preparation of the new strategic document.<sup>[14]</sup> It would be good if the

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[11] Strategy for Improvement of Gender Equality in the Judicial System of BiH, adopted, HJPC, 29 October 2020: <https://vstv.pravoCourtje.ba/>

[12] „Official Gazette of the Federation of BiH“, No. 22/13: <https://www.gcfbih.gov.ba/strategija-za-prevenciju-i-borbu-protiv-nasilja-u-porodicil>

[13] „Official Gazette of the Federation of BiH“, No. 102/18: [https://www.gcfbih.gov.ba/wp-content/uploads/2019/04/SNFBIH\\_102\\_18\\_AP\\_nasilje\\_u\\_porodici\\_2018-2020.pdf](https://www.gcfbih.gov.ba/wp-content/uploads/2019/04/SNFBIH_102_18_AP_nasilje_u_porodici_2018-2020.pdf)

[14] Pursuant to Article 37. Para. 1. Of the Law on Developmental Planning and Management over Planning in the Federation of BiH („Official Gazette of the Federation of BiH, No. 32/17) the

consultations and preparation of the new strategic document involved representatives of the judiciary and/or HJPC, to secure the inclusion of the perspective of those who are implementing laws in practice, as well as to plan measures and activities to eliminate challenges that exist in judiciary in the area of protection of women from violence.

## Reporting to contractual bodies and their recommendations

Bosnia and Herzegovina regularly meets its reporting obligations on the implementation of international conventions. During 2019, the **Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process**, was submitted, stating the most significant achievements made in the period 2014-2019, as well as the challenges and obstacles facing the BiH society in the context of gender equality and women's empowerment.<sup>[15]</sup> The most significant achievements include successful implementation of policies and strategic document,<sup>[16]</sup> and the improved legal and strategic framework by way of mainstreaming gender-related issues.<sup>[17]</sup> On the other hand, the key challenges include economic gender inequalities that are still very much present (employment and access to economic resources, family planning, domestic work and care for family), despite the measures adopted by the state bodies, as well as the institutional response to violence against women, particularly in relation to securing mechanisms for vertical and horizontal linking of all the competent institutions to secure multi-sectorial response to violence against women, aligned with the Istanbul Convention.

### The First Report to the GREVIO Group on the Implementation of the Council of Europe Convention on Prevention of Violence against Women and

existing strategic documents remain in force for the current planning cycle until the end of 2020, when in accordance with the new planning cycle, and pursuant to Article 36 of The Law on Protection against Domestic Violence („Official Gazette of the Federation of BiH, No. 20/13) prepare a new strategic document in the area of domestic violence.

- [15] *Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process*, April 2019: [https://arsbih.gov.ba/wp-content/uploads/2019/05/izvjestaj-o-napretku-Peking25\\_Bosna-i-Hercegovina.pdf](https://arsbih.gov.ba/wp-content/uploads/2019/05/izvjestaj-o-napretku-Peking25_Bosna-i-Hercegovina.pdf)
- [16] Gender Action Plan of BiH 2013-2017, Action Plan for the Implementation of the United Nations Security Council Resolution 1325 in BiH for the period 2014-2017.
- [17] Framework Strategy for the Implementation of the Istanbul Convention in BiH for the period 2015-2018, adopted, the 3rd GAP in BiH for the period 2018-2022 adopted, the 3rd AP for the implementation of the UNSCR 1325 for the period 2018- 2022 adopted.

**Domestic Violence** was submitted,<sup>[18]</sup> while the GREVIO Group's recommendations for BiH are expected in June 2021.<sup>[19]</sup> By the end of 2019, the **Report for the 3rd Cycle of Universal Periodic Overview on the State of Human Rights** was submitted,<sup>[20]</sup> which includes, inter alia, key breakthroughs made in BiH in the area of gender equality, women's rights and the protection from violence. In relation to the situation in judiciary, it was pointed out that the backlog of cases of criminal offences of domestic violence is in decrease, and that the programmes of entity CEJPs have planned trainings for Holders of judicial functions on domestic violence, while equitable representation of men and women in the judiciary of BiH has been achieved, more precisely, as of 31 December 2018, women make 60% of the total number of all judges and prosecutors in the BiH judiciary, and 48% of total number of managers of judicial institutions.<sup>[21]</sup>

In April 2018, with a slight delay, the **6th Periodic Report on the Implementation of CEDAW Convention in Bosnia and Herzegovina** was submitted,<sup>[22]</sup> and by the end of 2019, recommendations were received along with the praise for the progress made in the realisation of women's rights and gender equality with a concern expressed in relation to gender inequality that is present in all segments of the BiH society.<sup>[23]</sup> **Several recommendations of CEDAW Committee are related to the judiciary:**

- » Intensify efforts to disseminate the present concluding observations, among all stakeholders, including the judiciary;<sup>[24]</sup>

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[18] The report is accessible on the website of the Council of Europe: <https://rm.coe.int/grevioinf2020-12/pdf/a16809eed4a>

[19] The planned schedule of REVIO Reports is accessible on: <https://www.coe.int/en/web/istanbul-convention/timetable>

[20] The Report of Bosnia and Herzegovina for the Third Cycle of Universal Periodical Review on the State of Human Rights, which was made in line with Paragraph 5 of the Annex to Resolution 16/21 of the UN Committee for Human Rights, Council of Ministers of Bosnia and Herzegovina, 9 October 2019: [http://www.mhrr.gov.ba/ljudska\\_prava/UPR/3%20BHS%20Izvjestaj%20BiH%20za%20Treci%20ciklus%20Univerzalnog%20periodicnog%20pregledao%20stanju%20ljudskih%20prava%20doc.pdf](http://www.mhrr.gov.ba/ljudska_prava/UPR/3%20BHS%20Izvjestaj%20BiH%20za%20Treci%20ciklus%20Univerzalnog%20periodicnog%20pregledao%20stanju%20ljudskih%20prava%20doc.pdf)

[21] Ibid, pp. 5-6

[22] The Report is accessible on the website of OHCHR: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBIH%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fBIH%2f6&Lang=en)

[23] CEDAW Committee, Closing Observations on the 6th Periodical Report of Bosnia and Herzegovina, CEDAW/C/BIH/CO/6, 8 November 2019: [https://arsbih.gov.ba/wp-content/uploads/2019/11/BOS\\_CEDAW-C-BIH-Concluding-Observations-6\\_AsAdopted.pdf](https://arsbih.gov.ba/wp-content/uploads/2019/11/BOS_CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf)

[24] Ibid, Para. 10 a) and 18.



- » Build the capacity of judges and prosecutors on women's rights and gender equality, including making the application of the Convention a mandatory part of their professional training;<sup>[25]</sup>
- » Assess the impact of capacity building provided to the judiciary, the police and other law enforcement officers as well as the relevant service providers on the strict application of legislation criminalizing all forms of gender-based violence against women and on gender-sensitive investigation and interrogation methods; Ensure that all forms of gender-based violence against women, including domestic violence, are duly investigated and prosecuted, that perpetrators are adequately punished and that victims have access to appropriate redress, including compensation.<sup>[26]</sup>

These recommendations of the CEDAW Committee, as well as other recommendations from international contractual bodies relating to judiciary need to be thoroughly elaborated and their implementation needs to be secured in all segments of society, judiciary included.

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[25] Ibid, Para. 14 c).

[26] Ibid, Para. 26 c) and d).

# GENDER EQUALITY IN THE BIH JUDICIARY

This Report is primarily related to gender equality in the BiH judiciary. However, given that judiciary is an important and inseparable part of every society, this is a brief presentation of the key problems relating to the realisation of gender equality in BiH, as part of looking into a wider social context.

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## A brief overview of the situation relating to gender equality in the society of BiH

Traditional norms are still playing an important role in political and economic life of BiH, which influences the diminished chances for women for a meaningful participation and advocacy of their interests.<sup>[27]</sup> A gender-specific model of raising children, which implies different practices of raising and socialisation of children, has an impact on the continued presence of patriarchal values (e.g. the roles reserved for men in public spheres and labour market, while, for women, it is in the private sphere of work in their households).<sup>[28]</sup> Among economic gender issues, we point out poor participation of women in labour market and, generally, their less favourable position in employment and work, including discrimination and mobbing, whereby the position of some groups of women is even worse (the Roma women, women with disabilities).<sup>[29]</sup> There is still a very low participation of women in the decision-making positions in public and political life.<sup>[30]</sup> Women are not sufficiently involved in high-level political reforms, even though the special (affirmative measures) have contributed to the initial rise in

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[27] *Gender analysis report for Bosnia and Herzegovina*, Monitoring and Evaluation Support Activity (MEASURE-BiH), USAID Bosnia and Herzegovina, Sarajevo, November 2016

[28] *Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process*, April 2019.

[29] *Gender analysis report for Bosnia and Herzegovina*, Monitoring and Evaluation Support Activity (MEASURE-BiH)

[30] *Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process*, April 2019

political participation of women.<sup>[31]</sup> Levels of protection from gender-based and sexual violence are not geographically synchronised, laws are not implemented in equal manner, particularly when it comes to sanctioning perpetrators and decisions on compensation for damage suffered by victims. The process of mainstreaming gender equality in BiH requires, above all, activities focused on greater awareness and increase of knowledge on the causes and consequences of sex/gender-based violence. It is a very long process that depends on numerous social circumstances and influences, globally, regionally and locally, while it requires a radical restructuring and reform of the institutional policies. However, gender equality is still not a priority of developmental and other strategies and is still seen as an issue that is the exclusive domain of women's activities.<sup>[32]</sup>

In recent years, many activities have been undertaken in relation to gender equality and judiciary in Bosnia and Herzegovina. On the one hand, these activities were focused on those employed in the judiciary, primarily the holders of judicial functions, who were involved in research activities about gender equality in the judiciary, which is a basis of sorts (the initial point) for definition of needs and conceptualisation of activities. In parallel with this process, numerous trainings were organised for judges and prosecutors on the themes of gender equality, such as the recognition of the importance of the problem of gender stereotypes and prejudice. On the other hand, a research of judicial practice was done in several areas of relevance for gender equality. It needs to be said that the HJPC adopted the Guidelines for the Prevention of Sexual and Gender-based Harassment in Judicial Institutions in BiH,<sup>[33]</sup> which have been implemented in all judicial institutions since 2015.<sup>[34]</sup> Finally, the adoption of the **Strategy for the Improvement of Gender Equality in the Judiciary of BiH (2020)** needs to be mentioned as well, since it defines measures and activities for the

[31] Gender analysis report for Bosnia and Herzegovina, Monitoring and Evaluation Support Activity (MEASURE-BiH)

[32] UNICEF, Gender equality: <https://www.unicef.org/bih/rodna-ravnopravnost>

[33] Guidelines for the Prevention of Sexual and Gender-based Harassment in the Judicial Institutions in BiH, High Judicial and Prosecutorial Council of BiH, Sarajevo, 2015: [https://www.pravoCourtje.ba/vstv/faces/docServlet?p\\_id\\_doc=31014](https://www.pravoCourtje.ba/vstv/faces/docServlet?p_id_doc=31014)

[34] The guidelines have defined the notion of harassment, sexual harassment and gender-based harassment, those on which the guidelines are applied, internal procedure for preventive action, trainings, and awareness-raising activities related to the prevention of sexual and gender-based harassment, as well as the monitoring and review of the guidelines.

improvement of gender equality in the judiciary as the basis upon which every judicial institution in BiH has developed its own action plans.

