

Jačanje sudskog i administrativnog odgovora za zaštitu prava i sloboda žena u BiH

Strengthening judicial and administrative response to women's rights and freedoms in BiH

ANALYSIS OF THE LEGAL POSITION AND ACCESS TO JUSTICE OF WOMEN IN BOSNIA AND HERZEGOVINA



VAŠA PRAVA BiH
Legal Aid Network

Activity supported by the
Canada Fund for Local Initiatives
Activité réalisée avec l'appui du
Fonds canadien d'initiatives locales

Canada



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**WITH THE EMPIRICAL RESEARCH OF WOMEN'S ATTITUDES ON THE EXERCISE OF RIGHTS IN THE
INSTITUTIONAL FRAMEWORK**

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Summary

By the ratification of the UN Convention on Elimination of All Forms of Discrimination against Women and other legal instruments, B&H has undertaken responsibility, under international human rights law, to secure equality between men and women in all spheres of life. However, a lot more has to be done so that such a goal could become a reality in the lives of women. Almost a decade after the adoption of the Law on Gender Equality in B&H, and after the adoption of the Law on Prohibition of Discrimination in 2009, the reality shows that, even though the discrimination is prohibited and the legal remedies available to the victims, unjustified treatment has not ceased. Discrimination of women is of structural and horizontal nature and permeates all the cultures and communities, as well as all the sectors, levels of government and areas of life. Women are often discriminated for different reasons, and it is important to combat discrimination of women in systematic and comprehensive manner in order to achieve complete and full gender equality. Achieving such a goal is key for protection of human rights, the functioning of democracy, the respect for the rule of law, and economic growth and competitiveness.

The completion of this analysis was aimed towards showing the particularities and problems with which women are faced in various spheres of life, and which lead to real and tangible differences in treatment of women in access to rights pursuant to the valid legal regulations on the territory of B&H.

The Law on Gender Equality in B&H has provided that discrimination on the basis of gender and sexual orientation is prohibited, and that discrimination on the basis of gender represents any placing in disadvantageous position of any individual or group of individuals based on gender because of which individuals or groups of individuals are hampered or made impossible in recognition, enjoyment or realisation of human rights or freedoms. This law in substantial part relies on the provisions of Law

on Prohibition of Discrimination in B&H and it provides for judicial review of discrimination on the basis of gender. Although the legal provisions provide for various possibilities for the protection of rights, in practice it is evident that the enforcement of these statutes is not consistent, nor satisfactory. Namely, in the practice of the Association “Vaša prava B&H” is evident that most of the female beneficiaries addressed to us for assistance because of discrimination in procedures relating to the realisation of rights from labour relations, social protection, family law, and in relation to violence against women. Many of the beneficiaries provided with free legal aid indicated that there existed sexual discrimination during employment process. With regards to the rights of childbirth allowance there is a great divergence of cantonal provisions which results in difference of treatment regarding mothers that are in labour relations, in contrast to those that are not. Also, because of the complex social and economic situation on the territory of whole B&H in this field we also witness very large increase in the number of beneficiaries regarding the realization of their rights on the basis of regulations in the area of social protection. During 2013, the Election Law of Bosnia and Herzegovina introduced the gender quota of 40% for the participation of gender that is less present in the ruling structures, but we will potentially be able to see the genuine progress in this area after the elections in 2014. Violence against woman is ever-present in all spheres of life. Particularly, Roma women are faced with an increased risk of discrimination, same as women with disabilities, lesbians, bisexual and transsexual women (members of LGBT population), drug addicts and sexual workers.

After the initial failure in adoption of the law of free legal aid at the level of B&H, the processes of adoption of individual laws on different levels of government have been intensified. That legislation is not harmonized, which necessarily leads to unequal treatment towards endangered categories of individuals, particularly women, in various parts of the country, leading to inability

of effective access to justice, and finally to violation of the principle of the rule of law. In the context of access to rights of endangered categories of women in B&H, these women are subject of many limitations, which often have the form of discrimination, particularly in relation to place of residence. The beneficiaries of free legal aid in various laws are determined, in principle, in relation to the place of residence, particular status, and property status; under the condition that legal aid is not deprived for the reasons provided by the law. The cumulation of the criteria of status and property in some parts of B&H is problematic, as well as the fact that some laws do not provide free legal aid to victims of trafficking and victims of domestic violence, which are predominantly women. This divergence in legislation exists also regarding the determination of who is considered a citizen with a poor property status. Among the laws exists inconsistency regarding the waiving of courts and tax fees which also leads to limitations in access to courts.

The Law on Prohibition of Discrimination in B&H has provided that mobbing is a form of nonphysical harassment at the work place that implies repetition of acts that have as their effect the humiliation for the victim and whose purpose or effect is the degradation of working conditions or professional status of employee, or that any person that has reported discrimination or participated in legal procedure for the protection from discrimination will not suffer any consequences for such reporting or participation in antidiscrimination procedures. Discrimination regarding physical or psychological health is a special form of discrimination that necessarily includes: discrimination in relation to motherhood, discrimination of sick-disabled women, and discrimination at work that leads to psychological disturbances or breakdown. It is evident that mobbing in B&H is on increase, to which hard economic situation had contributed to, as well as high rate of unemployment and bad organisation of the labour market. Common to all the victims of mobbing is that the effects are multiple, that the negative effect on employment and family life is evident. The victims of mobbing in very small percentage of cases decide

to initiate court proceedings against the abusers, from the fear of dismissal from work, losses to their house budget, and because of the court fees. In practice it often happens that persons that had suffered mobbing are faced with judges who are not sensitive enough for proceedings regarding cases of discrimination – mobbing, which can discourage faith in the effectiveness of legal remedies that victim could employ. This is corroborated by the reports of the Institution of Ombudsman for Human Rights of B&H according to which less and less appeals are submitted regarding mobbing, and there are less cases that could end in court litigation.

The question of the legal position of women on the labour market and the realisation of rights from employment relationship, with regards to reproductive function, requires special protection and care by the state. The right to child allowance is one of the basic rights of women, whether employed or not, for whose realisation the state is liable, and which must secure the mechanisms for the payment in accordance with international and national standards. The child allowance in different parts of B&H is treated differently, and the payment for the mothers is not harmonized, while in some parts of the country it is not provided at all so that it can be stated with justification that there is a discrimination of such women, namely on territorial principle. This problem is particularly emphasised on the territory of FBiH, and its cantons. Differences are seen in the amount of payments from canton to canton and in the amount of assistance for baby accessories, while in some cantons no funds are provided in budget for such payments at all. Unemployed women in labour realise their rights of social protection only in limited manner, and depending on economic power of individual cantons or municipalities, so such payments are often very low and mostly given for one time.

Family Law of Federation of Bosnia and Herzegovina regulates family relations between marital and wedlock partners, between parents and children and other relatives by blood and adoption, relations of guardianship, adoption and special procedures for protection and exercise of these rights. Although it was regulated by the

provisions of this law that all actions and procedures should be undertaken in an urgent manner, in practice, this is not the case. Certain procedures, although all the facts necessary for the conduct and completion of the procedure are undisputed, procedures lasts one to two years after the filing of the claim or request to the court. In practice are evident problems that people, who are obligated by legally binding and enforceable judgments to give alimony, do not fulfill their obligation. Even if they are employed and when the courts in accordance with the Law on Enforcement Proceedings undertake actions and activities for the realization of a writ of execution, it is often the case that the child does not exercise his rights in the extent to which he is entitled. The Criminal Code of the Federation of BiH regulates avoidance of alimony payment as a criminal act. However, despite the fact that the beneficiary exhausted all legal possibilities in enforcement proceedings and reported to the competent prosecutor's office, it rarely happens that the Prosecutor act upon and forward the indictment to the court for approval. In situations where wedlock ceases to exist and if one of the partners intends to initiate proceedings of the division of common property, if one of the partners in whose name the property is registered does not voluntarily allow change of registration or otherwise assign property to other partner, difficulties occur. Specifically, it is necessary to have two court proceedings, the first process of proving the existence of common law marriage, and then the process of establishing / division of extramarital joint property. When it comes to the issue of exercise of the right to family pension, common-law partner is not entitled to a family pension because the Law on pension and disability insurance does not recognize the institution of common law marriage. One of many problems our beneficiaries are faced with is also issuance of travel documents and a change of residence for minor children. The law stipulates that the parent with whom the child lives must previously and promptly notify the other parent of the change of residence, which affects the performance of the duties of the other parent. In the divorce and custody for minor children proceedings, in written petitions prepared for the beneficiary, it is always requested from the Court

that a parent who gains custody over minor children would be able to change residence and obtain a travel document for a child without the consent of the other parent, with prior notification to the other parent. In practice, however, competent authority for the issuance of travel documents (MUP) requires the consent of the other parent, although by final judgment of divorce issuance of travel documents and border crossing is not conditional upon the consent of the other parent.

In BiH there is no Law on the Rights and Protection of War Victims at the state level, which would equally regulate the statutory rights of all civilian war victims in BiH, regardless of place of residence and nationality of the same. This matter is regulated at the entity level and at the level of Brčko District. Although the relevant legislation in the Republic of Srpska guarantees many rights to civilian victims of war, the biggest problem is the existence of the legal deadline for submission of applications and the deadline expired back in December 31, 2007. However, even today there are a large number of persons who were not familiar with the deadline for submission of applications, either because they were in exile or displaced in time or they were afraid to admit that they experienced a certain psychological and physical abuse during the war, and so on. It should be noted that the exhumation of the remains of civilian casualties during the war was carried out in 2013 and 2014. In this case, obviously there is no fair relation between public interest and the interests of the individual, because every citizen in RS, if the request for recognition of the rights under this law has not been submitted "within the deadline" must bear "an individual and excessive burden". In FBiH was not set the time limit for recognition of civilian war victim status. Due to the differences of entity regulations a number of persons are still unable to exercise their right to civil / family disability allowance and they are placed in a disadvantageous position compared to other civilian victims of war who were not changing their place of residence in the territory of BiH for a certain period of time. While in the FBiH right to apply for recognition of the right to civil disability allowance is not time-limited, the

applicant must have a registered place of residence in the Federation. It should be noted that in both entities these allowances the military victims of war receive far exceed those of civilian victims of war, and that the amount of the civil disability allowance differs in the Republic of Srpska and the Federation of BiH, as well as in the cantons. Also, women victims of war point to the problem of finding evidences to support their case in recognition of certain rights. After more than 20 years after the war, most of them had not been able to keep the records from the doctor from two decades ago. Furthermore, it is noticeable that most of them relive the trauma during the proceedings while supporting their case with evidence, and especially after the revision of decisions when, for example, in the repeated procedure should be established whether a killed family member was a civilian or a member of enemy formations, etc.

In Bosnia and Herzegovina, at the level of the entities were adopted laws that regulate the social problem of domestic violence. Laws have been passed in order to provide more efficient, faster and more complete protection of victims of domestic violence. A very important fact, which is established by law, and which is not regularly used in practice, is obligation of the subject of protection to act in accordance with the provisions of this law, to provide protection, support and assistance to victims of domestic violence regardless of whether there are criminal or misdemeanor proceedings instituted against the offender. It is notable that this provision was not applied by the social welfare authorities in their regular work, who even engage in assessing the merits of the motion regarding domestic violence, submitted by potential victims of violence. Having in mind the mere nature of the problem, it is incomprehensible to find existence of a large disparity between the number of reported cases of domestic violence and those who were presented before the court. One of the reasons for this situation is tradition, but the second reason is even more difficult and it lies with the inadequate response of the police or other government officials, even when the lives of the victims of violence are in danger. In dealing with beneficiaries it is noticeable that the police in many cases only warns violators, and are more

likely to decide to file misdemeanor charges, so the perpetrator of violence would only be fined. A very small number of criminal charges is filed, ex officio, as well as by the victims themselves. State and its entities, although they passed laws, did not create a system that would provide support to the victims and facilitate requesting and reception of adequate assistance. Women victims of violence have little hope of surviving outside of violent family, they feel helpless because they were blackmailed by the partners, the environment and society. Non-governmental organizations dealing with the protection of women victims of violence often point to the problem of underdevelopment of awareness of the obligation to report violence, which results in application being filed only when there are severe forms of violence that already have elements of the criminal act. Legal assistance to the victims of violence in BiH is still, in most cases, provided by a non-governmental organizations in accordance with the capacities they poses, unstable funding sources, mostly given by foreign donors and without support from the entity or cantonal budgets.

Human trafficking, besides being a global problem faced by countries in transition as well as in economically developed country, is one of the forms of organized crime and illegal migration, and is also the serious violation of human rights guaranteed by international instruments and the Constitution of BiH and Entity Constitutions and statute of Brcko District of BiH. Human trafficking is most often done in form of forced prostitution, pornography, slave labor, begging, false adoption, false and forced marriage, and the growing trade in human organs. BiH has established a solid legal framework for compensation to victims of human trafficking, so that already in the criminal procedure, a victim can, until the completion of trial, request pecuniary and non-pecuniary damage claim. The prosecutor is obliged to collect all the evidence in behalf of the victim needed for decision-making of the request. The court is obliged to decide upon request of the victim if data and evidence from the criminal proceedings do provide sufficient grounds. If that is not the case, the Court refers victim to initialize civil proceedings.

There were no positive examples of courts in criminal proceedings deciding on the claim for damages. That basically means that referral to enforce their rights in civil proceedings represents a further secondary victimization of victims of trafficking. Therefore, the changes to the legislation should allow victims of trafficking to

remain in BiH until the claimed damages are paid. Also, there should be national mechanism established in form of a compensation fund, where would confiscated or seized property of traffickers be used to compensate the victims of human trafficking.

1. Law on Gender Equality – in practice

The Law on Gender Equality of BiH¹ was adopted back in 2003 reflecting the fact that the society recognised the need to provide legal framework for gender equality and to guarantee equal opportunities for its citizens in both public and private spheres of life. Therefore, the Law stipulates that discrimination based on gender or sexual orientation is forbidden, and that gender discrimination means any situation where a person or a group of persons are put in disadvantage because of their gender, and challenged or prevented from being able to have, enjoy or exercise human rights and freedoms.

Therefore, it is evident that the Law on Gender Equality to a large extent refers to provisions of the Law on Prohibition of Discrimination of BiH. As in case of the Law on Prohibition of Discrimination, judicial protection from gender discrimination allows anyone who find themselves victim of discrimination or believe their rights were jeopardised by discrimination to seek protection of their rights in a procedure dedicated to the right in question as the primary issue. In addition, it is stipulated that a victim of discrimination can seek protection in a special procedure for protection from discrimination in line with the Law on Prohibition of Discrimination of BiH, and there are also defined areas in which BiH citizens are guaranteed protection from gender discrimination with includes: education, employment, work and access to all types of resources, social protection, sports and culture, public life, and the media.

If we take into consideration areas in which the Law on Gender Equality guarantees the right to non-discrimination, practice at the Association "Vaša prava BiH" clearly shows that majority of requests were related to discrimination in procedures concerning exercising rights in domains of employment, social welfare, and family law, and violence over women. In

addition, it is evident that in majority of cases gender discrimination affects women.

There is a serious problem of gender inequality and discrimination of women in their access to labour market. Current employment strategies do not seem to deal with the issue of inclusion of women in the labour market, and therefore fail to support efforts aimed at reduction of poverty. BiH still ranks the lowest when it comes to share of women in working force in the Southeast Europe. According to the Labour Force Survey from 2013, women account for 51.2% (1,330,432) of active fork force in BiH, however, only 37.3% of the employed are women.²

Relevant practice in Association "Vaša prava BiH" records many of female beneficiaries of free legal aid complaining about gender discrimination when seeking employment. Many of them reported that at job interviews they were asked to guarantee that they will not marry or start planning a family so employers would not be burdened by the obligation to support them during maternity leaves. In addition, they claim that employers sometimes avoid indefinite employment arrangements; instead, they tend to keep them under fixed-term employment contracts for years. In case of pregnancy, employers simply decide not to renew the employment contract. It should be noted that such practice of employers is not only in breach of the Law on Gender Equality of BiH, but also entity labour laws prescribing that persons seeking employment and persons employed cannot be put in disadvantage based on their sex. It should also be noted that maternity benefits are subject to different regulations depending on the administrative part of BiH, and in some parts of the country, women have no access to maternity benefits, or they simply lose their job once they get pregnant. In addition, when it comes to the issue of the right to maternity benefits, there is a difference in how different cantons regulated the issue and how working mothers are treated compared to the unemployed ones.

² Agency for Statistics of BiH. 2013 Labour Force Survey (http://www.bhas.ba/tematskibilteni/BHAS_Ars_BH_press.pdf)

¹ Official Gazette of BiH, issue no. 32/10.

In practice, not much can be done to help victims of gender discrimination in such cases, primarily due to the nature of available legal solutions. More specifically, laws provide grounds for filing of complaint against discrimination at employment or during the employment. However, female victims of discrimination rarely decide to initiate such procedures partly due to the lack of evidence to support their claims, and partly due to the time such procedures tend to consume. Beside the option to initiate a procedure by filing a complaint, discrimination victims are left with a possibility to inform cantonal labour inspectors based on the breach of the aforementioned provisions of the Labour Law concerning discrimination at or during employment. In such cases, labour inspection can react by sentencing measures to the employer aimed at elimination of the breach, as well as charging the employer with a misdemeanour and/or penalty.

Due to complex social and economic situation on the territory of BiH, there is an evident increase in the number of beneficiaries exercising their rights provided by the social welfare law such as the right to permanent financial assistance, child support, one-time financial assistance, disability support, and custodial care and assistance support. Since social welfare rights are exercised under regulations of the beneficiary's canton of residence, there are significant differences and lack of uniformity in how these rights are exercised in certain cantons, especially regarding the amount of the support provided for certain types of needs. Additionally, it should be noted that female beneficiaries (displaced persons) residing in Sarajevo Canton have, according to the Canton's welfare regulations, the right to permanent financial support only, while other rights concerning social welfare can be exercised exclusively under federal regulations.

However, not only women with BiH citizenship are discriminated in their attempt to exercise their social welfare rights, the same applies to foreign women residing in BiH, since positive legislation does not recognise the right of foreign, employed, women-mothers, working in national companies,

to compensation during their absence from work due to pregnancy, childbirth, and child care.

In 2013, a gender quota of 40% was introduced into the Election Law of BiH, to increase inclusion of the sex less present in governing structures, which is an increase compared to previous 33% of women in political structures of the BiH society. Having in mind that women are currently insufficiently involved in all levels of political structure, a true step forward will only be evident once political leadership is fully formed after 2014 elections. In 2013, the Club of Women Parliamentary Representatives of the House of Representatives of the Federation of BiH was established (March 2013), several NGOs created the Women's Platform for Constitutional Reform from a Gender Perspective and the First Memorandum of Understanding to monitor the implementation of Action Plan of the UNSCR 1325 was signed (October 2013). Results of these initiatives will be observed over the next few years.

Violence against women and girls continues to be a serious issue in BiH. Findings indicate that almost half of the women in BiH older than 15 have been subjected at least once in their lifetime to some kind of violence and that women are exposed to a high risk of violence, first in their immediate, intimate environment of relationship with their partner and family, and then in the broader community. Another long-lasting and serious issue for BiH is the wartime sexual violence suffered by tens of thousands of women twenty years ago. These women are still in need and seek justice and reparation. Victims are not treated equally in the two entities, and therefore uniformity of treatment of victims in deferent jurisdictions of the country is also needed. In Republika Srpska, victims of rape are not recognized as a special category of civilian victims of war, while in the Federation of BiH they are considered a special category of victims.

Roma women, lesbian, bisexual and transgender (LGBT) women, drug users and sex workers are some of the groups that also face high levels of discrimination. The general low educational level amongst Roma women, their unemployment rate

and the patriarchal attitude that prevails in Roma communities contributes to their difficult situation. About 90% of Roma women have no access to healthcare, social protection, or employment. Roma women are less educated and employed than other women in our country, mostly because they grow up in traditional Roma communities where women are not empowered, but also due to the strong discrimination they face from the rest of society. Due to their traditional practices and lack of de facto protection by the state, Roma women are often subjected to early and paid marriage.

Women with disabilities face daily discrimination, both as women and as persons with disabilities. They often lack adequate health care and access to services and are often socially isolated. As the Gender Equality Agency recognizes, women with disabilities are especially vulnerable to being victims of multiple discrimination in BiH society, particularly in the areas of labour and employment, although BiH adopted the Convention on the Rights of Persons with Disabilities. The most common form of discrimination against LGBT persons takes place at the institutional level because the laws of BiH prevent LGBT persons from getting married or registering a community, adopting children, accessing the social and health insurance of the partner, inheriting property and exercising all the rights that, based on the recognition of life community (marital or extra-marital), belong to heterosexual couples.

Recommendations

- Establishing of special programmes for employment, retraining or rehabilitation of women with disabilities, and special measures for protection of women with disabilities in the area of labour and employment;
- Developing of a state level comprehensive approach to improve the status and position of all female victims of war, including fight against the stigmatisation of victims of sexual violence, and expansion of provisions of compensation, support and rehabilitation measures, benefits, as well as

ensuring equal access to such services for all female victims irrespective of their place of residence;

- Intensifying informing of women on the possibilities to exercise rights provided by positive regulations;
- Promotion of female entrepreneurship, and forming of special education programmes for unemployed women;
- Harmonisation of regulations and practices concerning support to mothers of newborns;
- Harmonisation of legislation and practices concerning rights of LGBT population with Acquis Communautaire, that is, practice of the European Court of Human Rights.

2. Access to Legal Aid for Vulnerable Categories of Women

After the initial failure in enacting the law on free legal aid on the level of BiH, individual enactments of such laws on other levels of government have intensified, with exception of some parts of the country; in fact, such laws have so far been enacted in: the Brčko District of BiH, Republika Srpska, and Sarajevo Canton, Tuzla Canton, Zenica-Doboj Canton, West Herzegovina Canton, Una-Sana Canton, and Bosnian-Podrinje Canton.³ The legislation is significantly unharmonized, which inevitably leads to unequal treatment of vulnerable categories, especially women, in different parts of the country, to preventing of efficient access to justice, and finally, to breaching of the rule of law principle. Although some municipalities in BiH have locally regulated provision of free legal aid, the practice is inconsistent, selective and in some cases even discriminatory. This is particularly prominent if we have in mind that court

³ See: Law on Free Legal Aid (Official Gazette of RS, issue no. 120/08); Law on the Legal Aid Office of the Brčko District of BiH (Official Gazette of BD BiH issue no. 19/07); Law on Legal Aid (Official Gazette of the TC issue no. 10/08); Law on Legal Aid (Official Gazette of the PC, issue no. 3/10); Law on Cantonal Institute for Legal Aid (Official Gazette of the WHC issue no. 5/08); Law on Free Legal Aid (Official Gazette of the USC, issue no. 22/12); Law on Free Legal Aid (Official Gazette of the SC, issue no. 1/12); Law on Cantonal Institute for Legal Aid (Official Gazette of the ZDC, issue no. 5/05).

procedures are strictly formal, with involved parties bearing the burden of proof, and the presumption that lack of knowledge of rights is harmful, and the fact that courts are not required (or authorised) to assist the uneducated party. At the moment, citizens residing on the territory of the FBiH, i.e. cantons that have not established free legal aid mechanisms (Travnik, Mostar, Livno), as well as citizens in need of legal aid in legal and administrative procedures outside their place of residence (refugees and displaced persons) have poor access to justice and are fully dependant on the help from civil society organisations when it comes to exercising their rights.

In the context of access to rights for vulnerable categories of women in BiH, the future holds a huge challenge in form of difficulties that await creation of a comprehensive system that would ensure at least basic equality before the law for all citizens of BiH. Vulnerable categories, and particularly women, are subject to numerous limitations that often take form of discrimination, particularly in relation to their place of residence. It appears that depending on that circumstance, they may be left without access to free legal aid since relevant legislation is missing, so are relevant institutions that could provide free legal aid. Under such circumstances, assistance can only be provided by nongovernmental organisations that lack any institutional support from the government. There is an important issue of inability to receive free legal assistance in administrative procedures in Republika Srpska. Cummulation of status and assets criteria in some parts of BiH stands as an important issue, as well as the fact that some laws do not foresee providing of legal aid – bases on the status – to victims of human trafficking and family violence who are predominantly women. Due to the aforementioned reasons, the assets criteria are also regulated in a way that prevents efficient exercising of rights to legal aid.

Forms of Exercising Free Legal Aid

Aforementioned laws on free legal aid have different definitions of the scope of legal matter and procedures covered by free legal aid. Certain

laws list such areas, but such laws are also unharmonized since some of them have exceptions “under certain circumstances, in the interest of fairness” – while others contain general provisions on taking of “other actions” in order to protect rights and legal interests of legal protection beneficiaries. Only two laws stipulate that free legal aid includes preparation of applications to international bodies for protection of human rights. There is an issue with ban on free legal aid in specific areas, namely administrative procedures (Republika Srpska), but also procedures concerning taxes, which is a problem according to international standards.

Beneficiaries of Free Legal Aid

In general, beneficiaries of free legal aid are defined in different laws based on their place of residence, special status, assets, provided that legal aid is not withheld due to reasons defined by the law. The last two criteria - status and assets – are generally not cumulative, except in the Tuzla Canton, the Posavina Canton and the Zenica-Doboj Canton, where persons who exercise their right based on their status have to provide evidence of their material hardship, which appears to be particularly difficult.

All of the aforementioned laws, except those of the Una-Sana Canton, the Zenica-Doboj Canton and the Sarajevo Canton, limit the right depending on whether the beneficiary resides in the canton. This stands as an important issue in terms of protection of human rights and freedoms since other citizens of BiH who have legal interests on the territory of these cantons, and meet other requirements of the law, cannot receive free legal aid. Some of these laws do not foresee providing of assistance to foreigners, asylum seekers, refugees, persons under subsidiary or temporary protection, stateless persons (apatrids), and, what is also important in this context, victims of human trafficking, which is not only contrary to assumed international obligations, but can also cause withholding of legal aid to BiH citizens abroad in cases where reciprocity applies.