Below, we will present the activities and results of the measures undertaken so far in the improvement of gender equality in the BiH judiciary, as well as the gender structure in the BiH judiciary, in line with the accessible data.

## Gender structure of the BiH judiciary

In Bosnia and Herzegovina, the ratio between women and men is more equitable in the judiciary than in the legislative and executive branches of the government.<sup>[35]</sup> Given the scope of this Report, we will present the gender structure in the judiciary as a whole, and the jurisdiction and gender structure of the courts, which is in the focus of this Report. According to the data for 2018, **the representation of women in the prosecutor’s offices in BiH was 51%, while their representation in the courts was 64%.**<sup>[36]</sup>

	2017.		2018.		2019.	
	F	M	F	M	F	M
The Court of BiH	25	27	24	26	25	27
The Supreme Court of the FBiH	32	12	33	12	32	14
The Supreme Court of the RS	15	8	16	7	16	7
The Higher Commercial Court	3	4	3	4	3	3
Cantonal Courts	101	38	100	34	106	36
District Courts	71	39	72	39	70	37
Municipal Courts	268	150	270	152	265	148
Basic Courts	121	77	119	76	121	75

[35] Gender analysis report for Bosnia and Herzegovina, Monitoring and Evaluation Support Activity (MEASURE-BiH), USAID Bosnia and Herzegovina, Sarajevo, November 2016

[36] Women and Men in Bosnia and Herzegovina, Thematic Bulletin No 3, Agency for Statistics of Bosnia and Herzegovina, Sarajevo, 2020: [https://arsbih.gov.ba/wp-content/uploads/2020/02/Mu%5c%a1karci-i-%5c%beene-u-BIH\\_2020.pdf](https://arsbih.gov.ba/wp-content/uploads/2020/02/Mu%5c%a1karci-i-%5c%beene-u-BIH_2020.pdf)

	2017.		2018.		2019.	
	F	M	F	M	F	M
The Basic Court of Brčko District	7	11	7	11	7	11
The Appellate Court of Brčko District	4	4	4	4	4	4

Table: Judicial authorities by the type of institution and gender in 2017 and 2018<sup>[37]</sup>  
High Judicial and Prosecutorial Council, Annual Report for 2019<sup>[38]</sup>

The following part of this report contains a brief presentation of the jurisdiction of courts that were a focus of our research, as well as data on gender structure of the courts, which were provided by the HJPC in July 2020, and by the Constitutional Court in September 2020. A more detailed description of the courts' jurisdiction is given in Annex 1 to this Report.

### The Constitutional Court of BiH

The jurisdiction of the Constitutional Court<sup>[39]</sup> is defined in the Constitution of BiH<sup>[40]</sup>; there are five aspects of jurisdiction, the division being based on the extent to which, in addition to the basic task of such a court relating to the protection of constitutionality, this court maintains a more direct link with other judicial and legislative authorities in some types of disputes. The competences are: disputes over the conflict of jurisdiction and the abstract control over constitutionality; appellate jurisdiction; referral of questions from other courts and the unblocking of the BiH Parliamentary Assembly.

As for the ratio between women and men in the Constitutional Court of BiH, a man is the Court's President, while two of its three Deputy-Presidents are also men. The ratio between men and women judges is balanced (five men and four women), while the ratio between male and female members of the non-judicial staff is disproportionate since a great majority are women (67 women and 25 men).

[37] Ibid.

[38] High Judicial and Prosecutorial Council, Annual Report for 2019 [https://www.pravosudje.ba/lvstvl/faces/docServlet?p\\_id\\_doc=63649](https://www.pravosudje.ba/lvstvl/faces/docServlet?p_id_doc=63649)

[39] More information is accessible on the website of the Constitutional Court of BiH: <http://www.ccbh.ba/o-Courtu/nadleznosti/?title=uvod>

[40] Articles VI/3. and IV/3 of the Constitution of BiH.

The Constitutional Court of BiH	Men	Women	Total
President	1	/	1
Deputy President	2	1	3
Judges (Holders of judicial functions)	5	4	9
Unit Managers	25	67	92

### The Court of Bosnia and Herzegovina

The jurisdiction of the Court of Bosnia and Herzegovina<sup>[41]</sup> underwent changes in the course of years, and currently this Court has the following competences: criminal, administrative and appellate.

The number of male and female judges in the Court of BiH is equal, while the President of the Court is a man, as well as his Deputy. On the other hand, the ratio of women and men among the non-judicial staff is not satisfactory, if we have in mind that almost two-thirds are women.

The Court of Bosnia and Herzegovina	Men	Women	Total
President	1	/	1
Deputy President	1	/	1
Unit Managers	1	2	3
Judges (Holders of judicial functions)	25	25	50
Non-judicial staff	85	152	237

### The Supreme Court of the Federation of BiH

The Supreme Court FBiH is the highest appellate Court in the Federation of BiH,<sup>[42]</sup> its jurisdiction covering the territory of the whole Federation of BiH. This Court has the following units: criminal division, civil division, administrative division and the division for monitoring and studies of the court jurisprudence.

[41] More information is accessible on the website of the Court of Bosnia and Herzegovina: <http://www.Courtbih.gov.ba/>

[42] More information is accessible on the website of the Supreme Court of the FBiH: <https://vCourt-fbih.pravoCourtje.ba/>

Currently, a woman is the President of the Supreme Court of the FBiH, while her Deputy is a man. Three women and one man chair the Court's four divisions. On the other hand, there are more female judges (32) than men (13), while the gender structure of non-judicial staff is even more uneven to the benefit of women (49 women vs. 14 men).

The Supreme Court of the FBiH	Men	Women	Total
President	/	1	1
Deputy President	1	/	1
Unit Managers	1	3	4
Judges (Holders of judicial functions)	13	32	45
Non-judicial staff	14	49	63

### The Supreme Court of the RS

The Supreme Court of the Republika Srpska is the highest court in the RS,<sup>[43]</sup> with four divisions: criminal, civil, administrative and the division for jurisprudence.

When it comes to the women to men ratio in the Supreme Court of the RS, the situation is similar to that in other courts. Its President is a woman, while her Deputy is a man. Out of four division deputy-chairs, three are women. Women make the majority of non-judicial staff and this difference is even greater than in other courts (28 women and 7 men).

The Supreme Court of the RS	Men	Women	Total
President	/	1	1
Deputy President	1	/	1
Unit Managers	1	3	4
Judges (Holders of judicial functions)	6	16	22
Non-judicial staff	7	28	35

[43] More information is accessible on the website of the Supreme Court of the RS: <https://vCourt-rs.pravoCourtje.ba/>

## The Appellate Court of Brčko District

The Appellate Court of Brčko District of BiH has the jurisdiction over the territory of the Municipality of Brčko,<sup>[44]</sup> and has four divisions: criminal and minor offences, civil and administrative cases, statutory issues and jurisprudence.

In terms of representation of women and men, the situation in the Appellate Court of Brčko District is not satisfactory. Namely, men hold the positions of the Court President, Deputy President and three out of four chairs of its divisions. The number of judges is equitable, which is very positive, while women make two-thirds of the non-judicial staff.

The Appellate Court of Brčko District	Men	Women	Total
President	1	/	1
Deputy President	1	/	1
Unit Managers	3	1	4
Judges (Holders of judicial functions)	4	4	8
Non-judicial staff	4	8	12

## Education and other activities for members of judiciary

The values and opinions of the holders of judicial functions relating to gender equality are of relevance for gender equality in the BiH judiciary, just like it is the case with education that is being organised on this matter.

In the course of 2018, HJPC conducted an analysis of situation within judiciary;<sup>[45]</sup> an anonymous survey was carried out among judges, non-judicial staff and professional parties that appear in court proceedings (lawyers, prosecutors, expert witnesses and public notaries) with the aim of finding their attitude towards gender equality. The questions asked were related to the attitude of courts towards court proceedings and the parties involved, wages and the opportunities for promotion, gender prejudice and personal experiences of respondents towards gender prejudice, as well as sexual and gender-based harassment.

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[44] More information on the Appellate Court of Brčko District is accessible on: <https://apCourt-brckodistriktbih.pravoCourtje.ba/>

[45] In the framework of the project titled *Improvement of the Efficiency of Courts and the Responsibility of Judges and Prosecutors in BiH – 2nd phase*, on the representative sample 969 respondents.



Results of this research indicate that most of the male/female respondents (80%) think that judges treat in the same way the professional parties and parties involved in the proceedings in the courts if BiH, regardless of their gender, and that gender does not influence their assessment of evidence and decisions; while the remaining 20% of the respondents are of the opinion that, when it comes to professional parties appearing in courts, men are favoured over women. Although the responses relating the possibility of promotion are not representative, one can conclude that most of the respondents think that men have better chances for promotion, while the highest positions in the judiciary are not equally accessible to women as they are to men. The majority of the male/female respondents have never personally experienced any inappropriate kind of behaviour, and those who have had such experience, mentioned most frequently the cases where they were interrupted while they were speaking (both sexes), while women most often mentioned the improper comments relating to the way they were dressed. Women make 90% of respondents who personally experienced a lack of respect because of their sex, and 90% of women claimed that they experienced sexual harassment and/or gender-based harassment at workplace. However, most of them have never reported those incidents, most often out of fear from consequences of such an act. The majority of respondents think that awareness of gender equality in the judiciary is an important issue that needs to be adequately addressed, and that the level of gender equality in the judiciary can be improved by adequate training.

Based on the results of this research, HJPC has undertaken a number of measures and activities that include organisation of education on the topic of gender equality, both for holders of judicial functions and for the employees of the HJPC Secretariat, while trainings were held on gender prejudice at workplaces, and the application of the law, gender (non)equality: prejudice and stereotypes and the introduction of the principle of gender equality in the functioning of judicial institutions (gender mainstreaming), and the initial training that was organised for newly appointed counsellors for the prevention of sexual and gender-based harassment who are employed in 12 judicial institutions. A publication has been produced and distributed for judges on the issues of prejudice and stereotypes; the publication also includes the elaboration of the consequences of negative attitudes, particularly in the context of the application of law, as well as the issue of the ways to eliminate prejudice from the judicial system.

In October 2020, the Strategy for Gender Equality in the Judiciary of BiH was adopted, while the Guidelines for the Prevention of Sexual and Gender-based Harassment in Judicial Institutions in BiH were adopted as early as in 2015.<sup>[46]</sup>

Annual Reports of the HJPC of BiH for the previous two years,<sup>[47]</sup> contain, inter alia, the Recommendations for the Improvement of Gender Equality in the Judiciary in BiH,<sup>[48]</sup> and information on the activities and educational efforts that have been undertaken.<sup>[49]</sup> We need to have in mind that the HJPC of BiH and the Centre for Education of Judges and Prosecutors of the FBiH and the RS (CEJP) have regularly organised trainings for judges and prosecutors,<sup>[50]</sup> which evidently brings

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[46] *Guidelines for the Prevention of Sexual and Gender-based Harassment in Judicial Institutions in BiH*, High Judicial and Prosecutorial Council of BiH, Sarajevo, 2015: [https://www.pravoCourtje.ba/vstv/faces/docservlet?p\\_id\\_doc=31014](https://www.pravoCourtje.ba/vstv/faces/docservlet?p_id_doc=31014) The guidelines have defined the notion of harassment, sexual harassment and gender-based harassment, those on which the guidelines are applied, internal procedure for preventive action, trainings, and awareness-raising activities related to the prevention of sexual and gender-based harassment, as well as the monitoring and review of the guidelines. HJPC monitors annually the implementation of the guidelines, regularly organises inception and advances trainings for advisors for the prevention of sexual and gender-based harassment, who are appointed in judicial institutions, in line with the guidelines.

[47] *Annual Report for 2018*, High Judicial and Prosecutorial Council of BiH, Sarajevo, 2019: [https://vstv.pravoCourtje.ba/vstv/faces/docservlet?p\\_id\\_doc=52789](https://vstv.pravoCourtje.ba/vstv/faces/docservlet?p_id_doc=52789) and *Annual Report for 2019*, High Judicial and Prosecutorial Council of BiH, Sarajevo, 2020: [https://www.pravoCourtje.ba/vstv/faces/docservlet?p\\_id\\_doc=63649](https://www.pravoCourtje.ba/vstv/faces/docservlet?p_id_doc=63649)

[48] E.g., raising awareness of Holders of judicial functions about gender-related issues and specific needs of vulnerable groups in contact with judiciary and securing trainings, improvement of data gathering relating violence against women, securing equal access to justice fore all, without discrimination.

[49] HJPC has continued with the training for Holders of judicial functions and for their staff. In the organisation of CEJP FBiH, and in cooperation of the Centre for Women's' Rights from Zenica, a seminar was held on the topic of Gender (in) equality: *Prejudice and Stereotypes*, and the entity CEJPs included in their curricula for 2020, seminars on the topic of gender equality. In addition to this, in cooperation with the Atlantic Initiative association, HJPC organised two trainings for advisors for prevention of gender-based harassment in judicial institutions in u BiH.

[50] In addition, a great number of activities in the previous years were organised by the CEJP FBiH through projects related to human trafficking, treatment of victims and victims witnesses of human trafficking, while the Centres f Education of Judges and Prosecutors in the FBiH and the RS, though education related to the strengthening of capacities for efficient processing of war crimes cases in BiH, which implies also gender sensitive trainings for judges and prosecutors on dealing with cases of war crimes of rape and sexual abuse. *Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process*, April 2019.

improvements in the functioning of the judiciary,<sup>[51]</sup> however, they do not organise such trainings for non-judicial staff employed in the judiciary.

## Interview findings

A great majority of male/female respondents have assessed positively the state of gender equality in the BiH judiciary, in terms of ratio between men and women. Several respondents have pointed out that a greater attention is paid to the ethnic background/criteria than to gender equality, and that a comprehensive policy of gender equality in the judiciary needs to be adopted.

Women are currently more represented in the BiH judiciary (around 60-70%), and they also make the majority in the non-judicial staff, including administration. Two respondents have pointed out that a greater attention needs to be paid to the representation of men in the judiciary because there are fewer and fewer of them. However, some male/female respondents have said that the representation of women and men itself is not the only indicator of the state of gender equality. It has been estimated that the work in judiciary, in courts in particular, is very attractive for women because the working hours are defined, it is less stressful than to be a lawyer or to do similar jobs, while the salary is regular and stable. Some male/female respondents have stated that the salaries are low, and this is the reason why there are more women in the judiciary, because men seek better paid jobs, therefore more and more of them have been leaving judiciary.

Given that the gender equality is not just about a representation of women and men, some male/female respondents think that gender equality has not been given due attention in the BiH judiciary and that the essence of gender equality is not understood fully, and that, therefore, more needs to be done on strengthening gender awareness given that many judges think that it is enough to be professional and impartial.

Most of male/female respondents consider that there are no obstacles for women to be promoted in the judiciary, but some female respondents have pointed out the fact that there are no formal obstacles, but that women are often in a less favourable position due to their obligation to reconcile private and family life with their

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[51] E.g., relating the elimination of violence against women, it was indicated that there is an increase in the number of pronounced protective measures, a drop in suspended sentences and a rise in the pronounced measures of mandatory psycho-social treatment, which is the result, inter alia, of intensive trainings of the judicial staff. *Report on the Progress Achieved in the Implementation of Declaration and Platform for Action in BiH within the Beijing +25 Process*, April 2019.

profession, which makes it more difficult for women, particularly for the younger ones, to get promoted since they are faced with making choices between family obligations and career.

*There are no major obstacles for the promotion of women, except for the usual ones: family, husband who does not have understanding for woman's duties, children...*

There were some stereotypical responses in this segment, e.g. that women are more pushy than men because that is how they have been raised, that it is in their nature to dedicate themselves more to their families and sacrifice their careers, that women are less interested in criminal law and in working in criminal division, as well as that they show less interest in the managerial positions. Some male/female respondents think that there are always more women where there is a greater workload, that all new initiatives and projects, including the reform of judiciary, were actually initiated by women.

Although the number of women in managerial positions has been in an increase in the last decade, the majority of male/female respondents estimate that there are still more men in managerial positions than women. Some female respondents have pointed at the fact that it is more difficult for women in managerial positions, that majority of important tasks are being agreed upon and solved outside the office (e.g. in cafes), and often outside working hours. Likewise, some female respondents have said that due to widely spread gender stereotypes, women have to do more to prove themselves and that they constantly have to demonstrate how clever and capable they are, that it is difficult for them to accomplish themselves in professional roles, but that things are the same in other professions and institutions of a public significance. Male/female respondents have talked about their own experiences in their courts, and that there are still courts where a woman has never been a president, but that there are more and more women who are chairs of court divisions. A promotion depends on the working environment and differs from one court to another.

*When I started working, we had a male president of the court. Privileges for men and a certain degree of machismo were omnipresent. Later, a female replaced him, and the change was palpable. He was the old-school judge and he kept demonstrating that "the last word was the man's word".*

Male/female respondents consider that there is no gender inequality when judges are selected, that ethnicity may be an obstacle, and some of them pointed at the relevance of age. On the one hand, some work experience is required, which then means that one has to be of a certain age, whereas, on the other hand, older persons

have difficulties to be selected first while the younger ones have difficulties to get promoted. Likewise, the obligation to do a certain number of cases is a problem and some respondents say that they work "like in a factory", "like on the conveyor belt", "like in the coal mine", that the pressure is ever growing in several courts, not only in municipal and minor offences courts, as it was the case before. They point at the required number of cases to be adjudicated which results in the fact that the majority of judges have to finish their work at home and then it is easier for male than the female judges to do it, as the female judges have obligations for their family and household once they return home.

As for the activities undertaken in the judiciary in BiH relating to gender equality, several respondents do not know of any such activity/project, while several of them know that something had been organised, but not in their courts. Some female respondents stated that female judges in the international community had initiated an establishment of the Association of Women Judges and that, in those times, there had been activities relating to the strengthening of the role of women in judiciary, but that for the last several years there had been no such activities, whereas they could not explain exactly which activity they had in mind.

With regards to gender equality trainings, some male/female respondents were active, i.e. they participated in trainings as lecturers, while some have never attended trainings on gender equality. Several male/female respondents mentioned that different trainings have been organised, mainly by non-governmental organisations, e.g. the Atlantic Initiative and the Centre for Women's Rights from Zenica, whose trainings they have assessed positively. At the same time, they say that trainings are not compulsory, that there are no guarantees that a significant number of judges would apply for attendance, and they have proposed for some trainings to be made obligatory, or else to find a way to persuade judges to attend those trainings. On the other hand, some male/female respondents have drawn our attention to the format and contents of trainings. First and foremost, that attention should be paid to the expertise of male/female lectures because there were some inadequately qualified trainers for judges. There were male/female respondents who consider that a classic type of education, particularly the *ex cathedra* lectures, are not a good format for learning and that the format needs to be reconsidered, as well as that interactivity is most important, while some think that trainings are too long and that judges can not take so much time off their job, and that it would be better to organise them more frequently, but to make them shorter.

The appointment of counsellors for the prevention of sexual harassment is deemed as a very positive example that would contribute to the improvement of

gender equality; they said that it was good that guidelines were developed on the prevention of gender-based and sexual harassment. Some female respondents were themselves appointed as counsellors and they mentioned that training had been organised for them so that later, with the help of the knowledge and skills acquired at those trainings, they had organised education for the employees of their courts. They pointed out the fact that, at those trainings, they could hear some "typically Balkan comments".

*We were not aware that there was such a thing as sexual harassment, but now we know that it does exist and that it should not be kept hidden. Intellectuals should not behave in such a way and we all need to learn that some jokes are inappropriate, and we need to raise awareness about the things a male colleague should not say to their female colleague, not even as a joke.*

Others mentioned that there were trainings on these topics within CEJPs which were occasionally organised. There is a lot of training events about domestic violence, mostly thanks to non-governmental organisations that finance them. Discrimination against women is one of the topics within the education on jurisprudence of the European Human Rights Court, while the initial training of gender equality is done within one module in the first year, and there were opinions that it is necessary to include gender equality as a special and compulsory topic within the initial training of judges.

## Conclusions and recommendations

Data on the number of male and female judges in the BiH judiciary indicate that women and men are disproportionally represented, i.e. that the number of women greatly exceeds the number of men. This is especially evident in the case of cantonal, municipal and basic courts, while the situation is better at the Higher Commercial Court. In the courts that were a focus of our research, the situation is very similar, except for the Constitutional Court, the Court of BiH and the Appellate Court of Brčko District, where there is an equitable representation of female and male judges. On the other hand, the situation with managerial staff in the judicial institutions and chairs of court divisions, varies from one court to another so that, for example, in the Appellate Court of Brčko District, men hold all the important positions (President/Deputy President and chairs of three divisions), while, for example, at the Supreme Court of the RS, we notice equal representation (women hold the posts of President, Deputy President, chairs of three divisions, with one man presiding over one division). We need to keep in mind that the common feature of all the courts is an absolute disproportion in the non-judicial staff, where women are represented in a much higher number.

Although it is a positive development that the representation of women has increased in the BiH judiciary, it needs to be pointed out that it is necessary to strive for parity, i.e. as equitable representation of women and men in all public services, including judiciary, as possible. In that respect, measures are necessary to make even, to the greatest extent possible, the number of women and men both in the judicial and non-judicial roles. Likewise, it is necessary to keep in mind the representation of women and men in managerial positions in the judiciary. In that respect, in December 2018, the HJPC adopted the *Guidelines for Appointment of Chairs of Court Divisions*<sup>[52]</sup>, which is a set of recommendations that were distributed to presidents of all courts.<sup>[53]</sup> However, the guidelines are gender insensitive and there is no instruction to keep in mind the equitable representation of women and men when appointing chairs of divisions.