When it comes to the status criteria, the law of the Brčko District of BiH is the only one that does not include pensioners with minimum pensions in the category of those who have this right based on the material status, while the law of the Sarajevo Canton contains an additional requirement that pensioner cannot have other family household members.⁴ Laws of the Una-Sana Canton and the Sarajevo Canton do not include unemployed persons in the special status category, while laws of Republika Srpska and the Brčko District of BiH feature additional requirement according to which potential beneficiaries must be “without any regular income or revenues”.⁵ Laws of the Una-Sana Canton, Sarajevo Canton and Republika Srpska also include persons unable to work, and mentally ill persons, with additional requirement in the Una-Sana Canton and Republika Srpska according to which these persons need to be placed in healthcare institutions.⁶ At the same time, the law of Brčko District of BiH also includes persons of poor health who do not receive any income.⁷ It is particularly important to note that only laws of Una-Sana Canton and Sarajevo Canton have a special status category for victims of domestic violence and gender-related violence.⁸

There are discrepancies between the laws when it comes to defining who is considered poor. Laws of the Tuzla Canton, the Una-Sana Canton and the Posavina Canton define as poor those “whose total regular income and household revenues do not exceed 25% of the average net salary of the employed in the FBiH according to the most recent published data from the Federal Institute for Statistics, and who do not have property that can be subject to foreclosure”.⁹ On the other hand, the law of the Sarajevo Canton defines as poor those whose monthly income per household member do not exceed 40% of the average net salary the employed in the FBiH, and who also do not own any estate or other property that can be

used to cover the costs of the procedure.¹⁰ Unlike those, laws of Republika Srpska and the Brčko District of BiH feature general provision according to which grounds for legal aid for the poor include income and revenues (property) that are not considered income, as well as revenues for which the applicant and their family household members do not pay taxes.¹¹ Laws of the Tuzla Canton, Una-Sana Canton, and Posavina Canton and Brčko District of BiH explicitly stipulate that persons who share a household with an adult family member capable of bearing the attorney costs cannot be considered poor.¹²

There is also a lack of harmonisation between the laws in terms of relief from paying court fees and administrative taxes. Laws of Republika Srpska, Sarajevo Canton and Una-Sana Canton explicitly stipulate relief from such payments, while other laws explicitly stipulate to the contrary.¹³ Such limitations can prevent the poor from going through court procedures and other procedures. Although there are laws that foresee special conditions under which it is possible to be exempt from paying court fees and administrative taxes, they directly apply to beneficiaries of free legal aid, therefore, positive social effects of free legal aid programme is limited. Here it should be noted that the Constitutional Court of BiH recognised some provisions of laws on court fees as unconstitutional since they prevent undertaking of procedures if the application, including the complaint, if the court fee is not paid in advance, since it completely limits the right to access the court, that is, the possibility to take part in court procedure, which can cause irreparable damage, and is contrary to the very essence of the right to fair trial referred to in Article 6 Paragraph 1 of

⁴ Art. 11(1)e) SC.

⁵ Art. 17(1)b) RS; Art. 14 BD.

⁶ Art. 11(1)b) SC; Art. 13(1)c) USC; Art. 17(1)d) RS.

⁷ Art. 14. BD.

⁸ Art. 11(1)c) SC; Art. 13(1)e) USC.

⁹ Art. 15(1) TC; Art. 14(2) USC; Art. 15(1) PC.

¹⁰ Art. 13(1) SC.

¹¹ Art. 18. RS; Art. 15(1) BD.

¹² Art. 15(2) TC; 14(3) USC; Art. 15(2) PC; Art. 15(3) BD.

¹³ Art. 3(3) RS; Art. 2(3) SC; Art. 3(3) USC. While the relevant provision of the Law in the Brčko District of BiH (Art. 20, Paragraph 1.), could be extensively interpreted as including these costs as well, that is not the case with other similar provisions in Tuzla and Posavina Canton, due to provisions that explicitly deny such right – see: Art. 9(3) TC; Art. 9(3) PC.

the European Convention on Human Rights.¹⁴ However, not all laws on taxes are in line with such opinion of the Constitutional Court of BiH.

Recommendations

- Enacting of a state (framework) legislation on free legal aid that will harmonise criteria for exercising the right to legal aid and access to rights, and only in case it is impossible to enact a relevant law on the level of BiH, it needs to be done at least on the level of the FBiH;
- To the extent that maintains special status criteria for determining the user of free legal aid, all laws need to provide for inclusion of victims of human trafficking and domestic violence in those categories;
- The criteria concerning assets/property need to be harmonised in all laws in order to adapt it to difficult social situation in which the vulnerable citizens of BiH currently are;
- Laws on court fees on all levels of government need to be harmonised with the relevant practice of the Constitutional Court of BiH, so they would not limit the right to access court.

3. Discrimination of Women in Accessing Their Rights - Mobbing

Prohibition of discrimination is an integral part of international conventions directly applied in our national legal system,¹⁵ but also of the

¹⁴ See: Decision on Admissibility and Merits, no. U-8/12, dated 23.11.2012 (SC); Decision on Admissibility and Merits, no. U-16/14, dated 24.09.2014 (HNC).

¹⁵The Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; The Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention Concerning Discrimination in Respect of Employment and Occupation; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; The Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities and the UNESCO Convention against Discrimination in Education.

Constitution of BiH, the Law on Prohibition of Discrimination, and the Law on Gender Equality.

When we talk about discrimination of women, we cannot ignore the situation that often leads to leaving job, poor work efficiency, and looking for another job, situation known as mobbing. Mobbing means harassment at the workplace. It is a specific form of behaviour at the workplace with which a person or a group systematically performs psychological abuse and humiliates a person in order to diminish their reputation, honour, human dignity and integrity, and finally, to eliminate them from their job. Pursuant to provisions of Articles 4 and 18 of the Law on Prohibition of Discrimination in BiH, mobbing is a form of non-physical harassment at the workplace which includes repeated actions causing humiliation of the victim aimed at or resulting in degrading of working conditions or professional status of that person, and any person who has reported discrimination or took part in legal procedure in order to seek protection from discrimination shall not bear any consequences for doing so.

Discrimination concerning physical and psychological health is a special form of discrimination which necessarily encompasses: motherhood-related discrimination, discrimination of women with health conditions or disabled women, and discrimination at the workplace leading to psychological derangements or nervous breakdown.

Psychological abuse has five main stages of development. In the first stage, the stage of mobbing, there is an unresolved conflict which can also be the underlying cause, and the result is *impaired interpersonal relationships*. In the second stage, suppressed aggression escalates into psychological terror. In the third phase, the targeted person is already established as a victim and suffers repeated attacks and has become a doormat and a scapegoat in the collective. The

fourth stage is characterised by the victim's desperate "fight for survival" which manifests in form of the "burnout syndrome", that is, chronic weariness, psychosomatic or depressive condition. In the fifth stage, the victim suffers from chronic conditions and derangements, takes a sick leave or leaves the job/looks for another job. Finally, when helpless, employees usually find a way out by calling in sick. Behavioural patterns usually repeat themselves in regular intervals and over a long period of time.¹⁶

BiH records increased number of reported cases of mobbing. However, the fact is that the number of mobbing victims is much higher, but unregistered since victims avoid seeking judicial protection because of the fear it could cost them their job. It is clear that mobbing is in increase in BiH, which is clearly caused by poor economy, high unemployment rate, and inadequate organisation of the labour market. Female victims of mobbing are exposed to stress since mobbing leaves a trace on their health. One thing goes for all victims of mobbing – consequences are multiple. Problems and unhealthy atmosphere at work result in so many sick leaves. Once the job is lost, there is a problem of finding the new job, since mobbing causes loss of self-respect, and therefore adversely affects professional and private life of the victim.

In majority of cases, when it comes to discrimination (mobbing) of women, behaviours typical of mobbing were reported, namely: belittlement, discrimination and attacks against professional status; attacks on private life; isolation and ignoring; repeated assignments of tasks that cannot realistically be performed; work requirements exceeding persons abilities; constant criticism; work criticised by colleagues and clients; ridiculing, humiliation and assaults;

¹⁶See: Alma Vranjić i Vanja Kenjić, *Mobbing*, Sarajevo, September 2013, available at: <http://www.zjzfbih.ba/wp-content/uploads/2013/09/Mobbing.pdf> (last accessed: 10.01.2015).

threats; intimidation and disciplining; withholding of professional education; hiding of information of key importance for the job; assigning of new responsibilities without prior consulting; unjust and inappropriate pressure while performing duties.¹⁷

Only a small percentage of mobbing victims decide to initiate court procedures against their abusers, partly due to fearing it would cost them their job, partly because of insufficient household budget and court costs. In one of the recommendations of the Human Rights Ombudsman in BiH in case of mobbing, it was confirmed that according to provisions of the Law on Prohibition of Discrimination in BiH the burden of proof is on the other side, that the conclusion was confirmed by the practice of the European Court of Human Rights in Strasbourg concerning proving of equal treatment, and that reasons for such approach can be found in the very essence of the concept of victim with regards to the protected right, that is, forbidden behaviour, which is often difficult for the victim to prove due to unavailability of proof.¹⁸

However, these legal standards are often missing in practice, thus leaving mobbing victims in even worse position, especially if we have in mind insufficient sensibility of judges in discrimination – mobbing cases, which certainly can discourage those expected to believe in effectiveness of legal remedies available to victims. This standing is supported by reports from the Institution of Ombudsman for Human Rights in BiH according to which the number of mobbing-related complaints is decreasing, that is, the number of

¹⁷In general: Ljiljana Dabrosavljević-Gruić, „Diskriminacija žena na radnom mestu – povezanost sa materinstvom, invaliditetom i ženskim zdravljem“, *Viktimizacija na radnom mjestu*, December 2006, p. 27-34.

¹⁸See, for example: Preporuka Ombudsmana za ljudska prava BiH, number Ž-SA-06-895/12 - mobbing radnika JU "Centar za sport i rekreaciju" Sarajevo; Preporuka Ombudsmani za ljudska prava BiH, number Ž-SA-05-1108/10 – mobbing.

mobbing cases that could eventually be resolved at court is in decline.

Recommendations

- Establishing of mechanisms for mobbing prevention, and of mechanisms for detection and elimination of mobbing while ensuring that parties in legal and employment relationships act in line with provisions of the Law on Prohibition of Discrimination in BiH,
- Work on improving legal solutions, procedures, and actions of relevant institutions in cases of mobbing,
- Rising awareness of women on discrimination – mobbing and other forms of violation of rights in the field of work and employment,
- Informing of women on types of help,
- Developing of a free legal aid system for women exposed to mobbing and active preventive activities (public awareness campaigns, rising awareness and capacities of employers to recognise discrimination).

4. Maternity Pay and Rights of Employed Expectant Women

The issue of legal position of women in the labour market and exercising the rights of the employed with regards to reproductive role requires the need for special protection and special attention on behalf of the state. It should be a priority for the state to ensure special rights to women during their pregnancy, and later on, when they need to take care of their child, while employed or unemployed, as well as to ensure equal conditions for work, progress and maintaining of the existing rights during this particularly sensitive period in life of a mother.

The right to maternity pay is one of fundamental rights of women, whether they are employed or not, and the duty to ensure realisation of that right is on the state which needs to ensure efficient mechanisms for disbursement of this type of financial support, in line with international and national standards. Although this right is recognised by many international legal instruments signed by BiH as well as by national legislation, the question of to what extent BiH recognises this right of its female citizens remains open. In fact, maternity pay is treated differently in different parts of BiH, and in some of them, it is completely ignored which leads to a reasonable conclusion that women who are becoming mothers are discriminated, primarily because of territorial circumstances. This problem is particularly evident on the territory of the FBiH, that is, in some of its cantons where this right is subject to different cantonal regulations dealing with this particular area. The differences are present in the amount of the maternity pay, newborn support, while some cantons do not even provide for these types of support. Since social welfare and protection of families with children is responsibility of entities, there is no regulation that would provide for uniform treatment of rights of mothers, namely, the amount of maternity pay.

Unemployed new mothers can exercise their social welfare rights stipulated by law only to a limited extent, depending on the economic power of their canton or municipality of residence; however, if they receive some kind of financial aid, it is usually non-recurring and quite modest.

When it comes to the rights of new mothers resulting from their employment, we can say there are certain rights that are guaranteed, primarily by international documents, the Labour Law of FBiH and the Labour Law of RS, as well as other acts. Governments of both FBiH and RS are instances in charge of setting up legislative framework, while it is on federal cantons and the Public Fund for Child Protection of RS to implement it. However, the financial factor, financial (in)ability and how is budget allocated decide on the destiny of new mothers' rights.

Rights to Payment during Maternity Leave

Problems in the area of rights of new mothers are particularly evident in the FBiH, more specifically, in some of its cantons, since amounts of the payment vary, and in some cases, the budget for such purposes does not even exist. In the Herzegovina-Neretva Canton (HNC), new mothers cannot realise their right to payment instead of their salary while on maternity leave because of the passive attitude of the HNK Government which does not plan the means for such purposes when planning the canton budget, nor does it enact implementing regulations on the payment amount and methods for those new mothers who have the right to receive this kind of support.¹⁹ Such actions cannot be reasonably justified, since actions of those who are responsible, despite the laws that oblige them to respect human rights of (new) mothers, fail to enact implementing regulations or to respect deadlines for their enactment, so they in fact exclude and disable mothers to exercise their rights, which is not the case when we look at other categories in the FBiH and the HNC which are included in their respective budgets. Therefore, we can only identify a clear case of discrimination.

Although what we have here represents a severe breach of the obligation defined in the Constitution according to which cantons have to harmonise their legislation with that of the entity, the Law on Social Protection of the FBiH does not foresee any instruments that would protect beneficiaries from cantonal regulations in case their rights recognised in entity law are ignored. There are no penalty clauses in the Entity Law on Social Protection in case the canton fails to harmonise its legislation with the Law, and Federal Ministry has no defined measures to use on cantons that have failed to enact any of the appropriate regulations. Therefore, the last resort can be found in court proceedings, as a way to draw attention to this issue in our society, and advocate for rulings that could eventually result in making the relevant authorities act in line with court decisions by force, if not willingly.

¹⁹ This type of compensation is not paid or foreseen in the budget of the Posavina Canton as well.