Available research on gender equality in judiciary<sup>[54]</sup> demonstrates that women are faced with obstacles in terms of their promotion, and that is the reason why they are not equally represented in managerial positions even in the countries with equal or somewhat higher representation of women in judiciary. Like in some other sectors, the phenomenon of „feminisation“ is noticed in judiciary, which means that there is a greater probability for men to leave judiciary for jobs in private sector (more risky, but better paid), which is linked to gender prejudice.

By undertaking measures to achieve a more equitable representation of women and men in judiciary, among its judicial and non-judicial staff, as well as in its managerial positions, it will be secured that judiciary would be more diverse and it will correspond better to the society in which it operates, and serve better different needs of the BiH citizens.

[52] Text of the Guidelines is accessible on the HJPC website: [https://www.pravoCourtje.ba/lvstvl/faces/pdfservlet?p\\_id\\_doc=50574](https://www.pravoCourtje.ba/lvstvl/faces/pdfservlet?p_id_doc=50574) These guidelines can be applied in all municipal, basic, cantonal, district and district commercial courts in Bosnia and Herzegovina, Higher Commercial Court in Banja Luka, the Basic Court of Brčko District of BiH and the Appellate Court of Brčko District BiH, the Supreme Court of the Federation of Bosnia and Herzegovina and the Supreme Court of the Republika Srpska, if judicial units have been formed in these courts. In the Court of BiH, presidents of courts units select judges from their units for this function, while presidents of court units in other courts are appointed by presidents of those courts.

[53] It is expected that the application of these guidelines will improve the management and the operation of courts through development of responsibility for achievement of the set goals, better communication and teamwork as important segments of changes in the organisation of courts that would eventually increase the productivity of courts and secure better service for citizens.

[54] *Gender, Diversity and Justice: Overview and Recommendations*, OSCE/ODHIR, Warsaw, 2019: <https://www.osce.org/odihr/419840?download=true>

Furthermore, it is necessary to sensitivise employees of the judiciary, through formal and informal education as well as through the inclusion of issues of gender and diversity in the curricula of legal education.<sup>[55]</sup> The results of this research also show that the respondents consider that education is very important because it is one of the main ways to bring about a change. Although slow, there are changes, for example, in the case law related to domestic violence, which is an area where a lot of training has been organised. In several years, from relativisation and banalisation of the issue of domestic violence there has been a shift to better understanding that it is a „serious social, and not only private problem “.

This is why it is indispensable to organise trainings on the topics of gender equality, and to secure quality training and expert lecturers, as well as to motivate holders of judicial functions to attend those trainings, as well as to include the topics relating to gender equality into the initial trainings.

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[55] *Gender, Diversity and Justice: Overview and Recommendations*, OSCE/ODHIR, Warsaw, 2019.



# GENDER STEREOTYPES AND PREJUDICE

Gender stereotypes and prejudice are very important and negative social phenomena, reflected in all segments of a society, including judiciary. Recognizing gender stereotypes and prejudice is important for the judiciary in many aspects, and the fight to eliminate stereotypes and prejudice enables a promotion of gender equality in the judiciary, both for holders of judicial function and employees, as well as for all citizens.

One of the skills of a legal expert is the ability to identify facts and distinguish them from allegations based on misconceptions, stereotypes and other forms of misrepresentation.<sup>[56]</sup> Understanding gender and gender prejudice allows a judge to rule in an impartial manner and allows other legal professionals to offer a stronger argument. It is important to remember that gender understanding, including gender prejudice, plays a role in all legal frameworks and must be taken into account in all legal analyses, and it is especially important in cases of discrimination on the basis of gender, family and gender-based violence, sexual harassment and divorce litigation, as these are the areas where gender stereotypes and prejudice are most prevalent. The way the law is enforced can reproduce and strengthen gender stereotypes, thus limiting access to justice and opportunities for men and women, but it can also promote gender equality by conscious efforts to overcome gender stereotypes.<sup>[57]</sup>

Gender stereotypes and prejudice are often present:<sup>[58]</sup>

- » In cases of rape, which, with a frequent lack of evidence, affects the investigation, prosecution and sentencing, i.e. a proper implementation of the law. Gender prejudice can lead to the victim's guilt, and this further affects the willingness of victims to report crimes and/or participate in prosecution, which leads to restrictions on access to justice, as well as the assessment of the credibility of testimony from witnesses and expert witnesses, and this can have many negative consequences for the entire criminal justice system.

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[56] Majda Halilović, Callum Watson, Heather Huhtanen and Mylene Socquet-Juglard, (eds), *Gender Bias and the Law: legal frameworks and practice from Bosnia&Herzegovina and beyond*, Atlantic Initiative and DCAF, Sarajevo, 2017.

[57] Ibid.

[58] Ibid.

- » In the application of labour law, whether it is regarding employment, salaries, fees or discrimination in the workplace, including sexual harassment.
- » In the disputes over rights of the pension legislation.
- » The exercise of women's property rights, including the division of marital assets and the right to the inheritance.
- » On the granting of custody of the children.<sup>[59]</sup>
- » In the working environment – jokes about women in workplace, harassment.

One study has found that almost a third of respondents testified or were a subject of jokes about women in the workplace, but that this was not recognized as particularly harmful or degrading, while over a third of the survey respondents were not familiar with policies relating to discrimination and harassment. From all of the above, it can be concluded that the presence of gender prejudice affects the enforcement of justice, as well as professional and collegial relations in the court.<sup>[60]</sup>

## Interview findings

Respondents have very divided opinions regarding the presence of gender stereotypes and prejudice in the judiciary. A number of those believe that there is no room for stereotypes and prejudice in the judiciary, and that judges are professionals who are able to lead proceedings and decide impartially and without any stereotypes.

*Judges should not use stereotypes. And there are none. Maybe the typists and other administrative staff, but this doesn't affect the work of the judge.*

Some respondents believe stereotypes are present in the judiciary, but not among judges. They point to stereotypes and prejudice when it comes to female lawyers, especially in criminal proceedings because it is common for more lawyers to take part in those cases. It is similar with the female judges in criminal proceedings, especially if they are young, it is noted that individual parties and their lawyers sometimes “do not take them seriously enough”.

Furthermore, almost the same number of respondents believes that stereotypes and prejudice are present in the judiciary, especially in the areas such as: domestic violence; war and peacetime rape; divorce lawsuits and custody of children. They

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[59] Majda Halilović and Heather Huhtanen, *Gender and the Judiciary: Selected Findings and Recommendations on the Implication of Gender within the Judiciary of Bosnia and Herzegovina*, Atlantic Initiative and DCAF, Sarajevo, 2014.

[60] Ibid.

point out that training on these topics has been organised, that various materials are available, but that gender stereotypes and prejudice are still present, “as if they are ineradicable”, including the fact that there is implicit prejudice, and that some judges are not aware that they are prejudiced.

*The judge brings his experience and values system into the verdict. If the judge has been raised in patriarchal tradition, he is unlikely to make a decision that is free of prejudice, even though we should do so as judges;*

*[...] you can clearly see from the legal reasoning that this judge is prejudiced. He has been raised prejudiced and cannot judge in any other way...*

*When we talk about gender stereotypes and prejudices, it is all trivialized, that is how both women and men react. Sometimes the female judges are the main opponents, they keep the tradition and they don't give up, just so that nothing changes...*

Among the respondents there are those who are aware that there are gender stereotypes and prejudice but believe that the activities conducted within the judiciary are having an effect and that the situation has been improving. They say that invoking ethics, morality, gender consciousness and the like leads to a reduction in prejudice to a minimum, however, it is necessary to include a wide range of judges and prosecutors.

There are few respondents who believe that gender stereotypes and prejudice are present in the workplace, that is, in the work environment. However, several responses suggest they are present, only not adequately addressed.

*There are no prejudice and stereotypes in our court, sometimes male colleagues make “bad taste jokes” to female colleagues, but that is all right, no one gets angry and everything is fine.*

On the other hand, some female respondents allege that there are male colleagues who behave inappropriately towards female colleagues, for example, in one court, a male judge often addresses colleagues and other staff as “honey” and “kid”, in another court one male judge has allusions of a sexual connotation to younger colleagues, while in the third court there is a male judge who constantly tells jokes about blondes and is, generally speaking, very “sexist” towards women. Although different training sessions for the BiH judiciary have been being held,

some respondents say that few training sessions relating to working relations and a collegial atmosphere are free of gender prejudice, and even when some judges complete such or similar trainings, it is only for themselves because there is no obligation to pass the knowledge on to colleagues at the collegiate. Thus, the respondents believe that court executives have a key role to play, and that there should be work with them to ensure that knowledge gained in training is further transferred to the court, bearing in mind that it is impossible for all judges of one court to undergo all the trainings on offer.

When asked about the proposals and the best ways to fight gender stereotypes and prejudice in the judiciary, the respondents have had different ideas. A small number of respondents believe that there is no need to build strategies to combat stereotypes and prejudice, while the majority believe that the raising awareness of judges should be worked on, that education is key and that supporting material should be drafted wherefrom judges could learn, such as manuals, the practice of other courts (national, regional and international) and alike. Also, some believe that bringing in foreign experts, both international and regional, is a good way to share experiences more informally and to show how other countries have tackled this.

## Conclusions and recommendations

Available research, as well as the views of respondents has confirmed the existence of gender stereotypes and prejudice in the BiH society, in all segments, including the judiciary. Recognizing gender stereotypes and prejudice and working towards eliminating them will contribute to improving gender equality in the judiciary, for holders of judicial function and employees in terms of a gender-equal working atmosphere, as well as for all citizens of BiH, thus enabling better access to justice.

It has been recognized that gender stereotypes and prejudice are present in some legal areas more than in others, for example, in cases of discrimination on the basis of gender, family and gender-based violence, rape, sexual harassment and divorce proceedings. In addition, judges are part of the society, therefore they have certain gender stereotypes and prejudice, reflecting on the way the trial is conducted, as well as on the working relationships and working atmosphere.

Recommendations for improving the situation refer to organizing training for awareness of gender stereotypes and prejudice, to jointly (participatory) designing a strategy to combat gender stereotypes and prejudice in the judiciary, to the necessity of raising awareness of judicial functions holders. In terms of education, it is necessary to produce accompanying material, which will be easily understood

and informative (manuals, court practices of other courts, including courts from the region), and it is estimated that it would be good to bring in foreign experts, with whom there will be experience exchange in shorter formats and more informal (peer to peer). Also, training related to gender prejudice in working relationships and creating a collegial working atmosphere free from gender prejudice should be organised, where a special attention should be paid to working with court managers, male and female, among other things, to ensure that knowledge gained in training is further shared in the court.

# RESEARCH OF GENDER EQUALITY AND THE JUDICIARY OF BIH DONE SO FAR AND NEED FOR FURTHER RESEARCH

In the recent years, several surveys that are relevant to achieving the principles of gender equality in the judiciary have been conducted in BiH. Mostly, analyses of judicial practice in certain legal areas were conducted, where gender stereotypes and prejudice most commonly appear and persist, for example in the area of domestic violence and gender-based violence, sexual violence associated with armed conflict, and discrimination and mobbing. The findings of this research are presented briefly in topics, and it has been determined that a further research is needed.

## Domestic violence and gender-based violence

Like in the other countries, domestic violence and gender-based violence are very present in BiH. A survey on violence against women in BiH conducted by the OSCE,<sup>[61]</sup> has found that social norms and attitudes are changing, but that the number of reports of violence is low - the vast majority of women do not report violence (84%). The reasons are numerous: fear, distrust of institutions, and minimisation of the seriousness of violence, a belief that domestic violence is a private matter. The legal framework is not harmonised, there are differences among entity laws, and laws are not implemented adequately, especially when sanctioning perpetrators.<sup>[62]</sup> Two-thirds of women in BiH can be defined as directly affected by the conflict, but cases of non-partner violence that women survived during the war, particularly cases of sexual violence committed during the war, have not all been prosecuted and an effective model of reparations has not yet been established.

The results of this research have been confirmed through other research relating to judicial practices concerning domestic violence and gender-based violence. A

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[61] *Dobrobit i sigurnost žena: Bosna i Hercegovina – Izvještaj o nalazima*, OSCE, 2019

[62] For example, in the practice of both entities, domestic violence is more often treated as a minor offence, and not as criminal offence, which indicates that it is the perception of the police, prosecutors and courts that this type of violence is not a serious problem, and they often pass the most lenient sanctions.

2014 survey found that when sentencing, judges also take into account certain non-legal factors - e.g. a lesser sentence if the defendant is the primary breadwinner of the family, the victim's behaviour, the perpetrator's apology and the like.<sup>[63]</sup> It was also found that gender prejudice affect the assessment of the credibility of testimonies of victims and witnesses, as well as that legal professionals believe that men have a natural predisposition to commit violence. Research shows that most rape convictions state only superficially the extenuating and aggravating circumstances without specifically explaining how these circumstances are affected by sentencing, and often exacerbate neutral circumstances for this type of crime, such as difficult financial circumstances or the unemployment of the accused.<sup>[64]</sup> Victims do not receive compensation in criminal proceedings, sentencing is completely uneven, both among different courts and within individual courts, and sentences closer to the legal minimum are usually imposed.<sup>[65]</sup>

An analysis of monitoring criminal and misdemeanour cases in the area of gender-based violence protection<sup>[66]</sup> has suggested that violence against women in BiH is much more prevalent than those cases that receive a judicial epilogue. The findings of this research show that key elements of access to justice, relating to ensuring legal assistance to victims/damaged, providing professional support to the damaged and her children in the proceedings when acting as witnesses, adequate punishment of the perpetrator and providing compensation for damages are still not satisfactory. The analysis of convictions for crimes of stalking and sexual harassment in Republika Srpska<sup>[67]</sup> has shown that crimes with elements of gender-based violence continue to be prosecuted without a trial, under a plea agreement that prosecutors make with defendants, making it impossible for a victim of violence to exercise their rights in criminal proceedings.<sup>[68]</sup>

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[63] Majda Halilović and Heather Huhtanen, *Gender and the Judiciary: Selected Findings and Recommendations on the Implication of Gender within the Judiciary of Bosnia and Herzegovina*, Atlantic Initiative and DCAF, Sarajevo, 2014.

[64] Ivanka Marković, Majda Halilović i Maida Čehajić-Čampara (ur), *Priručnik za razmatranje krivičnog djela silovanja u sudskoj praksi u Bosni i Hercegovini*, Atlantska inicijativa, Sarajevo, 2019, pp. 31-32.

[65] *Ibid*, pp. 33-34, 55.

[66] Aleksandra Petrić i Dženana Radončić, *Analitički izužestaj: Analiza praćenja krivičnih i prekršajnih postupaka u oblasti zaštite od rodno zasnovanog nasilja u Bosni i Hercegovini*, Udružene, Banja Luka & Zenica, 2017.

[67] Aleksandra Petrić, *Analiza sudskih presuda u Republici Srpskoj za krivična djela proganjanja i polnog uznemiravanja*, Udružene, Banja Luka, 2019.

[68] For example, to testify and make and win a property-related legal claim.

It is worth bearing in mind that the 2019 survey<sup>[69]</sup> referring to the re-reading and analysis of domestic violence convictions, showed that there had been some progress in this area (prison sentences are given more often, improved practices related to mitigating and aggravating circumstances) but that there are still cases that show that there is a perception in the judiciary about a small social danger of domestic violence, that this act is minimised and that its dynamics has not been understood.

## Armed conflict-related sexual violence

In addition to domestic violence and gender-based violence, several surveys have been conducted in BiH on sex crimes committed during the war. In a 2017 survey, it was noted that there had been progress in the past few years in relation to the prosecution of sexual violence committed in the war, but that prejudice and myths about sexual violence in wartime were still present, reflected through issues raised in court, the language used in verdicts, characterization of crimes, acceptance of certain evidence, imposition of safeguarding and acquittals on perpetrators,<sup>[70]</sup> and penalties below the legal minimum.<sup>[71]</sup>

A survey conducted by the OSCE <sup>[72]</sup> showed similar results and trends relating to the offence qualification, the establishing of punishment and mitigating and aggravating circumstances, but noted that in 2014-2016, there was a significant progress in handling cases of sexual violence relating to an armed conflict.<sup>[73]</sup> This

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[69] Majda Halilović, Ivanka Marković i Nejra Veljan, *Ponovno čitanje i analiza presuda za nasilje u porodici u Bosni i Hercegovini*, Atlantska inicijativa, Sarajevo, 2019, p. 26 and 154.

[70] Kyle Delbyck, *Rape myths in wartime sexual violence trials: Transferring the Burden from Survivor to Perpetrator*, TRIAL International, Sarajevo, 2017. The predominant myths that still exist are: promiscuity (she got what she wanted), consent /agreement (she wanted it), credibility (the victims is lying) disgrace myth (assault on honour).

[71] Kyle Delbyck, *Kažnjavanje ratnog seksualnog nasilja – Smjernice za suzbijanje nedosljednosti u odmjeraivanju kazni*, TRIAL International, Sarajevo, 2018

[72] *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016*, OSCE, 2017

[73] Improvements are related to the strengthening of technical aspects of investigation, criminal prosecution and adjudication, knowledge about international law, extended and greater respect for special evidentiary rules in case of sexual violence. Furthermore, investigations, prosecutors and judges are continuously improving access for victims of sexual violence, including sensitive better method of conducting interviews and provision of psychological support prior and during trial, and in almost all institutions dealing with the cases of war crimes, officers for support to witness have been employed.



research, as well as the research conducted by the TRIAL International<sup>[74]</sup> show that the practice is slowly evolving in BiH courts relating to decisions on property-legal claims in criminal proceedings, so in June 2015, the Court of BiH issued the first verdict obliging war criminals to compensate a war rape victim, in addition to a custodial sentence followed by a series of such convictions before several court instances in BiH.<sup>[75]</sup>

## Discrimination and mobbing

For the issues of gender equality and the position of women, anti-discrimination procedures, especially workplace discrimination and mobbing, are important and those are also areas where there has not been much research about the judicial practice in BiH. However, from a small number of studies, one can gain an insight into the current state and determine a need for a further research into judicial practice in this area.

A 2015 survey has shown that the protection of workers' rights and interests in BiH is extremely poor, that exercising of rights in work relations is a mass occurrence (20,000 cases per year), and that despite a solid legal framework, protection of labour rights is not functional in practice.<sup>[76]</sup> Also, a discrimination in the area of work and employment is a widespread occurrence in BiH, and the most common forms of discrimination in the field of work is mobbing, followed by gender discrimination.

From 2015 until March 2018 there were 210 meritorious court decisions in the area of discrimination in the BiH courts, as well as 109 cases that ended in a different way.<sup>[77]</sup> The results of a qualitative analysis of 23 verdicts showed that in

[74] *Imovinskopравни zahtjevi u krivičnom postupku – Priručnik za pravosudno osoblje*, TRIAL International, Sarajevo, 2019.

[75] Thus, so far in nine cases of the court of BiH, the District Court in Doboj and the Cantonal Court in Novi Travnik, one or more perpetrators are obliged to pay compensation for damages to the victims of war crimes in the amount from 20.000 to 60.000 KM. Six of these rulings have become final, two are awaiting the second-instance proceedings, while one was suspended and a re-trial was ordered.

[76] Elma Demir, *Diskriminacija u oblasti rada u Bosni i Hercegovini*, Asocijacija za demokratske inicijative, Sarajevo, 2015, p. 37, accessible on: <https://adi.org.ba/wp-content/uploads/2015/11/Diskriminacija-u-oblasti-rada-Final-9112015-1.pdf>

[77] Dženana Radončić, Edin Hodžić i Midhat Izmirlija, *Kvadratura antidiskriminacijskog trougla u BiH: zakonski okvir, politike i prakse 2016–2018*, Centar za društvena istraživanja Analitika, Sarajevo, 2018.

all cases the lawsuit referred to a protection against discrimination at work (when starting employment and during the course of employment),<sup>[78]</sup> and that the Law on Gender Equality, which more closely regulates specific forms of discrimination in employment relations, was not mentioned in any of the analysed cases. In most examples, the cases involved a direct discrimination and less mobbing and victimization, with no cases of harassment or sexual harassment reported. As for the grounds for protection, a term “vague” was registered in most cases, indicating an apparent lack of understanding of the concept of discrimination, as well as the quality and manner of entering data into the court decisions database. The most commonly stated grounds for discrimination are ethnicity (24%), political or other orientation (19%) and gender (over 10%). At the end of the survey, recommendations were made to the courts and the HJPC regarding a creation of the basis for a consistent and strict compliance with the anti-discrimination legal framework.

The survey, which covered the period 2008-2017, found that there were shortcomings in the records of workplace discrimination cases (e.g. data cannot be simultaneously classified from the category of labour disputes and discrimination on the basis of gender/sexual harassment).<sup>[79]</sup> According to municipal and basic courts, mobbing is the most common form of employment discrimination, but the way records are kept could not be determined whether gender-based discrimination was also found in those cases.<sup>[80]</sup> The results of this survey show that awareness of gender-based discrimination is extremely low, that very few cases have been reported and initiated under the Law on Gender Equality and the Law on The Prohibition of Discrimination, and the shortcomings in the judicial anti-discrimination practices are evident, and given that most of these procedures are conducted according to the labour law, there is a clear indication of a lack of understanding of anti-discrimination laws.

## Interview findings

Several respondents have said that they are not familiar with any research on gender equality and the judiciary of BiH, but most of them are familiar with the surveys that have been conducted. Some respondents have pointed out that there is

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[78] Ibid. Which is in line with the data received from HJPC for this research, according to which 64% of anti-discrimination cases are related to discrimination at workplace.

[79] Lejla Gačanica, *Rodno zasnovana diskriminacija u oblasti rada u Bosni i Hercegovini*, Helsinški parlament građana, Banja Luka, Banja Luka, 2019, pp. 5-6.