In 2012, as a response to these issues, the Association “Vaša prava BiH” filed a lawsuit before the Municipal Court in Mostar for the purpose of determining discrimination of new mothers in the Herzegovina-Neretva Canton (HNC) by the FBiH as the first defendant, and the HNC as the second, asking the court to find that the first defendant is performing discrimination against new mothers on the territory of the FBiH by being passive and enabling inability of mothers on maternity leave to realise their right to maternity pay if they not meet the requirement which limits their rights depending on their place of residence, and in that way, take no action to put an end to discrimination of new mothers in that particular canton. It was required that the first defendant should be ordered to undertake necessary and legally defined steps in order to cease further violation of rights of new mothers who are employed compared to other categories, and to take legally defined steps to ensure rights to maternity pay for mothers in the HNC, within 30 days, under the threat of enforcement. It was also requested to find that the second defendant conducts discrimination against new mothers employed on the territory of the HNC, by being passive and failing to enact the Decision on Salary Compensation Based on Maternity Leave, which made working new mothers unable to exercise their right to support while on maternity leave. Similarly, it was requested that the second defendant should be ordered to undertake necessary and legally defined steps in order to cease further violation of rights of new mothers who are employed compared to other categories by enacting a decision on salary compensation based on maternity leave and ensure that working new mothers receive maternity pay, all within 30 days and under the threat of enforcement.

The Municipal Court in Mostar rejected the claim filed by the Association “Vaša prava BiH”. The Cantonal Court in Mostar, acting upon the appeal of the plaintiff, enacts a decision on 10.09.2014 by which the appeal is accepted, the contested ruling revokes, and the case returns to the first instance court for a repeated procedure and deciding, so it left for us to see what will be the

attitude of the court in the expected repeated procedure.

Right to Financial Support During Pregnancy and at Giving Birth for Unemployed Mothers

The right to financial support during pregnancy and at giving birth for unemployed mothers is quite differently regulated depending on the canton. Cantons struggle to ensure funds for such purposes, and therefore this type of support is not provided for in all cantons, or it is, but the amount varies, can be quite small, or non-recurring. Instead of setting necessary laws in place, some cantons enact only temporary decisions in order to avoid the obligation to ensure social protection. Such situation contributes to social insecurity and discrimination of beneficiaries depending on the place of residence.

By decision of the HNC Government, expectant and new mothers in the canton have the right to one-time financial support in amount of 400.00 BAM for the newborn, but in practice payments are often irregular and dependant on the budget situation in the canton. Payment is executed by the Social Welfare Centre of the City of Mostar with some delays. Since this issue is to be further regulated by the cantons, what we now have is different treatment in each of the ten cantons of the FBiH, which is unacceptable.

Exercising Other Rights

Other rights of expectant and new mothers resulting from their employment are primarily regulated on the entity level (right to take nursing breaks during working hours, right to part-time working regimen, etc.). Therefore, health insurance of employed women, although regulated on the entity level, is harmonised between the cantons, do expectant and new mothers (regardless of their employment status) have the right to free healthcare services, in line with entity decisions on participation in relevant secondary legislation. Similarly, method, procedure, bodies and financing of social protection of families with children is more closely regulated by cantonal regulations,

whereby cantons can define other rights of such families as well.

The Association “Vaša prava BiH” recorded a certain number of female beneficiaries concerning exercising their right as employed expectant mothers, and based on our experience, we can draw a conclusion that women working in public sector (public authorities and institutions), usually use their maternity leave to the full extent provided by the Labour Law which is – one calendar year. Women working in this sector choose this option since they believe their job and legal status is safe, as well as their right to compensation during maternity leave, depending, of course, on the canton they live in. However, women employed in private sector use shorter maternity leaves, so some return to work immediately after mandatory maternity leave of 42 days, or after two or three months, due to uncertainty of their employment and legal status. In addition, they find the amount of financial support unsatisfactory – the amount depends on the canton, and in some it is not even planned in the budget. Beneficiaries also face problems in exercising their right to payment of earned wages, problems in form of irregular wages, failure of employers to pay workers’ contributions, vacation allowance, and other compensations. There is also a problem of inability of beneficiaries to realise their right to unemployment benefits if the previous employer had failed to pay mandatory contributions. Finally, there are beneficiaries working in public or private sector who experienced mobbing in form of non-physical harassment at the workplace, harassment, and sexual harassment.

Recommendations

- It is necessary to harmonise regulations concerning maternity pay since current situation is unacceptable and leads to evident “territorial” discrimination of new mothers. At the same time, harmonised legislation would support the citizens’ right to free movement within the common market of BiH;
- As a part of the European integration process, it is necessary to resort to all

measures necessary to harmonise regulations concerning the right to paid maternity leave with the existing minimum standards foreseen by the EU legislation, since the lack of appropriate legislation in certain parts of BiH is directly opposed to requirements imposed to member states and countries in the EU accession process;

- Expectant and new mothers should be treated same as other employees with similar abilities.

5. Family Law of the Federation of Bosnia and Herzegovina

The FBiH Family Law²⁰ regulates relations within the family resulting from relationships of married partners or partners living in common-law marriages, relationships between parents, children, and other biological or adopted relatives, custody and adoption relationships, as well as other special procedures for realisation and protection of rights resulting thereof. In that sense, family law is defined by the Family Law, and can be defined as a set of legal norms regulating relationships within a family and family as a whole.

When it comes to the relationship between parents and children, the image of parental right was significantly modified by the Convention on Rights of the Child and its basic rule that children should be treated in a way that protects their “best interest”. Treating a child as equal in relation to their parents implies a new approach to the existing family law institutes.

It should be noted that certain family relationships are protected and correlated to some areas of criminal law, labour law, social law, civil law, and other areas of law. When considered from the angle of social function of the family law, this functionality is not exhausted in protection of the family, instead, its goal is to create legal grounds for realisation of basic social values such as: upbringing of children,

responsibility for assumed family-legal responsibilities, solidarity between family members, equality between women and men, protection of individuals incapable of living independently and functioning normally.

Protection of family and children is one of the most important constitutional principles in family law. The task of the state is to set legal grounds for forming of healthy family and eliminate any obstacles on the path towards achievement of this goal. Often, authorities and expert services are engaged to serve this purpose. But there are limitations to what the state can do since interpersonal family relations need must be respected. If we look at the need to protect the child, it is not only a natural right but also responsibility of parents. State can intervene if interests of children are jeopardised.

The right and freedom to enter into marriage is guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as by the Universal Declaration of Human Rights. This right also includes the right to equal position of future spouses.

The family law is a basic source of rights in this field, while other sources that partially regulate/complement family relations include laws dealing with issues of status, laws on social policy and social protection, Law on Registers, Personal Name Act, Law on Citizenship, Law on Succession, etc.

Divorce, Entrusting and Supporting Children

When analysed from the aspect of legal science, practice of courts and other bodies involved in the issue of family law, majority of procedures regulated by the Family Law concerns divorce, entrusting and supporting underage children.

Despite the fact that provisions of the FBiH Family Law require *urgency* in procedures concerning determining of presence of marriage, marriage annulations or divorce, disputes in relationships between parents and children,

²⁰ Official Gazette of the FBiH, issues no. 35/05, 41/05 and 31/14.

disputes over determining/challenging paternity or maternity, disputes over with whom the child shall live, disputes over methods of maintaining personal and direct contact of a child with the other parent and on parental care, disputes over child support, etc., it is not often the case.

The Family Law stipulates that the main hearing must be held within 15 days of the receipt of the complaint or application by the court and that the first instance court shall render a judgment and make a copy of the judgment within 15 days of the conclusion of the hearing.²¹ However, the practice shows that courts do not act in accordance with the provisions of the Act and thus some procedures take up to year and a half or two years, although all the facts necessary for implementation and completion of the procedure are undisputed. The courts usually use backlog as an explanation. Such actions of courts and other authorities involved do not only affect parties to the disputes, but also their surroundings, and in majority of cases, they have emotional/psychological effect on people involved in the procedures, and quite often permanently affect the development of children.

Still, the practice also shows positive examples of courts on the territory of the Central Bosnia Canton where courts act urgently and finalise procedures in very short time, giving priority to disputes where rights of the child are under threat, showing particular sensibility towards the children involved.

Alimony

In proceedings where the judgments on divorce define contacting, seeing the parent with whom the child does not live, the amount of alimony, etc., often causes disputes over alimony, disagreement over exercising parental rights, guardianship, issuing passports for children, change of residence, sharing and disposal of assets, etc.

The most common problem is evasion of alimony which directly violates the rights of the child to a

proper standard of living, or when a parent avoiding their legal obligations affects or prevents exercise of other child's rights. The practice shows problems when persons who are obliged to provide alimony by final and enforceable judgments still refuse to do it. Even if such persons are employed and the court, acting in line with the Law on Enforcement Procedure, undertakes measures and activities to enforce the decision, it is often the case that the child fails to exercise their right to the full extent.

It should be noted that the Family Law provides that where the court finds that where parents and other persons who are required to provide child support are not able to support the child, they shall report it to the guardianship authority which shall provide funds for child support from the budget of the FBiH.²² This provision is rarely applied in practice, with rare cases of courts applying it, despite the fact that that have the opportunity to determine actual facts during the procedure. Consistent application of this provision by acting courts would significantly contribute to reduce of the number of time-consuming and burdensome procedures, and would fully embody the principle of acting “in the child’s best interest”.

The Criminal Code of the Federation of BiH regulates the criminal offence of alimony evasion.²³ In practice so far, even though the beneficiaries would exhaust all legally defined possibilities in the enforcement procedure and file a charge to the responsible prosecutor’s office, it is rarely the case that the prosecutor decides to bring the charges to the court. The reason is usually explained as the fact that the debtor is unemployed, or does not own any real estate, etc.

It is also necessary to point out different interpretations and opinions of courts concerning the criminal offence in question. Certain courts support the opinion that the criminal act is found in evasion of the obligation to support, not in the very act of refusing to pay the alimony determined by court. Therefore, a person avoiding to pay alimony shall committed a crime

²¹ Art. 273 of the Family Law of the FBiH.

²² Art. 237 of the Family Law of the FBiH.

²³ Article 223, Paragraph 1, FBiH Criminal Code.

only if they engage in activities to avoid their obligation to provide support (e.g. hiding their address, income, assets, etc.), and therefore, they express their intention as an important element of this felony. Such understanding of the situation means that the fact that someone is not paying alimony (amount determined by the court of law) is not sufficient to indicate the aforementioned criminal offence of alimony evasion. There is another opinion, which is more favourable for the beneficiary, and according to that approach, the intent is not to be included in legal description of the criminal offence, since it is the very fact that the offender avoids to provide support determined by a valid and final court decision is sufficient to constitute a criminal offence. The obligation cannot be avoided due to temporary unemployment or lack of personal property or regular income, for if the debtor is capable of working, regardless of their employment status, they are obliged to participate in supporting their underage children.

Another problem is situation in which the court finds the debtor guilty of evasion of alimony, but impose suspended sentence, so the debtor usually pays one or two alimonies and then again cease to fulfil their duty. So far, the courts have been avoiding acting in line with provisions of the Criminal Code and consider the possibility to revoke suspended sentence and impose imprisonment instead.

Another problem arises when persons expected to provide support (maintenance) are foreign citizens.

Although BiH signed the Convention on the Recovery Abroad of Maintenance from 1956, the problem is in duration of the procedure, and extensive documentation required, so due to inability to cover the costs of this option beneficiaries decide not to use it.

In addition, one of the problems seen in practice is statute of limitations for this particular field. Although the law stipulates that the statute of limitations does not apply to the right to maintenance, in practice, claimants and attorneys often feel somewhat confused. The Law of Contract and Torts defines that all claims defined

by final judgement or decision of a different authority, or settlement before the court or some other authority are subject to a 10-year statute of limitation, including those for which the law stipulates shorter statute of limitation. It is also stipulated that any claim that may arise from such decisions or settlements and become due in the future, are subject to the statute of limitation as defined for occasional claims. In addition, any claims for occasional payments that are due annually or in shorter periods (occasional claims) – which may include side claims, or such occasional claims that exhaust the very right – such as claims for maintenance, are subject to a statute of limitation of three years after maturity of each such payment.²⁴

The practice shows many examples of claimants and their legal representatives failing to exercise their rights due to lack of knowledge of the law, or inability to hire an expert, or failure to submit their motion for execution in a timely manner. In cases when they succeeded in submitting their motion, and the court allowed the execution, if the party obliged to provide maintenance objects referring to statute of limitations, the court tends to accept their argument. In line with the aforementioned, we believe that solution for this significant problem would be to found so-called Alimony Fund on the level of BiH so the funds for alimony/maintenance would be provided by the state, and refunded through claims from the persons obliged to pay alimony. Such solution would protect the beneficiaries and avoid time-consuming enforcement procedures and quite present cases of evasion of maintenance duty determined by the law.

Common Law (Informal) Marriage

Family Law of the Federation of BiH defines informal marriage as a union of man and woman who are not legally married or in informal marriage with someone else, whereas their union lasts for at least three years or less if they have a child together. In addition, the law treats this type of marriage in level with traditional marriage with regards to mutual maintenance and other property

²⁴ Article 372, Paragraph 1 and 2 of the Law on Contract and Torts.

rights. However, in practice the situation with formal and informal marriage is completely different.

Determining and Dividing Acquest in Informal Marriage

In case that partners in informal marriage separate and one of them intends to initiate a procedure to determine and divide their joint acquest/property, if the partner holding the title does not want to allow registration or in some other way put the property at disposal of the other partner, determining of joint property may become difficult. In fact, to separate court proceedings need to be undertaken, the first to prove that the informal marriage actually existed, and the other to determine and divide the acquest.