[80] This research has also confirmed that the highest number of anti-discrimination cases are those in the area of employment, labour and working conditions, and that gender-based discrimination is mentioned in the total of 11 cases, not solely in the areas of labour and employment.

not enough research that the ones that exist are not unified, that they are on different websites, and only those who are very interested obtain the results of the research.

Most respondents believe a further research into judicial practice is necessary. In terms of research areas they consider necessary, the answers vary, but the most commonly listed are family cases, issues of income support, divorce, children custody, etc., because they believe that those are the areas where women's inequality is most expressed. In addition, some respondents cite mobbing, gender discrimination, femicide, examination of punitive policies in cases of domestic violence, victims of sexual violence in war, comparative research on war and peacetime rapes, inheriting practices, a position of women in property disputes, etc.

The vast majority of respondents believe it would be very useful to do research on women's labour rights and discrimination against women, especially in relation to employment and work, as well as a research on mobbing, to establish how much women's labour rights are violated (redundancy because of pregnancy, sexual harassment at work, the status of court associates and counsellors when starting employment and so on).

Several respondents have pointed out a need to explore the application of international treaties because "no one invokes conventions or apply them directly", as well as the compliance of national legislation with the conventions. One female interlocutor suggested that research should be done the same way as the European research because there is "a few quality research" in BiH, and some believe that no further research is needed, and that further research should be focused on implementing recommendations from research that has been done so far, as well as improving court databases, in order to obtain the data needed more easily.

## Conclusions and recommendations

The survey has found that much has been done in the field of gender equality in the BiH judiciary so far, and the results of these surveys show some changes, which are very slow. In addition, there are some areas concerning gender equality in which no gender analysis of court practice has been done.

Both, the available research and attitude of respondents show that further work needs to be done to improve judicial practice in areas that have been the subject of research, such as domestic violence and gender-based violence, sexual violence, etc. It is necessary to analyse periodically the practices of the courts, and in parallel maintain continuous education of judges and prosecutors.

In some areas, a research is necessary, and based on the results of the research, a quality training for judicial function holders and other judiciary employees should be provided. Besides, there is a high degree of consent that research on women's labour rights and discrimination against women is necessary, especially in relation to employment and work, as well as a research on mobbing. In addition, the knowledge and skills of judges regarding the use of anti-discrimination legislation need to be improved, especially when it comes to a proper use of institutes that are new to the BiH law.<sup>[81]</sup>

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[81] For example, securing mandatory application of the rule of transferring the burden of proof; securing the application of the most favourable legal regime for inclusion of intermediaries on the side of prosecution and stimulation of courts to apply *amicus curiae* with the aim of receiving expert opinion

# ACCESS TO JUSTICE/JUDICIARY

Although the situation varies from one country to another, it can be said that a very small number of people from minority groups work in the justice sector (e.g. Roma, people with disabilities, LGBTI, etc.), and research shows that an increasing the number of people with minority backgrounds in the judiciary would significantly contribute to breaking stereotypes and increasing trust in the justice system, both within minority communities and the population as a whole, thus improving access to justice.<sup>[82]</sup> However, in BiH, similarly to most countries in the region, there are no official statistics available on the representation of members of minority communities in the judiciary, except for gender and national statistics.

Regarding the access to justice, the majority of respondents in this survey believe that women and men in BiH have equal access to justice and judiciary. However, some respondents have said it is a formally equal approach to the judiciary, but not substantially, given the fact that many women and slightly fewer men face obstacles when it comes to access to the judiciary.

*Formally, courts are available equally to all, but it must be taken into account that most of the property is owned by men and that women are much more unemployed, which means that they have no money and consequently do not have the same opportunities.*

Some female respondents have pointed out that women with disabilities, destitute women, widows, women living in the country, women from the minority communities and other groups often do not have the same opportunities to access the judiciary, and the reasons vary and mainly do not concern the courts themselves, but rather the environment in which women live, ignorance, lack of information, poverty, inadequate free legal aid, etc.

## Impact of Covid-19 pandemics on access to justice and on the position of women

The corona virus pandemic (Covid-19) has changed overnight our lives, our societies and the world as a whole. Already at the very beginning of this great health crisis in the world, it has been shown that the measures being taken affect women and men in a different way. The European Institute for Gender Equality (EIGE) has

[82] Gender, Diversity and Justice: Overview and Recommendations, OSCE/ODHIR, Warsaw, 2019.

published a brief analysis from a gender perspective and pointed to the greater impact of the pandemic on women and the worsening position of women:<sup>[83]</sup> 1) women are on the front line; most health care workers and nurses across Europe and the world are women; 2) there are legitimate concerns that there will be a large loss of jobs in women-dominated professions, primarily in the service industry; 3) Unpaid work (care) will increase, especially due to school closures; 4) Physical distancing is not possible for all, older people and people with disabilities often depend on the support of others, making physical distancing almost impossible; 5) Domestic violence increases in times of crisis because women spend longer periods of time with violent partners in the house, so they are exposed to violence longer and it is more difficult for them to report violence; 6) More women are needed in decision-making positions to decide on issues affecting their life and health; 7) Special challenges regarding public transport, which women use more than men (risk of viruses, public transport reduced or cancelled) and 8) measures taken must include different needs of women and men.

The UN Entity for Gender Equality and the Empowerment of Women (UN Women) has stressed the importance of ensuring that the response to Covid-19 does not leave women out, and recommended the following during the pandemic: allow access to data classified by gender; include gender expertise in crisis response teams; support women who are most exposed in the response to the crisis; include women in decision-making process in response to the crisis; ensure that public health messages are focused on all women; strengthen the economic resilience of women; provide the availability of basic health services to women and girls and prioritize services for a prevention and response to gender-based violence.

The BiH Gender Equality Agency has voiced concerns about the rise in violence against women during the health crisis and restricted movement measures, and warned that the issue of service provision for women who are subject to violence should be raised, as well as access to justice for women victims of violence during the epidemic.<sup>[84]</sup> Figures from April 2020 show that, due to the corona virus pandemic,

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[83] European Institute for Gender Equality EIGE, Coronavirus puts women in the frontline, 25 March 2020, accessible on: <https://eige.europa.eu/news/coronavirus-puts-women-frontline> The translation is taken from the FemPlatz Magazine No. 3 – Etraordinary edition, the Association of Women Citizens Femplatz, Pančevo, 2020, accessible on: <http://femplatz.org/index.php?l15>

[84] Agency for Gender Equality in BiH, *Nasilje nad ženama u Evropi za trećinu veće nego prije mjera ograničenog kretanja*, 7.4.2020, accessible on: <https://arsbih.gov.ba/nasilje-nad-zenama-u-evropi-za-trecinu-vece-nego-prije-mjera-ogranicenog-kretanja/>.

safe houses and shelters have been closed for new admissions, putting women victims of violence in a position to be locked up in a house with violent partners.<sup>[85]</sup>

In this regard, the Peace Building Network <sup>[86]</sup> has sent a request to the BiH authorities to inform the public about the number of reports of violence against women and domestic violence since adopting the crisis headquarters measures; information on measures and mechanisms for supporting and protecting victims during an emergency/prohibition of movement; information on funding mechanisms for assistance, support and protection for victims of domestic violence, as well as a possible establishment of co-operation with relevant civil society organisations dealing with these issues.<sup>[87]</sup>

The next area of concern is the slowdown or a temporary stop of economic activities, which further and specifically affect women, especially entrepreneurs, women who have lost their jobs, but also employed women, which is why the measures are needed to address the negative consequences of the pandemic.<sup>[88]</sup> Therefore, the BiH Gender Equality Agency has drafted recommendations for integrating the gender equality perspective into the process of planning, decision-making and implementation as well as measures and plans in the fight against the Covid-19 pandemic. The recommendations draw attention to the obligation of executive bodies and crisis headquarters at all levels of government to make the measures gender-sensitive and contribute to gender equality, and as priority the following areas have been listed: prevention and protection against gender-based violence; women's employment; economy and an equal representation of women and men in the decision-making bodies.<sup>[89]</sup>

[85] Adin Šabić, Ženama koje trpe nasilje u BiH zatvorena vrata skloništa zbog korona virusa: U danima izolacije prepuštene nasilniku 24 sata, Interview.ba, 10.04.2020, accessible on: <https://interview.ba/vijesti/item/30966-zenama-koje-trpe-nasilje-u-bih-zatvorena-vrata-sklonista-zbog-korona-virusa-u-danima-izolacije-prepustene-nasilniku-24-sata>.

[86] The network brings together 295 members, associations, foundations and schools.

[87] Network for Building Peace, Poziv na djelovanje: Nasilje nad ženama i u porodici, 10.04.2020, accessible on: <https://www.mreza-mira.net/vijesti/aktivnosti-mreze/poziv-na-djelovanje-nasilje-nad-zenama-i-u-porodici/>.

[88] Agency for Gender Equality in BiH, Uticaj pandemije na zapošljavanje i rad žena, 6.4.2020, accessible on: <https://arsbih.gov.ba/uticaj-pandemije-na-zaposljavanje-i-rad-zena/>.

[89] Agency for Gender Equality in BiH, Preporuke za integrisanje perspektive ravnopravnosti spolova u borbi protiv pandemije COVID-19, Nos. 10-37-2-728-2/20 od 28. 4. 2020, accessible on: <https://arsbih.gov.ba/preporuke-za-integrisanje-perspektive-ravnopravnosti-spolova-u-borbi-protiv-pandemije-covid-19/>.

## Interview findings

Most respondents believe that measures taken to prevent the spread of the Covid-19 pandemic have not violated access to the judiciary at the expense of the parties. There were no online trials in BiH because there were no legal possibilities for this, but emergency trials were held, including domestic violence cases. At the beginning, there were no inquests or hearings, and this lasted for a shorter period of time, and after that the trials were held, but to a much smaller extent. Some respondents have said that the parties must have had certain consequences as a result, that many trials have been postponed, and one female interlocutor pointed out that judicial protection was difficult to achieve during that period, that at the same time the number of domestic violence cases increased, and some women were forced to stay with the violent partners, not only because of the unavailability of a judicial protection, but also because the police were overwhelmed by visiting and checking if the isolation rules were respected, as well as because some shelters could not provide isolation so women could not be accepted in shelters.

On the other hand, when asked about the impact of Covid-19 on women in the BiH judiciary, the answers vary. Some respondents believe that working from home, one of the underlying changes made during the epidemic, has not affected women and men in the BiH judiciary in different ways. The answers vary from the fact that there was no negative impact at all, because it was a period with a smaller volume of regular work, so it could be compensated for writing judgments which many are behind with, to the answer that there was a negative impact, but that there was no difference between women and men. This negative impact is mostly related to the fact that not everyone has a special space in the house to work, that all the household members are present and that it is very difficult to work effectively from home. A number of female respondents believe that the epidemic and its associated measures have had a greater negative effect on women in the judiciary, mostly due to family-related obligations at home.