The practice shows that such proceedings usually take a lot of time, especially if the partners do not have children. Although the new Federal Law on Succession²⁵ showed real progress concerning levelling of informal and formal marital unions, the practice shows certain weaknesses. In cases where legal heirs exist, they need to give their consent to give their informal spouses the right to inherit their property.

When it comes to retirement and disability insurance rights, difficulties arise when partners attempt to exercise their right to the deceased spouse's pension, primarily due to the fact that laws regulating this field do not recognise informal marriage and therefore do not provide for partners in such unions to exercise same rights as married couples, primarily, the right to family pension.

Changing Residence of the Child

Female beneficiaries also face problems when they need to obtain a passport for their minor child, or change child's place of residence. The law stipulates that the parent with whom the child lives must inform the other parent, beforehand and in a timely manner, on the change of the

place of residence that affect performing of duties of the other parent.²⁶

When preparing lawsuits for divorce and entrusting children for our clients, the court is requested to enable the parent entrusted with the child to change residence or obtain travel documentation without the consent of the other parent, but with prior informing of them. In practice, police authorities responsible for issuing of travel documents also require consent from the father, although the final court decision on divorce does not stipulate obligation to obtain approval from the other parent for obtaining of travel documents or crossing the state border. In that particular case, the father does not give consent at the relevant authorities for procedures concerning issuing of travel documents. Therefore, in line with the Instruction on how to determine if the conditions for issuing of travel document set forth in Article 18, Paragraph 3 of the Law on Travel Documents of BiH, responsible authorities ask the relevant social welfare centre for opinion. This Instruction only creates additional burden for parents of minor children, children, and public guardians.

Provision of Article 18 of the Law on Travel Documents of BiH stipulates that application for travel documents for minors or persons incapable of work is filed by one parent with the consent from the other, while Article 8 of the Law on Amendments of the Law on Travel Documents of BiH (Official Gazette of BiH, issue no. 47/04) stipulates that, as an exception to these provisions, travel documents may be issued if the parent filing the application was given custody over the child by a court decision, unless the same court decision stipulates that travel documents for the child should only be issued under consent of the other parent.²⁷

It is evident that issuing of travel documents for a child or child crossing the state border do not require consent of the parent with whom the child does not live and who is not entrusted with custody over the child, except if such approval is conditioned by a court decision. However,

²⁵ Official Gazette of the FBiH, issue no. 80/14.

²⁶ Art. 142, Para. 8 of the Family Law of the FBiH.

²⁷ Official Gazette of BiH, issue no. 47/04.

Instruction of the Ministry of Civil Affairs on how to determine conditions for issuing of travel documents stipulates that if the court decision on awarding the custody over minor sets a condition that travel documents may only be issued under consent of both parents, the responsible authority will seek approval from the other parent, who is not the child's custodian, by asking for written consent that travel document can be issued. If the court decision does not set forth that consent from both parents is needed, the issuing authority will ask responsible social services to render an opinion on whether it is justified to issue travel documents to the child in question.²⁸ In this case, there is a legal issue does the Instruction, as a bylaw, derogate legal provisions of the Law on Travel Documents, and does it impose additional burden on parents and responsible public custodian.

Recommendations

- Setting of legal grounds for realisation of basic social values such as: upbringing of children, responsibility for assumed family-legal responsibilities, solidarity between family members, equality between women and men, protection of individuals incapable of living independently and functioning normally;
- Undertaking of appropriate measures to ensure consistent application of provisions of the Family Law concerning urgency in dealing with procedures protecting child's best interest;
- Draw attention of relevant courts to their obligation to ensure consistent application of provisions of the Family Law stipulating their duty to inform guardianship authority in case they found that parents, or other persons obliged to pay maintenance, cannot provide for that obligation, so the guardianship authority could provide for child maintenance using funds from the Federal Budget;
- Establish so-called Alimony Fund on the level of BiH to ensure proper funding of maintenance, and recovery of funds from

persons who are actually responsible for paying the maintenance;

- Obligation to run two separate procedures: proving of existence of the informal marriage, and then determining/dividing of the acquest.

6. Rights of Civilian victims of War in BiH

BiH does not have a state level law on rights and protection of victims to ensure equal treatment of status rights for civilian victims of war in BiH regardless of their place of residence or ethnicity. The matter is regulated on entity levels; in Republika Srpska by the Law on Protection of Civilian victims of War of RS,²⁹ and in the Federation of BiH by the Law on Principles of Social Protection, Protection of Civilian victims of War, and Protection of Families with Children.³⁰ In the Brčko District, this matter is regulated by the Decision on Protection of Civilian victims of War of the Assembly of the Brčko District from 2008.³¹ Due to lack of harmonisation between entity regulations, civilian victims of war and their families are often unable to exercise their rights.

BiH is signatory to all international conventions concerning protection and rights of victims as well as to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*.³² Concerning the implementation of the aforementioned Convention in BiH, UN Committee against Torture in charge of monitoring and application of this Convention issued conclusions and recommendations to BiH authorities asking for urgent adoption of the Law on Rights of Victims of Torture and Civilian victims of War in BiH.³³ In addition, numerous reports on the situation

²⁸ Art. 4. Instruction on how to determine if the conditions for issuing of travel document

²⁹ Official Gazette of RS, issues no. 25/93, 53/04, 37/07, 60/07, 118/09 and 24/10.

³⁰ Official Gazette of the FBiH, issues no. 36/99, 54/04, 39/06 and 14/09.

³¹ Available at: <http://skupstinabd.ba/2-registar/ba/Odluke/2008/65.%20sj.%20Odluka%20o%20ci vilnim%20zrtvama%20rata%2043-08%20B.pdf>.

³² Resolution of the UN General Assembly no. A/RES/39/46, 10th December 1984.

³³ See: 667. and 670. Meeting of the Committee (CAT/C/SR.667 i 670) held on 8th and 9th November 2005.

concerning human rights by foreign and local authorities, organisations and institutions indicate the need for enactment of the State Law on Civilian victims of War.³⁴ However, it has not yet been done, and civilian victims of war in BiH are those who suffer the most.

Civilian victims of War in Republika Srpska

Although relevant legislation in this entity guarantees numerous rights to civilian victims of war such as the right to civilian/family disability allowance, (personal care) attendance allowance, healthcare, etc., the biggest problem is in a set deadline for applications which expired on 31st December 2007.

The first-instance body deciding on rights of civilian victims of war in this entity is relevant municipal body in the place of residence of the applicant. Appeal against the decision of the first instance body is processed by the ministry of war veterans and victims of war of RS.

Civilian victim of war is defined as: 1) person who has suffered bodily injury due to abuse, rape, restraint (prison, concentration camp, internment, forced labour) or who, while escaping the enemy, got hurt or injured with at least 60% damage to their body, as well as person who was killed, or tragically died, deceased or disappeared; 2) person with at least 60% damage to their body due to being wounded or injured as a result of war operations such as: bombarding, street combats, stray bullet, mortar grenade, artillery shell, etc.; and 3) person who suffered at least 60% damage to their body due to being wounded or injured by left over military equipment or as a result of enemy diversions.³⁵ According to this

law, the right, under certain circumstances, belongs to family members of civilian victims of war who were killed, who died or disappeared under aforementioned circumstances and family members of the deceased who were recognised as civilian victims of war pursuant to this Law. Family members include: spouse, children (born in or outside the wedlock, adopted or foster children) and parents. Right to protection pursuant to this Law includes: civilian disability allowance/family disability allowance, personal care attendance; allowance for a family member incapable of working; additional financial support; allowance for single parents; health protection; and professional rehabilitation.³⁶

Right to Civilian/Family Disability Allowance

Right to civilian disability allowance belongs to civilian victims of war who suffered 60% to 100% bodily injury. Monthly allowance is determined as a percentage of the basis and according to the level of damage suffered, as follows:

- Group I – 100% damage suffered, persons need assistance for basic daily routine
100%;
- Group II – 100% damage suffered
70%;
- Group III – 90% damage suffered
50% etc.

The initial basis for determining of monthly allowance for disabled civilians is 351.00 BAM and it is harmonised at the beginning of every year with the index of retail prices of the previous year and available amount in the Budget of Republika Srpska planned for that purpose. Decision on harmonisation of the basis is made by the Government of Republika Srpska. Family members of a civilian victim of war who were killed, died, or disappeared during the war under circumstances stipulated by the Law, have the right to family disability allowance in amount of 40% of the amount paid to the Group I beneficiaries.

³⁴ See, for example.: The report of the Committee on Economic, Social and Cultural Rights of 24.01.2006; The report of the UN Human Rights Council of 29.12.2005; Report on Human Rights in BiH in 2011 by the Ministry of Foreign Affairs of Sweden; The report on the rights of civilian victims of war in Bosnia and Herzegovina from 2010 of the International Institute IFIMES; The second periodic report on the implementation of An International Covenant on Economic, Social and Cultural Rights, the Ministry for Human Rights and Refugees in BiH, etc.

³⁵ Art. 2 of the Law on Civilian Victims of War in RS.

³⁶ Art. 8 of the Law on Civilian Victims of War in RS.

Law in RS foresees deadlines for recognition of certain rights of civilian war victims and families of civilian victims of war, and it prescribes that the application for recognition of rights arising from bodily injury can be submitted within five years from the date the person suffered damage, or the date of termination of the circumstances under which the damage occurred.

The fact that the damage to the body caused under circumstances referred to in Article 2 of the Law must be supported by documentation on medical treatment not older than one year from the date of the injury or the date of termination of the circumstances under which the injury occurred, and it must accompany the application. Application for recognition of rights due to a person being killed or deceased shall be filed within five years from the date of death, while the application for recognition of rights based on the disappearance of a person may be filed within five years after the disappearance, or from the date of termination of the circumstances under which the person went missing, or within one year of the exhumation and identification of the missing person's remains. A person who has acquired certain rights as civilian victim of war or family member of a civilian victim of war under regulations of the Federation of BiH or regulations of some other state in the region, is not entitled to apply for recognition of the rights under the Law in RS.³⁷

The law was amended in respect of the "2007 deadline", but the deadline was not abolished, instead, a new deadline for submitting the application was set, and it stipulates that persons who are late with the application for recognition of rights on the basis of the original provisions of the Act, may apply until 31st December 2007.³⁸

However, there is still a very large number of persons who were unaware of the deadline for submission of applications, either because they were, for example, in exile or displaced at that time, or they were afraid to admit that they had experienced psychological and physical abuse during the war, and so on. It should be noted that particularly significant number of exhumations of

the remains of civilian casualties during the war was carried out in 2013 and 2014. However, by means of decision, relevant units for protection of war veterans and disabled persons reject applications for recognition of the right to family disability allowance based on the suffering of family members, on the grounds of them being untimely submitted. It should be pointed out that setting a deadline for submission of application for recognition of the right to civilian/family disability allowance stipulated in the Law on Protection of Civilian victims of War of RS serves the public interest. However, in the aforementioned case, fair relationship between public interest and interest of an individual is clearly missing, since every citizen in RS, if they fail to submit their application within the set deadline, must bear "personal and inappropriate burden".³⁹

Access to Rights for Civilian victims of War in the FBiH

According to the structure of the Law, it only Chapter III of the Law – Protection of Civilian victims of War – that regulates all issues concerning definition of the term, status, and rights of civilian victims of war in FBiH. The law distinguishes civilian victims of war from a recognised status of a civilian victim of war. Civilian victim of war is a person who, during the war or immediate war danger, due to being wounded or injured as a result of some form of war torture, suffered mental damage or severe impairment of health, disappeared, or lost their life. At the same time, the Law recognises the status of a civilian victim of war only to a limited category of civilian victims of war.⁴⁰

In FBiH, deadline for recognition of the civilian victim of war status does not exist. That means that the status can be given to persons who suffered subsequent damage to their health, manifestation or worsening of a condition, long

³⁹ See for example: The decision of the Constitutional Court in case no. AP-450/06 dated 05.04.2007, the Decision of the European Court of Human Rights in the James and Others v the United Kingdom judgment of 21 February 1986, paragraphs 46 and 50.

⁴⁰ See: Art. 54 Law on Social Protection, Protection of Civilian War Victims and Families with Children.

³⁷ Art. 33 of the Law on Civilian Victims of War in RS.

³⁸ Art. 34 of the Law on Civilian Victims of War in RS.

period of incubation, loss of extremity or vision on both eyes due to worsening of health condition, mental damage and other damage to their health caused by war or immediate war threat.

In order to enable exercising of other rights, the law recognizes the status of civilian victims of war to persons who suffered damage to the body below the 60% or significant deterioration of health.

Rights of civilian victims of war are as follows:

1) personal disability allowance or monthly personal allowance, 2) personal care attendance, 3) orthopaedic allowance, 4) family disability allowance, 5) support in covering costs of medical treatment and orthopaedic aid, 6) reconditioning (professional rehabilitation, retraining and additional education), 7) priority employment, 8) priority housing solutions, 9) psychological assistance and legal aid. It should be noted that rights under items 5) to 9) are exercised according to regulations on health insurance, healthcare, protection of families with children, and employment.

Realisation of rights defined by this Law, civilian victims are categories according to the percentage of suffered damage of health in six groups, as follows: 1st group – disabled persons with 100% disability who need care and assistance in daily life; 2nd group – disabled persons with 100% damage suffered; 3rd group - disabled persons with 90% damage suffered; 4th group - disabled persons with 80% damage suffered; 5th group – disabled persons with 70% damage suffered; 6th group – disabled persons with 60% damage suffered.

Right to Civilian/Family Disability Allowance

Personal disability allowance is set as a monthly amount according to the disability category, in amount of 70% of monthly disability allowance for disabled war veterans.

According to the Law, 50% of funds for personal disability allowances is provided by the Federal budget and 20% from cantonal budgets, for the

appropriate category defined in line with the Law on Rights of Homeland Defenders and Their Family Members, except in case of a civilian victim of war who was killed, who died or disappeared. Monthly allowance for victims of sexual abuse and rape is 70% of the basis, which is in line with allowance given to civilian victims of war of the first category with 100% disability.

Besides personal disability allowance, the Law recognises the right to family disability allowance. The right to family disability allowance belongs to family members of civilian victims of war of categories I to IV provided that: the civilian victim of war, while still alive, had had recognised right to personal care attendance, and that their death was caused by the wound, injury, bodily damage or health condition. Step parents, who had shared household with the civilian victim of war for at least three years before their death or disappearance have the right to family disability allowance, provided that the victim does not have living parents or adopted parents. In addition, family members of civilian victims of war who suffered sexual abuse and rape have the right to family disability allowance. The basis for calculation of the amount of the family disability allowance is 70% of the basis used for family disability allowance of fallen defenders, namely: for one family member in amount of 43% of the basis; for two family members in 55% of the basis; for three family members - 60%, and for four or more - 65% of the basis.

Specific Position of Women Civilian Victims of War in Exercising Their Rights

Women victims of war as well as non-governmental organisations dealing with protection of civilian victims of war in Bosnia and Herzegovina indicate that women, regardless of their ethnicity, who suffered abuse and suffering of their loved ones in the war, became isolated and dwell on margins of all areas of social life. They are forgotten by the institutions of the state and both entities, and poorly informed about the rights they are entitled to.

Due to unharmonised entity regulations for a number of persons it is still impossible to exercise their right to civilian/family disability allowance which puts them in disadvantageous position compared to other civilian victims of war who had not changed place of residence in BiH over a certain period of time.

For example, the FBiH does not institute a time-limited right to apply for recognition of the right to civilian disability allowance, but the applicant must have registered place of residence in the Federation. Persons who returned to the Republika Srpska after 2007 are not entitled to the civilian disability allowance, because the deadline for submission of applications has expired, and some of them register fake residence in the Federation in order to obtain the rights. However, most of them is tied to the RS by of health insurance, property reconstruction, etc.

It should be noted that, in both entities, allowances for soldier victims of war are far greater than the benefits for civilian victims of war, and that the amount of the civilian disability allowance is not the same in the Republika Srpska and the Federation of BiH, as well as in the cantons. In addition, in the Brčko District, the rights of civilian victims of war are regulated by the Decision on the protection of civilian victims of war of the Brčko District Assembly from 2008. However, the matter contained in the decision of the Brčko District does not provide a complete and functional solution for problems of this population, which also indicates the need for adoption of the Law on the state level.

In addition, women victims of war point to the problem of proof in recognition of certain rights. After more than 20 years passing, most of them did not save medical test results and opinions from their physicians. Similarly, it is evident that many of them relive their traumas in the presentation of evidence, especially after decision revision when, for example, repeated procedure requires determining whether the deceased family member was civilian or a member of enemy troops, etc. They also indicate that there is need in the Republika Srpska for changes in jurisdiction of first instance authorities, that is, a need for

forming of a special municipal department to deal with civilian victims of war exclusively. Since current first-instance authority is municipal department for protection of disabled veterans, civilian victims of other ethnicities are exposed to additional psychological stress. Changes would also help administrative bodies operate with more agility having in mind the large number of cases.

Recommendations

- Enacting of the Law on Protection of Civilian Victims of War on the state level;
- Harmonisation of entity regulations dealing with status rights of civilian victims of war;
- Cancellation of the deadline for application for realisation of rights stipulated in the Law on Protection of Civilian Victims of War in RS.

7. Law on Protection from Domestic Violence of RS

In the Republika Srpska, besides the Constitution, the Criminal Code of RS, and RS Family Law, the most important law that regulates the social problem of domestic violence is the Law on Protection from Domestic Violence.⁴¹ This law regulates protection from domestic violence and violence in the family, persons who are, under this law, considered family members or relatives, bodies of protection and procedure for protecting the victims of domestic violence, establishing of the Council for the fight against domestic violence, as well as sanctions for perpetrators of domestic violence. Pursuant to this law, domestic violence is any violent action of a family member or family which harms peace, psychological, physical, sexual or economic integrity of a family member or a family.

The law was enacted in order to provide more efficient, prompt and full protection of domestic violence victims. The law recognises the following bodies of protection responsible for providing protection from violent behaviour: the police, public prosecutor's office, and social welfare centre - social services. The law provides

⁴¹ Official Gazette of RS, issues no. 102/12 and 108/13.

explicit definition of procedure they are obliged to follow.

Bodies of Protection

By recognising that violence against women is not a private matter but a violation of human rights, the state has become obliged to use all mechanisms to protect these rights. In this regard, a group of government bodies was assigned to provide protection, assistance and support to victims of domestic violence, and those bodies include the police, public prosecutors, centres for social work or social welfare, health and educational institutions, and competent courts.⁴²

A very important obligation, which is established by law, but usually not applied in practice, is the obligation of the body of protection to act in line with provisions of this law, to provide protection, support and assistance to victims of domestic violence regardless of whether the perpetrator is subject to criminal or misdemeanour proceedings. It is notable that this provision is usually ignored by bodies of protection; they even engage in assessing the merits of the violence reports made by potential victims of violence whether through associations (e.g. Nova Generacija from Banja Luka), or by MIA RS, Police units.

Forms of Violence and Measures of Protection

According to the definition, there are three forms of violence: psychological violence (emotional violence) which is less visible and hard to notice, even for the victim, sexual violence against the victim's body, and economic violence which includes violent seizure of money and valuables, as well as prevention from using shared material assets.

Urgent Measures of Protection and Court Proceedings

Proposal to the court for pronouncement of urgent measure of protection may be submitted by the police, authorised body, prosecutor or the injured

party, and the measures are pronounced within 24 hours from the moment of submission of the proposal, or bringing of the perpetrator before the court. These measures are used to: temporarily eliminate situations that may lead to violence, prevent repeated or further violence, and ensure a form of protection and safety for the victim. Protective measures are of temporary nature, and for the court to impose them, the victim must report violence and the perpetrator to the police.

Some of the legally prescribed protective measures include removal of the perpetrator from the apartment, house or other dwelling and restraining the abuser from contacting the victim of domestic violence, although the law stipulates and other protective measures that can be applied according to the circumstances of the case and the necessary degree of protection of the victim.⁴³

Given the extent of the problem, it is hard to understand why the number of reported cases of domestic violence is so different than the number of those who end up before the court. One of the reasons is in the tradition, but another ever more difficult reason is inadequate response of police and other government officials, even when the lives of victims of violence are in danger. Experiences with our beneficiaries showed that in many cases the police only warns perpetrators, and are more likely to file misdemeanour charges, which means that the perpetrator is merely fined. A very small number of criminal charges is filed, ex officio, as well as by the victims. In addition, according to the indictments, criminal proceedings take a very long time, victims of violence are required to give a statement on the circumstances of violence for several times, which is why many victims of violence decide not to proceed with the procedure.

In their responses, the police stated that their obligation to file criminal charges for domestic violence before the competent prosecutor's office is not general, because it does not mean that the crime was committed just because it was reported.

⁴² Art. 9 of the Law on Protection from Domestic Violence of RS.

⁴³ Art. 24-28 of the Law on Protection from Domestic Violence of RS.

RS Criminal Code treats domestic violence as a criminal offense, but in practice very few judgments were passed to find the perpetrators of violence guilty of a criminal offense. In addition, there are different practices in use, so for the same acts constituting the basic form of the offense, there are various decisions of the competent authorities - in some cases a judgment is passed, yet in some prosecution refuses to press charges.

Position of Women Victims of Violence

Violence against women in BiH, and especially domestic violence is a widespread social problem. The problem of domestic violence should be seen in the light of the fact that the BiH society is exposed to strong patriarchy, which led to strengthening of the role of men in society, while position of women resembles their position in times when women almost exclusively dealt with household chores, household and family.

The aforementioned division of roles led to the lack of social support and understanding for women victims of domestic violence. It is believed that this form of violence is a private matter in which the state should not interfere. This opinion is also supported by women themselves who, instead of fighting for protection of their human rights (since violence against women is a violation of human rights) choose to stay in violent relationships.

Country, and therefore its entities, although enacted the laws, failed to create a system that would provide support for victims and facilitate seeking and receiving adequate assistance. Women victims of violence have little hope of surviving outside of violent family, they feel helpless because they are blackmailed by their partners, the environment, and the society.

Safe House is a special measure of support that provides safe accommodation and support to victims of domestic violence, which can be implemented by a legal entity. However, the number of safe houses, unfortunately, is not sufficient, and the main reason is financing of this

sort of refuge for victims of violence. Non-governmental organisations dealing with the protection of women victims of violence often point to the problem of low awareness of the obligation to report violence so only cases of serious violence that already have elements of the crime are reported. NGOs also point to a poor use of sanctions against the perpetrators, as well as pronouncing of a suspended sentence in many cases.

Recommendations

- Increase agility of courts in processing cases of domestic violence. In fact, prosecutors should act urgently in cases of domestic violence having in mind that victim and the perpetrator share a household, and untimely response may lead to further or repeated violence;
- In cases where victim, during the court proceeding, decides not to testify, if there are reasons to believe the perpetrator committed the crime of domestic violence, prosecution should not drop the charges;
- Prior to the trial, prosecutors should prepare witnesses and the injured party for direct statements and prepare them for direct and unpleasant questions concerning their personal life that may be posed by the defendant's attorneys;
- Increase fines for misdemeanour and criminal acts of domestic violence, and increase duration of prison sentence for this type of criminal offence;
- Special trainings for professionals dealing with violence against women;
- Public awareness activities and education of children concerning fight against domestic violence, and prevention in all fields.

8. Law on Protection from Domestic Violence of the FBiH

Due to traditional and patriarchal influence in BiH, we unfortunately still have a great number of victims of domestic violence. According to available statistics, the majority of victims are women. Relevant entity laws dealing with this

issue serve as legal framework that enables victims to realise their rights in cases of violence. On the territory of the Federation the legal framework is the Law on Protection from Domestic Violence of FBiH, which, among other things, defines the concept of violent actions and protective measures that can be imposed on violent people. Also, the Law stipulates the obligation to report domestic violence both by the victim and by other family members, as well as any citizen who becomes aware of committed violence. The law specifically emphasizes the obligation to report domestic violence of health and social workers, teachers, educators, medical, educational and other institutions and bodies, as well as non-governmental organisations that become aware of domestic violence acts in the course of performing their duty.

In accordance with this law, domestic violence should be reported to the nearest police institution, and in accordance with amendments to the law from 2013, it is police department that is authorised to apply for protective measures. Exceptionally, the law allows for prosecution to initiate the proceedings before the competent court.

Although the law stipulates that the act of domestic violence is also a verbal attack, including insulting, swearing, name calling and other forms of severe harassment of a family member by another family member, according to the experiences of women - beneficiaries who approached the Association "Vaša prava BiH" this kind of violence is mostly unreported, although in most cases it precedes physical violence. In addition, sometimes, in the case of physical violence, the victim does not dare to report the violence for reasons of economic dependency on the abuser.

Attorneys of the Association "Vaša prava BiH" usually find out about the cases of domestic violence when women – beneficiaries contact them with an intention to file for divorce or seek advice concerning their rights in case they decide to leave their informal spouse due to domestic violence. On that occasion, beneficiaries are given detailed instructions on how they can report

violence, and what is the procedure once the offence is reported.

Concerning the measures that are pronounced by a decision of the competent court, it is noticeable that, in practice, a six-month restraining order is the most popular measure pronounced. The measure is pronounced in a decision by the competent municipal court in which the court determines places or areas prohibited for the perpetrator, and safe distance from the victim of domestic violence. In case the perpetrator fails to act in accordance with the measure, the law prescribes that they shall be fined, and it is not known whether the threat of fines has any preventive effect on the violent person causing them to comply with the imposed prohibitive measures.

The fact that the economic dependence of the victims of violence is one of the reasons for not reporting violence is well supported by the case of the beneficiary M.H. She was a victim of many years, and she suffered psychological and physical violence from her partner with whom she has a child, and she turned to the Association "Vaša prava BiH" in order to initiate proceedings to entrust a minor child born out of wedlock. On that occasion, she was informed on the details of the procedure in case of violence, as well as on protective measures that may be imposed on a violent person. Unfortunately, the beneficiary did not want to report the existence of violence because of economic dependence on her partner, and the possibility that she and her baby may end up homeless.

For such situation, the Law foresees the right of victims of domestic violence to support for basic needs in terms of necessary health care, social care and material care, and right to legal aid to resolve their status. In order to provide for realisation of these legal solutions and financing of the aforementioned support, cantonal governments were supposed to enact secondary legislation, within six months of this law coming into force, and ensure more specific regulation of temporary forms of assistance, including legal aid to victims of domestic violence. Since it has not been done, victims of domestic violence are still

unable to exercise their rights, primarily the right to be recognised as victims of violence. Legal aid to victims of violence in BiH is still, in majority of cases, provided by non-governmental organisations in line with their capacities and unstable sources of finance usually provided by international donors, and without any support from federal or cantonal budgets.