*There was a long period of working from home. You are like at work, but the kids are around you. You have to work with the kids, because online school is in progress. And there is your job waiting for you;*

*It was easier for men to move to a quiet space and work, but women had all other responsibilities, since they were already in the house;*



*At home, it goes without saying that you are going to cook, you are going to tidy up, as if you are not working. An additional problem is that there are no working hours, but you are available at all times, and in the evening, if necessary.*

Some female respondents say the impact was different when it comes to woman's age and her family status. Women who do not have a family and women who have adult children, have endured the situation more easily, worked more easily from home, they had this kind of flexibility. On the other hand, for women who have young children and school-age children, the situation was frustrating, as they failed to finish work during working hours, so they often worked at night.

Some respondents point out that some have been on duty, and that timetables have been introduced in some courts to establish who comes to work and when. Several respondents believe that this was not well organised, for example, in one court there was a rule that two of them come to work alternately, and chambers comprise three judges. Some judges did not have access to the online law database, so that is why they came to court, even when they did not have to, that is, when the work from home was allowed. When the state of emergency was lifted, everyone returned to work, except those whose health was damaged or those whose family member was infected. Some respondents say that they adhere to epidemiological measures, that they avoid contacts, and that in some courts only cases in which up to five defendants were tried, due to the number of persons allowed. Otherwise, it is easier for appeal courts to follow all measures now, it is hardest for the basic courts, but the trials are still taking place. One female interlocutor is concerned about the consequences that will subsequently emerge and believes that all of this has affected judges and other staff, that they are now all depressed, especially women who had too many obligations during the period of the epidemic.

## Conclusions and recommendations

The issue of access to justice and judiciary is an important and complex issue. There are no legal differences between women and men in BiH regarding access to justice, thus, a formally equal access to justice has been ensured. However, certain groups of people, especially women from multiple marginalized groups often face obstacles when access to justice is at stake, due to poverty, disadvantaged social standing, ignorance and similar. This is certainly one of the problems that need to be solved in the BiH society, but at the same time the issue is outside the range of this research.

On the other hand, the corona virus epidemic has caused multiple problems and challenges all over the world. In terms of access to justice, the way the judiciary

works during restrictive measures introduced to prevent the spread of the epidemic has had a negative impact on many citizens because access to justice has been hampered by delayed trials, while in cases of domestic violence it has had even more serious consequences, as the inability to properly protect them has left women victims of violence in a situation where they have to spend time with a violent partner. It should be noted that the Covid-19 epidemic has had a more adverse impact on women who are employed in the judiciary, especially women who have school-age children. Women employed in the judiciary, as well as other women in the BiH society, have been burdened with both, business and private obligations, which were often difficult to fulfil and reconcile.

Therefore, the situation in the judiciary should be analysed during the validity of measures introduced with the aim of preventing the epidemic and, based on the failings and lessons learned, measures for future similar situations should be planned. Two types of measures need to be planned – to provide timely protection in the cases of domestic violence and other cases in which it is important to act efficiently and quickly (e.g. ordering the issue of seeing children and the like), while on the other hand it is necessary to introduce measures that will mitigate the consequences of the double burden on women employed in the judiciary.

# CONCLUSIONS AND PROPOSALS FOR FURTHER RESEARCH AND ACTIVITIES

The legislative framework for gender equality in BiH is relatively solid and largely in line with the international standards in this area, although some improvements are always possible. The implementation of the law is a challenge, therefore, in the whole society the measures should be taken to raise awareness of the importance of the issue of gender equality on the one hand, as well as the necessity of proper implementation of the law on the other. Also, BiH has been sending regular reports to the international committees about the implementation of conventions, but efforts should be stepped up to meet recommendations received by the international contracting bodies. Bearing in mind the objective of this research, it is necessary to ensure a more detailed work and implementation of CEDAW committee recommendations regarding the judiciary.

It can be noted that much has been done in the field of gender equality in the BiH judiciary so far, but that the changes have been very slow. The number of women in the BiH judiciary exceeds the number of men, which is why measures should be taken to achieve parity, that is, the more equal representation of women and men, both among judicial and non-judicial staff. Also, it is necessary to make sure there is an equal representation of women and men in the leadership positions in the judiciary.

Training sessions for the judicial staff are regularly organised in BiH, but further sensitization is needed on issues of gender equality and gender prejudice and stereotypes, as well as organizing different trainings, in different formats. Gender stereotypes and prejudice are still present and very widespread in the BiH society, which is reflected in the judiciary as well, and some measures are necessary to eliminate gender stereotypes and prejudice. Taking measures to this end will contribute to improving gender equality in the judiciary, for holders of judicial functions and employees in terms of a gender-equal working atmosphere, as well as for all BiH citizens, thus enabling a better access to justice.

Different materials for judges need to be produced and distributed, occasionally analysing the practice of courts in areas that has already been under research, in order to monitor progress, while in some areas a research is necessary, and based

on the results of the research, it is important to ensure quality training for the judicial function holders and other employees in the judiciary.

Furthermore, while there are no legal differences between women and men in terms of access to justice, certain groups of people, especially women from multiple marginalised groups, often face obstacles when accessing justice, due to poverty, disadvantaged social standing, ignorance and the like. Also, the corona virus epidemic has brought problems and challenges regarding access to justice, which has been hampered, especially for women exposed to violence, and has had a negative effect on women employed in the judiciary, who have been doubly burdened by work and private obligations. The issue of access to justice, in regular and exceptional circumstances, is a significant question on which to work in the future, but measures to address the issue outweigh the scope of this project.

In this overview and at the end of each area, short conclusions and recommendations have been made. Although many of the recommendations are relevant to improving the position of women and achieving the principles of gender equality in the BiH judiciary, many of them go beyond the range of this research. In this part, the focus is on recommendations that can be made within the project implemented by the AIRE Centre.

## **Recommendations for gender analysis of jurisprudence**

Areas where it would be useful to conduct gender analysis of court practice, since there has been no or not enough research into judicial practice in BiH, and the experiences of other states show that gender inequality is present in these areas, and that women meet certain specific challenges and barriers are: 1) discrimination on the basis of gender in different spheres of social relations; 2) discrimination against women in connection with employment, workplace discrimination and mobbing and 3) the application of the Istanbul Convention and the CEDAW Convention in the judicial practice.

After the research and based on the results of the research, recommendations on improving the integration of gender perspective in these areas can be formulated and, if necessary, a certain training in cooperation with the HJPC might be suggested.

## **Recommendations for project activities and interventions**

In addition, it would be useful to carry out the following activities in order to further improve and enhance gender equality in the BiH judiciary:

- » Support the implementation of measures and activities planned by the Strategy for improvement of gender equality in the BiH judiciary, in a partnership with the HJPC and the courts. The first activities could relate to supporting the courts in drafting the first action plans for the improvement of gender equality, as well as support in the realisation of certain activities stipulated in the action plans;
- » Develop basic (online) training on gender equality in cooperation with the HJPC, CESTs and other associations. Training would be intended for anyone employed in the judiciary, including legal advisers and associates, both male and female. Online training is a good solution in terms of time, since it does not mean a certain time/term, as with regular training, but can be done whenever a person has a free time. Certificates to be awarded to the participants who successfully complete the training;
- » Develop an advanced (online) training on gender equality, for respondents who successfully complete basic (online) training. Certificates to be awarded to the participants who successfully complete the training;
- » Support to counsellors for the prevention of sexual and gender-based harassment in the judicial institutions in BiH. It is necessary to conduct an analysis, i.e. a needs assessment, and then plan the activities that advisers need most, since previous experiences have shown that respondents have very positively evaluated the establishment of this mechanism, as well as the trainings that have been organised so far
- » Organise a coaching program on gender equality for presidents of the Constitutional Court of BiH, Court of BiH, the Supreme Court of FBiH, RS Supreme Court and Brčko District Court. The selection of courts is determined in relation to the focus of the AIRE Centre project, as well as taking into account the views of the respondents that it is very important to work with the court management. At least five regionally recognized experts in the field of gender equality are required to establish a coaching program, which are also lawyers, in order to offer presidents a good choice and additional argument as to why they would accept to participate in the programme. The topics would include gender equality and the position of women in society, especially in the context of the judiciary as a working environment – the hiring of non-judicial staff, the selection of the presidents of the divisions, the establishment of procedures within courts to protect against discrimination and mobbing, and other relevant issues that would contribute to increasing sensitivity for gender equality issues in the judiciary. Coaching programmes have proven extremely successful in the region, especially in the “closed” systems. For example, UNDP SEESAC has implemented such programme in Serbia, Montenegro and Bosnia and Herzegovina with the highest representatives of the army and

defence ministries of the listed countries taking part, and the Swedish police are implementing a coaching programme in Serbia with senior officials of the Interior Ministry.

- » Support the establishment of an informal network of (senior) female judges in BiH, in a cooperation with the Association of Female Judges and the HJPC, or measures to increase visibility and empower the Association of Female Judges, after analysing the needs assessment;
- » Organise a mentoring program for female judges (in cooperation with the Association of Female Judges or with an informal network of (senior) female judges if established. The mentoring program implies a number of activities, such as a call/advert, mentor selection, a building of the mentoring program, mentor training, call/job advert for mentors, mentors' meetings, etc. Most respondents believe that the mentoring program in the judiciary is very useful, that there are legal possibilities for that which have not been used, that it is a good way of passing on knowledge, but that the motivation of older female judges and those who are in the highest courts to be mentors should be taken care of, and that it is necessary to pay attention to the basic principles of this mentoring, not to "turn into help to solve cases". Mentoring program is estimated as an extremely important for professional associates and newly appointed judges;
- » Conduct an analysis of the situation in the judiciary during the pandemic in two directions to show: how the Covid-19 pandemic affected women's access to justice, especially in relation to domestic violence and protective measures, as well as gender analysis of how the Covid-19 pandemic has affected women employed in the judiciary (flexible work for employees in the courts, working from home). Based on the results of the analysis and recommendations, further activities should be planned;
- » Conduct a gender analysis of the position of the non-judicial staff in the BiH judiciary: Bearing in mind that statistics show a major imbalance in the representation of women and men among non-judicial staff, in the sense that there are too many females among the non-judicial staff, and that so far no gender analysis of a position of the non-judicial staff has been conducted in BiH, this research would be useful for perceiving the way the employment has been arranged, workplace position, exercising labour rights, achieving special rights of women, opportunities for promotions, opportunities to participate in trainings and other forms of professional development. Based on the results of the analysis and recommendations, plan for further activities should be conducted;
- » Organise a series of trainings for lower courts and courts in smaller environments, and for lecturers to be from the higher courts (the courts that

are the focus of this project), in order to provide a space for learning through collegial discussions;

- » Organise a series of panel discussions on the topics concerning gender equality in the judiciary. Depending on the topic, invite several female judges each time to prepare examples from practice (case studies), which would be presented at the panel.
- » Organise a regional forum on gender equality in the judiciary, following a series of panel discussions to be held in BiH. Invite female judges from Serbia and Montenegro to the regional forum as well as international experts, in order to exchange experiences and share examples of good practice;
- » Support the establishing/completing a base of judicial practice in the areas relating to gender equality, including the Centre for Judicial Documentation;
- » In accordance with the CEDAW Committee recommendations, produce a publication (a manual) for the judiciary with conclusive observations of the Committee and its recommendations, explaining the recommendations and their relevance to the court proceedings;
- » Produce a publication (a manual) with examples from the ECHR practice regarding gender equality, i.e. discrimination against women. Also, the manual should include examples from the BiH jurisprudence and possibly the jurisprudence from the region;
- » Support to the HJPC:
  - An improvement in reporting on gender equality in the judiciary, through regular annual activity reports (e.g. drafting reporting guidelines, developing indicators to monitor the state of gender equality in the judiciary)
  - Support the analysis of the HJPC documents (e.g. Guidelines for an appointment of the presidents of judicial divisions) and proposals for amendments to introduce a gender perspective in those
- » Support to the Constitutional Court:
  - Draft a plan for the improvement of gender equality in the Constitutional Court, which may include several activities (gender analysis of the court work, publication of the US practice regarding gender equality...)