Recommendations

- Cantonal governments should act in line with Article 32 of the Law on Protection from Domestic Violence of the FBiH and enact secondary legislation to provide for detailed regulation of the status of victim, and finance various forms of assistance to victims of domestic violence;
- General prevention of violence should be conducted in order to inform general public on forms of violence and ways to report domestic violence;
- Medical, healthcare, educational staff, and staff of other institutions referred to in Article 8 of the Law should be educated on how to recognise potential victims of domestic violence, and how to encourage them to seek help, especially if the victim is a child;
- It would be advisable to form funds to finance economic empowering of victims of violence who are mostly women.

9. Position and Realisation of Rights for Victims of Human Trafficking

Trafficking in human beings, besides being a global problem faced by both countries in transition and economically developed countries, is one a form of organised crime or illegal migration, and also a severe violation of human rights guaranteed by international law, the Constitution of BiH, entity constitutions, and the Statute of the Brčko District of BiH.

Human trafficking⁴⁴ is most often done for forced prostitution, pornography, bonded labour,

begging, fake adoption, fake and forced marriage, and the ever growing in human organs. Men are usually victims of forced labour, women of prostitution and children of begging and selling to families without children. Men as well as women and children can be victims of trafficking in human organs. Such illegal actions of traffickers violate basic human rights, the right to freedom and dignity of the individual, freedom of movement, the right to decision-making, equality among the people, the right to life, work and education, the right to health and non-discrimination.

From the very beginning of recognising trafficking, BiH has undertaken planned, coordinated and long-term measures to put this problem under control. In this regard, various legal documents in form of strategies and action plans that define basic guidelines for action in the fight against this phenomenon have been created, adopted and implemented. Since 2001, BiH politics and the fight against human trafficking were defined in four action plans for prevention of trafficking and for periods: 2001-2003, 2005-2007, 2008-2012, and 2012-2015. In definition of policies and their implementation, BiH applied international standards set out in the Council of Europe Convention on Action against Trafficking in Human Beings and UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

The war in Bosnia and Herzegovina resulted in a large number of children who lost their parents and even close relatives, but because of their particularly difficult situation, it is natural to expect that traffickers easily manipulate them and use them for all forms of exploitation. In addition, Bosnia and Herzegovina, as a country that suffered a conflict, does not enjoy full range of economic and other social conditions to do more to protect child victims of war.

All this points to the need to fully engage all available resources of our country in protection of child victims of trafficking and, on the other

⁴⁴ See also: The UN Convention against Transnational Organised Crime of December 2000, and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in

Persons, Especially Women and Children, as a supplement to the UN Convention and the Council of Europe Convention on Action against Trafficking in Human Beings.

hand, to involve as many international humanitarian organisations who are able to support BiH in dealing with this issue, one case at the time, as successfully as possible. Efforts should be invested in presenting the problem of child protection in BiH as an international and regional problem, as much as possible.

10. Legal Protection –BiH Legislation

BiH is signatory to numerous international documents dealing with the issue of human trafficking and has processed many of its obligations resulting thereof in its laws. This primarily refers to criminal laws in BiH which stipulate a wide range of criminal offences that include activities involved in human trafficking.

Since 2001, activities to raise awareness of citizens have been undertaken, necessary regulatory frameworks for effective prosecution of cases of human trafficking have been set up, and capacities within the Ministry of Security have been established, as well as monitoring teams to monitor the situation in the field. Similarly, transnational mechanisms for repatriation of victims of trafficking have been established enabling application of special investigation practices in criminal prosecution of perpetrators of human trafficking; capacities for effective witness protection at the national and regional level have been established as well.

The Criminal Code of BiH adopts the definition of human trafficking by accepting most of the definition set forth in the UN Convention, but unfortunately does not define all forms of exploitation, instead, it only lists them. The BiH Criminal Code also defines other acts that can be linked to human trafficking, as follows: slavery and transport of slaves; human trafficking; international recruitment for prostitution; illegal deprivation of identification documents; smuggling of persons; torture and other forms of cruel, inhuman or degrading treatment.⁴⁵

FBiH Criminal Code regulates and defines offences against sexual freedom and morality,

⁴⁵ Art. 185-190. Criminal Code of BiH.

namely: incitement to prostitution; exploitation of children and minors for pornography; introducing a child to pornography; rape; sexual intercourse with a helpless person; sexual intercourse by abuse of position; coercion to sexual intercourse; sexual intercourse with a child; indecent assault; lewd acts in front of a child or a juvenile; abduction of a juvenile or child; neglect or abuse of a child or minor; violation of family responsibilities; transmission of venereal disease.⁴⁶ RS Criminal Code defines offenses against sexual integrity, namely: human trafficking for prostitution; exploitation of children or minors for pornography; production and viewing of child pornography; rape; sexual intercourse with a helpless person; child sexual abuse; sexual intercourse by abuse of position; satisfying lust in front of others; abduction of a child or a minor; neglect and abuse of minors; violation of family responsibilities; and transmission of sexual diseases.⁴⁷

The Criminal Code of the Brčko District of BiH defines offences against sexual freedom and morality: human trafficking and organised trafficking in human beings; incitement to prostitution; exploitation of children and minors for pornography; Introducing a child to pornography; rape; sexual intercourse with a helpless person; sexual intercourse by abuse of position; coercion to sexual intercourse; sexual intercourse with a child; indecent assault; satisfying lust in front of a child or a juvenile; abduction of a minor or a child; neglect or abuse of a child or minor; violation of family responsibilities; and transmission of sexual diseases.⁴⁸

Laws on criminal procedure in Bosnia and Herzegovina offer a wide range of investigative measures which can be applied in fighting against trafficking in children in respect to the severity of punishment applicable to such crimes. The laws on the protection of vulnerable witnesses and

⁴⁶ Art. 210-212, 203-209, 217-221, 227. Criminal Code of the FBiH.

⁴⁷ Art. 198-200, 193-197, 205, 207, 209, and 211. Criminal Code of RS.

⁴⁸ Art. 207a), 207b), 207-209, 200-206, 214, 216, 217, and 223. Criminal Code of the BD of BiH.

witnesses under threat, and the Law on Witness Protection Program of BiH put at disposal of the police and prosecutors a large number of measures that can effectively protect the child victim of trafficking and their families when acting as a witness, in the court proceedings, as well as prior to its commencement, and once it is finalised. A child and a minor are considered protected witnesses unconditionally, that is, without any additional requirements for the establishment of such a status.

Legal Aid and Protection

The Law on Movement and Stay of Aliens and Asylum of BiH,⁴⁹ and its implementing act - the Rulebook on protection of victims of trafficking, introduced additional measures for protection of foreign victims of trafficking. In accordance with current legislation, foreign victims of trafficking in Bosnia and Herzegovina have the right to: safe and adequate housing, health care, psychological assistance, information on their legal status and consulting with regards to their rights and obligations in a language they understand, legal assistance in criminal and other procedures in which the victim is exercising their rights, a temporary residence permit in BiH for humanitarian reasons, information on access to diplomatic and consular offices of their country of origin or habitual residence, information about the possibilities and procedure of repatriation, access to the labour market and other rights.

Rules on protection of privacy of victims and witnesses of human trafficking BiH regulates principles and common standards relating to the identification procedure, protection and assistance, primary and secondary prevention and other activities related to the protection and assistance to victims of trafficking in human beings, citizens of BiH.

Given that human trafficking is a grave violation of human rights of victims, international standards provide trafficking victims compensation for non-pecuniary and pecuniary damage for the purpose of prevention. There are

numerous international instruments that could possibly be used to protect the rights of victims in terms of compensation, the most important being the cited UN Convention, Council of Europe Convention on Action against Trafficking in Human Beings, Directive 2012/29/EU.

Bosnia and Herzegovina has established a solid legal framework to provide compensation to victims of trafficking, so even during the criminal procedure, the injured party can by the end of the main hearing file a property claim or a claim for damages. The prosecutor is obliged to collect all the evidence for the injured party necessary for reaching of the decision. The claim is decided upon by the court, and the decision thereof can award the property claim partially or fully, and if the data of the criminal procedure do not provide sufficient grounds, the court sends the claim to legal procedure. The practice so far has not recorded any positive examples of courts deciding on the compensation of damages in criminal procedure, so referral to legal procedure serves as repeated victimisation of victims of human trafficking. Therefore, changes of legislation should enable victims of human trafficking to stay in BiH as long as they claim compensation, and assets seized and confiscated from traders should, by establishing the state level mechanisms, i.e. Compensation Fund, should be primarily used to compensate damage suffered by the victims of human trafficking.

Recommendations

- Preventive measure and initiating of efficient measures aimed at citizens to raise awareness of the issue of human trafficking,
- Harmonise substantive criminal law in entities and the Brčko District with the novel provision of the CC of BiH Article 186, with the Palermo Protocol and Anti-Human Trafficking Convention,
- Intensify application of the institute of seizure of gain acquired by criminal offence of human trafficking,
- Ensure more efficient witness protection programme in case of human trafficking, improve existing protection of victims of

⁴⁹ Official Gazette of BiH issues no. 36/08 and 87/12.

human trafficking in order to ensure as human and dignifying return of victims to their homelands or places of residence as possible,

- Improve cooperation and coordination between the relevant institutions and authorised organisations in BiH for the purpose of fighting against different forms of human trafficking in BiH,
- Ensure that trials are not in violation of the rights of human trafficking victims,
- Establish a state-level mechanism for compensation of damages suffered by the victims of human trafficking, that is – Compensation Fund.

**EMPIRICAL RESEARCH OF WOMEN'S ATTITUDES ON THE
EXERCISE OF RIGHTS IN THE INSTITUTIONAL FRAMEWORK**

Dr. Andrea Puhalić

The *main aim* of the research was to analyse a set of specific obstacles to women's access to BiH institutional system responsible for the prevention, detection, and sanctioning of gross violations of human rights. The research was approached from two methodological perspectives: quantitative and qualitative.

1. Quantitative research

1.1. Quantitative research methodology

Survey method was used within the quantitative approach and, within it, *techniques of interviewing and scaling*. A research instrument was constructed for testing specific obstacles to women's access to BiH institutional system of protection in cases of violation of their rights, including the attitudes of women themselves regarding physical, psychological, economic and sexual violence in the family and the workplace, as well as their relationship with the police, the centre for social work, health services, the courts, and the prosecutor's office. The questionnaire used closed questions to collect information about personal characteristics of the respondents, such as gender, work experience, education level, marital, family, and employment status. Through assessment scales, we examined the opinions, motives, beliefs, convictions and feelings of the respondents, in relation to the role of women in private and public spheres, and their relation to relevant systems of human rights protection.

1.1.1. Sample characteristics – women respondents in BiH

Our study sample consisted of 179 women, citizens of BiH, who cooperate with the organization Your Rights BiH, or are users of the services provided by the organisation. In order to maintain a heterogeneous sample, we strived to include respondents from as many different cities and from all regions of BiH, as well as of different ages and education levels. Finally, the convenience sampling method was used since the respondents who agreed to cooperate with the researcher were selected for this research. Educational and age structure of the sample is shown in Table T1.

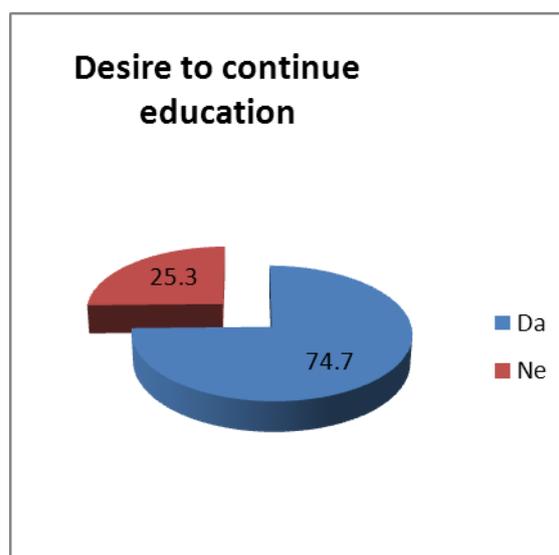
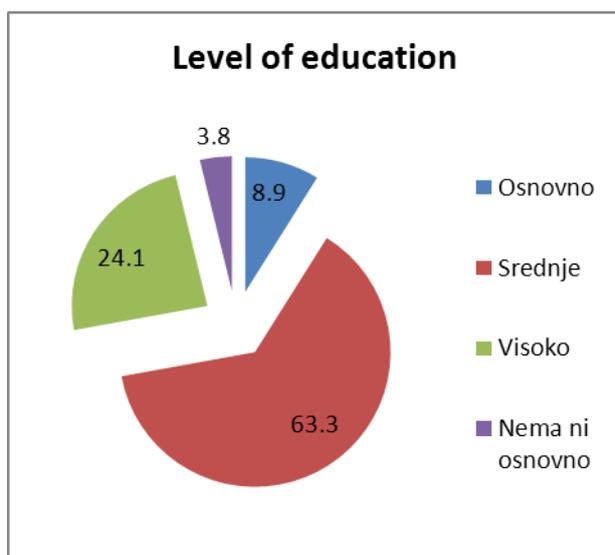
Table T1: *Sample structure with respect to age and education level*

	Age				Total	Education level				
	<30	30-40	40-50	>50		No primary education	Primary	Secondary	Higher	Total
%	20.3	34.2	26.6	19.0	10.0	3.8	8.9	63.3	24.1	100.0

By analysing Table T1, we notice a fairly uniform representation of respondents of all age categories, with the lowest representation of the oldest respondents in our sample. On the other hand, in a dominant majority presence are the respondents with secondary education (63.3%), and the proportion of women with higher levels of education (24.1%) is significant. These data demonstrate a higher than average level of education in our sample compared to the total population of women in BiH and, therefore, we assume that these women know their rights and mechanisms for their protection better than the average population of women in BiH. Nevertheless, more than half of our respondents (74.7%) stated that they wished to continue their education, but were unable to do so. Graphs 1 and 2 show the representation of subjects with different levels of education, and the ratio of those who did not want to continue their education compared to those who wanted to.