# ANNEX 1 – COURTS’ JURISDICTION

## The Constitutional Court of BiH

The jurisdiction of the Constitutional Court<sup>[90]</sup> is defined by the Constitution of BiH itself (Article VI/3. and IV/3) and there are five forms of jurisdiction, the selection of which is based on the fact that the Constitutional Court, in addition to the classic task concerning the protection of constitutionality, has a more immediate connection with the judicial and legislative authority, in certain types of disputes.

► Disputes of Conflict of Jurisdiction and Abstract Control of Constitutionality

This jurisdiction includes disputes relating to conflicts of jurisdiction and procedures for evaluation of the constitutionality of the law. The Constitutional Court has exclusive jurisdiction in deciding all disputes from the Constitution between the two entities, between Bosnia and Herzegovina and one or both entities, and between Bosnia and Herzegovina institutions. The court decides on positive or negative conflicts of competency, as well as any other disputes that may arise in relations between the state and entity power structures, i.e. the institutions of Bosnia and Herzegovina. In addition, the Constitutional Court has the authority to decide whether the provision of the constitution or the law is in accordance with the Constitution of Bosnia and Herzegovina. In both cases, the dispute can only be initiated by a certain circle of authorized initiators.<sup>[91]</sup>

► Appellate jurisdiction

It is stipulated that the Constitutional Court has the appellate authority for issues in the Constitution that arise on the basis of a verdict of any court in BiH, which means that the Constitutional Court is the highest judicial instance in relation to regular courts, confirming its role in terms of a special institutional guarantor of the protection of rights and freedoms established by the Constitution. When the

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[90] More information is accessible on the website of the Constitutional Court of BiH: <http://www.ccbh.ba/o-sudu/nadleznosti/?title=uvod>.

[91] These are: member of the Presidency of BiH, Chair of the Council of Ministers, Speaker or Deputy Speaker of any of the two houses of the Parliamentary Assembly or one-fourth of members of any of the houses of the legislative body of one entity.



Constitutional Court determines that the appeal has been founded, the court may act as a court of a full jurisdiction, that is, decide in meritum, or it can abolish the verdict and return the case to the court for retrial. The court, whose verdict has been abolished, is obliged to issue a second verdict in an emergency procedure, in which it is bound by the Constitutional Court's legal understanding of violations of constitutionally guaranteed rights and basic freedoms of the appellant".<sup>[92]</sup>

► Referral of questions raised by other courts

The Constitutional Court is responsible for issues forwarded by any court in Bosnia and Herzegovina regarding whether the law, on which its decision depends, is compatible with the Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its protocols, or with the BiH laws or in terms of the existence or reach of any general rule of the international public law. The court may support the legislation or declare it invalid.

► Unblocking of the Parliamentary Assembly

The Constitutional Court's jurisdiction in the event of a "blockade" of the House of Peoples of the Parliamentary Assembly of BiH on an issue of vital interest constitutes an atypical aspect of the activities of the constitutional court instance, as this establishes "a close contact" between constitutional and legislative authorities. The Constitutional Court resolves a dispute in which the proposed decision of the Parliamentary Assembly, in the opinion of a majority of delegates of one of the constituent peoples, is destructive to the vital national interest, while the House of Peoples has exhausted all parliamentary means to resolve this issue.

## The Court of Bosnia and Herzegovina

The jurisdiction of the Court of Bosnia and Herzegovina<sup>[93]</sup> has been changed over the years, and currently the court is in charge of:

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[92] Appellants who consider that the ruling or other decisions taken by any court have violated their rights, have the right to file an appeal once all entity legal remedies have been exhausted, whereby the constitutional Court also takes into account the efficacy of potential legal remedies.

[93] More information is accessible on the website of the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba/>.

► Criminal jurisdiction

- 1) The Court has jurisdiction over criminal offences determined by the BiH Criminal law and other laws of Bosnia and Herzegovina.
- 2) The Court has jurisdiction over criminal offences determined by the laws of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District when these crimes: a) endanger sovereignty, territorial integrity, political independence, national security and international subjectivity of BiH; b) they may have serious repercussions or harmful consequences on the BiH economy, or they can cause other harmful consequences for BiH or may cause serious economic damage or other harmful consequences outside the territory of the particular entity or Brčko District.
- 3) It is also within the Court's jurisdiction that it: a) takes a final and legally binding stance regarding the implementation of the Bosnia and Herzegovina's law and international treaties at a request of any entity court or any Brčko District court that has been trusted to enforce the BiH law; b) It is also within the Court's jurisdiction to issue practical instructions for the application of the criminal substantive law of BiH regarding the criminal acts of genocide, crimes against humanity, war crimes and violations of the laws or customs of war, and individual criminal responsibility in relation to these acts, by official duty or at a request of any entity court or Brčko District Court; c) decides on issues concerning the implementation of international and inter-entity criminal regulations, including relations with Interpol and other international police authorities, such as a transfer of a convicted person, the extradition of persons, which another state, i.e. the international court or tribunal, require from any official body in the BiH area; d) solve a jurisdiction conflict between the entity courts, between the entity courts and Brčko District Court, and between the Court of Bosnia and Herzegovina and any other court; e) decides on the repetition of criminal proceedings for criminal offences stipulated by the laws of the State of Bosnia and Herzegovina.

► Administrative jurisdiction

- 1) The Court has jurisdiction to decide on complaints against administrative acts, i.e., in the cases of silence of administration, institutions of BiH and its bodies, public agencies, public corporations, institutions of the Brčko District and other organisations, as stipulated in the legislation of the state of Bosnia and Herzegovina, when those acts are carried out in the course of performing public duty.
- 2) In particular it is in Court's jurisdiction to: a) assess the legality of individual and general executive acts issued under the state law, when performing

public duties of BiH authorities, for which the law does not foresee judicial examination; b) resolve property disputes between the state and entities, between the state and Brčko District, between the entities themselves, between the entities and Brčko District, and between the BiH institutions relating to exercising the public authority; c) solve a conflict of competencies between the entities, entity courts and courts of Brčko District, and between the Court of Bosnia and Herzegovina and any other court; d) decide on the repetition of proceedings in disputes in paragraph (1) and paragraph (2) point. a) and b).

► Appellate jurisdiction

- 1) The Court has jurisdiction to decide on: a) appeals against verdicts or decisions rendered by the Criminal Division of this Court; b) appeals against verdicts or decisions rendered by the Administrative division of this Court; c) extraordinary legal remedies against final decisions rendered by the Court divisions, except for retrial requests.
- 2) It is also in the Court's jurisdiction to: a) decide on complaints relating to violations of the election law and additional regulations and instructions issued by the Central Election Commission of BiH; b) resolve all other cases as stipulated in the legislation of BiH.

## The Supreme Court of the Federation of BiH

The Supreme Court of the FBiH is the highest appellate court in the Federation of BiH and has in its jurisdiction the whole Federation of BiH. The Supreme Court of the FBiH is competent: (1) to decide on regular legal remedies against the decisions of the cantonal courts, if this is determined by law; (2) to decide on extraordinary legal remedies against the courts' final decisions when specified by law; (3) to decide on legal remedies against the decisions of its councils, if it is not determined otherwise by law; (4) to solve conflicts of competencies between cantonal and municipal courts from different cantons, if it is not determined otherwise by law and (5) to decide on transfer of local jurisdiction from one court to another court when specified by law and to perform other tasks determined by law, except those within the jurisdiction of the Constitutional Court of the Federation of Bosnia and Herzegovina.

The Supreme Court of the FBiH may also have original jurisdictions, if established by the Federation law. The judicial divisions of the Supreme Court of the FBiH are as follows: criminal division, civil division, administrative division and the division for monitoring and studying judicial practice.

## The Supreme Court of the RS

The Supreme Court of Republika Srpska is the highest court in the RS and is competent to decide: (1) on regular legal remedies against the decisions of the district courts, if that is determined by law; (2) on extraordinary legal remedies against the courts' final decisions, when this is determined by law; (3) on legal remedies against the decisions of its councils, unless otherwise determined by law; (4) takes principle stands to harmonise judicial practice on issues that are rated as relevant to the unified implementation of the law in the Republika Srpska; (5) solve conflicts of jurisdiction between courts, if not otherwise determined by law; (6) on transfer of local jurisdiction from one court to another court, when determined by law, and (7) considers current issues of judicial practice, analyses the needs for professional training of judges, associates and senior associates and performs other tasks specified by law.

The Supreme Court of the RS has four divisions: criminal, civil, administrative and jurisprudence.

## The Appellate Court of Brčko District

The Appellate Court of Brčko District of BiH has in its jurisdiction the territory of Brčko municipality and is competent to decide on: (1) regular legal remedies issued on the decisions of the basic court; (2) extraordinary legal remedies declared in final court decisions; (3) whether any law of Brčko District, by-law or any other legal act of any Brčko District institution is in accordance with the Statute, (4) whether any by-law of Brčko District or any other legal act of any Brčko District institution is in accordance with Brčko district law; (5) the conflict of competencies between the Courts of Brčko District and other Brčko District institutions or among the institutions of Brčko District.

The Appellate Court of Brčko District has four divisions: criminal offense division; civil and commercial and administrative division; statutory division and the jurisprudence division.



## The AIRE Centre

The AIRE Centre is a specialist non-governmental organisation that promotes the implementation of European Law and supports the victims of human rights violations. Its team of international lawyers provides expertise and practical advice on European Union and Council of Europe legal standards and has particular experience in litigation before the European Court of Human Rights in Strasbourg, where it has participated in over 150 cases.

For twenty years now, the AIRE Centre has built an unparalleled reputation in the Western Balkans, operating at all levels of the region's justice systems. It works in close cooperation with ministries of justice, judicial training centres and constitutional and supreme courts to lead, support and assist long term rule of law development and reform projects. The AIRE Centre also cooperates with the NGO sector across the region to help foster legal reform and respect for fundamental rights. The foundation of all its work has always been to ensure that everyone can practically and effectively enjoy their legal rights. In practice this has meant promoting and facilitating the proper implementation of the European Convention on Human Rights, assisting the process of European integration by strengthening the rule of law and ensuring the full recognition of human rights, and encouraging cooperation amongst judges and legal professionals across the region.