Graph 1: *Representation of respondents with different levels of education*

Graph 2: *Sample structure regarding the desire to continue education*

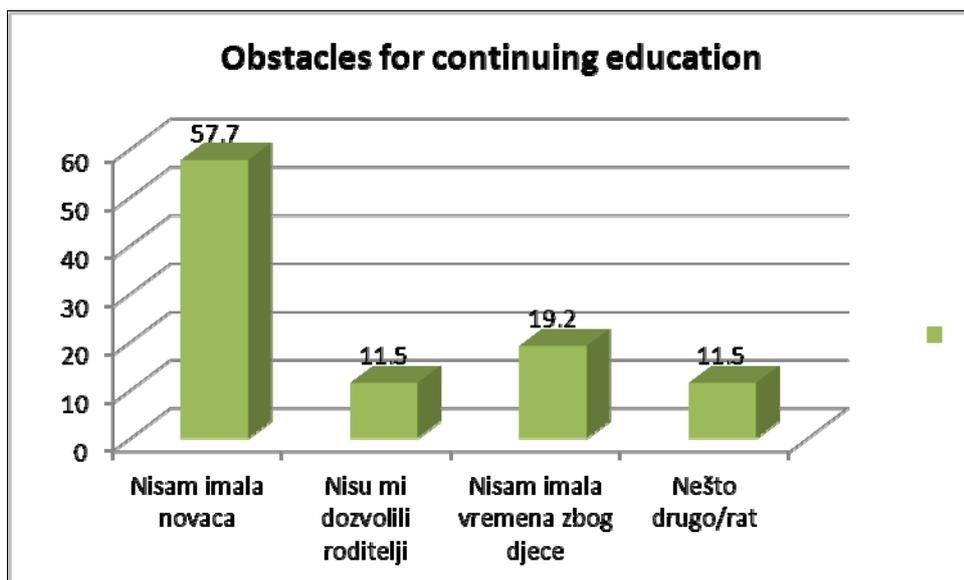


Graph 1 Legend (from top to bottom): Primary Secondary Higher No primary education

Graph 2 Legend (from top to bottom): Yes No

The analysis of these graphs demonstrates the significance for researching the difficulties due to which a significant number of our participants could not continue their education, despite wanting to do so. Statistical data on these obstacles is provided in the analysis of Graph 3.

Graph 3: *Obstacles for continuing education*



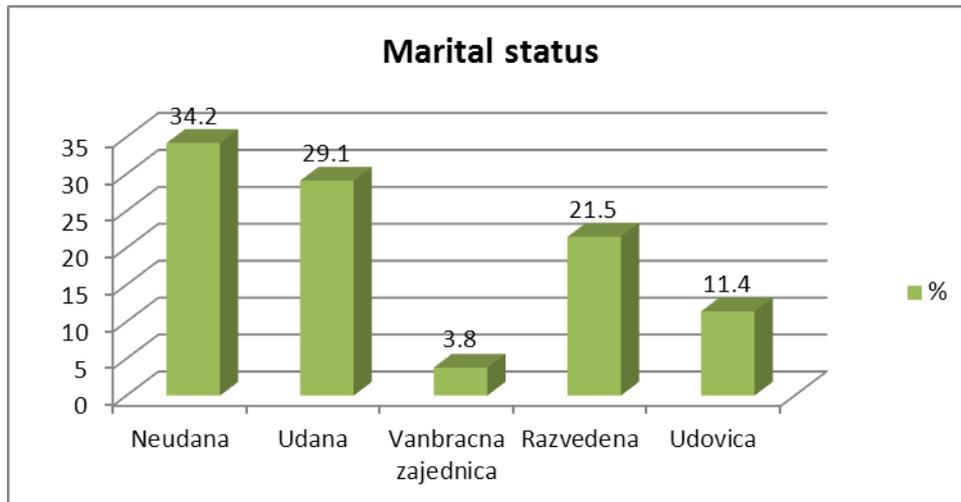
Graph 3 legend (left-right): I had no money, My parents would not let me, Lack of time due to child care, Something else / war

In the analysis of the previous chart, the dominant cause of our respondents not pursuing further education is the lack of funds. Lack of time due to child care responsibilities also stands out as a highly common obstacle, which we associate with the dominant role of women as mothers and wives in a traditional, patriarchal society. In line with this, the following graph and table show the proportion of women with children, regardless of their marital status.

Table T2: *Sample structure with respect to whether the respondents have children*

	Children						
	No	Yes					
		<i>Number of children</i>					
		1	2	3	4	6	Total
%	12.7	37.3	46.3	11.9	3.0	1.5	87.3

Graph 4: *Sample structure regarding the marital status of the respondents*



Graph 4 legend (left-right): Unmarried, Married, Domestic partnership, Divorced, Widowed

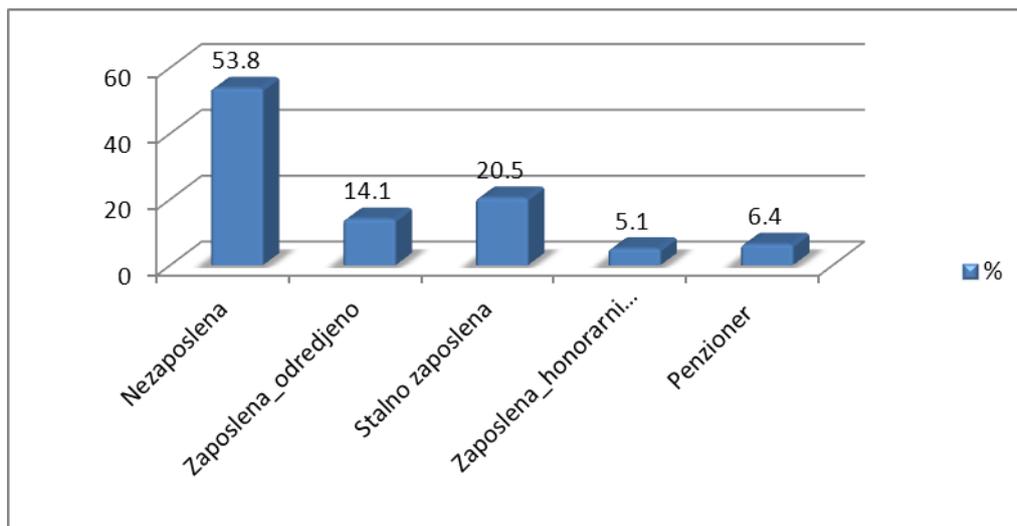
Analysis of Graph 4 and Table T2 shows that our sample predominantly consists of women with children (87.3%), although only 32.9% of them are married or in a domestic partnership. This means that nearly half of our respondents belong to a particularly vulnerable category of single mothers. Considering the data from Table T2, which shows that only 20.5% of our respondents are employed full-time while 53.8% are unemployed, we can conclude that some of these single mothers are further threatened by the lack of work. Table T3 shows the differentiation of the sample regarding the employment status of the respondents.

Table T3: *Sample structure with respect to the employment status of the respondents*

	Employment status					
	Employed				Retired	Unemployed
	Permanently	Temporarily	Occasionally	Total		
%	20.5	14.1	5.1	39.8	6.4	53.8

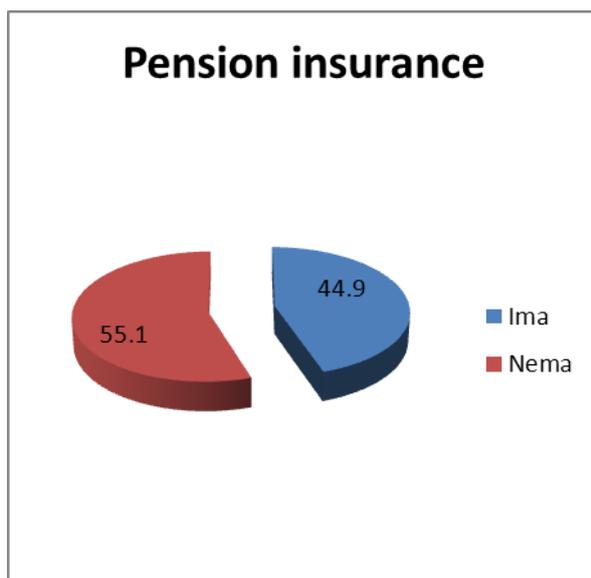
Data showing that more than one half of the respondents are unemployed indicates a particularly vulnerable category of women who are not only unable to exercise the right to employment, but whose fundamental human rights are threatened by living in poverty, such as the right to adequate health care, and pension and disability insurance. In addition to Graph 5 which vividly illustrates the dominant representation of unemployed women, Graphs 7 and 8 show the sample differentiation in relation to health, pension, and disability insurance.

Graph 5: *Employment status of the respondents*

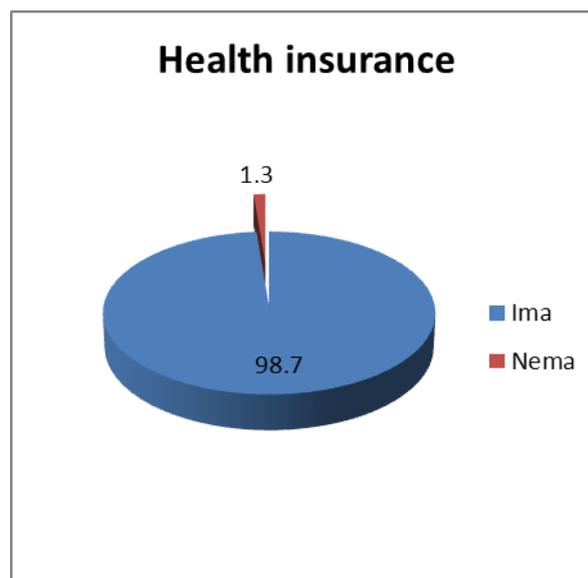


Graph 5 legend: Unemployed, Temporarily employed, Permanently employed, Occasionally employed, Retired

Graph 6: *Respondents' pension insurance*



Graph7: *Respondents' health insurance*



Graph 6 and 7 legend (top-bottom): Yes No

While examining Graphs 6 and 7, we see that 55.1% of women respondents in our study do not have pension and disability insurance, since it can only be achieved through employment or through private insurance, and since more than half of them are unemployed and have no income based on which they could exercise this right. Additionally, more than half of our respondents do not have the right to the old age pension, disability pension, compensation in the event of risks such as old age, total loss of working ability, disability, death, or bodily injury. Although there are some monetary benefits under social security for some of these

risks, in the absence of other forms of material support, these are usually one-off grants or are insufficient to meet the basic needs of women and their families.

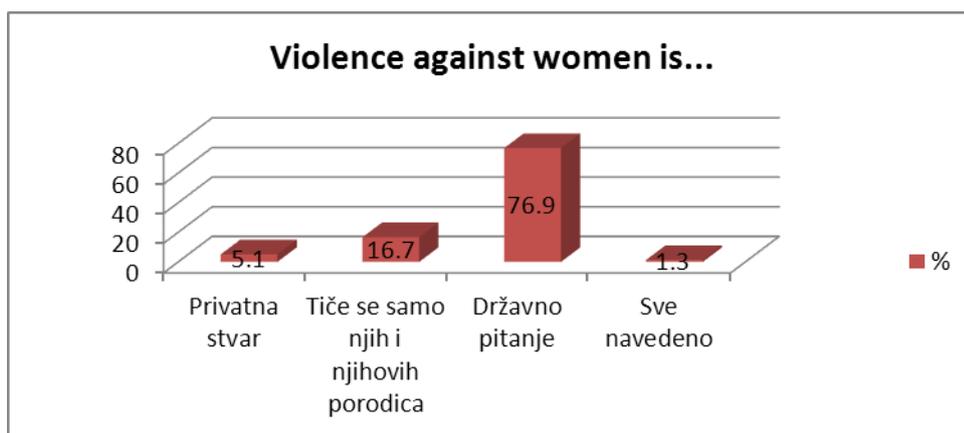
The ability to obtain health insurance through applying to the Department of Employment in the RS or the cantons in the FBiH creates a significantly different picture when it comes to the right to health insurance for women in BiH, in comparison to pension and disability insurance. In this regard, 98.7% of women respondents have unrestricted access to health care services within a regulated health insurance system.

1.2. Quantitative research results

The results of our study will be presented in three segments. The first segment relates to the general attitudes of the respondents towards violence against women, as well as the right of women to self-determination, family planning, equal access to income earned in marital and non-marital union. Within the second segment of the results, we will present the attitude of women respondents towards judicial and administrative protection in cases of violation of their rights through physical, psychological, and sexual violence in marital or non-marital union. In addition, we will present the attitude of women towards violations of their rights in the workplace, in the form of sexual harassment or employment termination due to pregnancy. Within the third segment, we will analyse the attitude of women respondents towards institutions of judicial and administrative protection in cases of human rights violations.

1.2.1. Attitude towards fundamental women's rights and violence against women

Graph 8 shows the attitudes of the respondents regarding the question whether violence against women is a private or state issue.

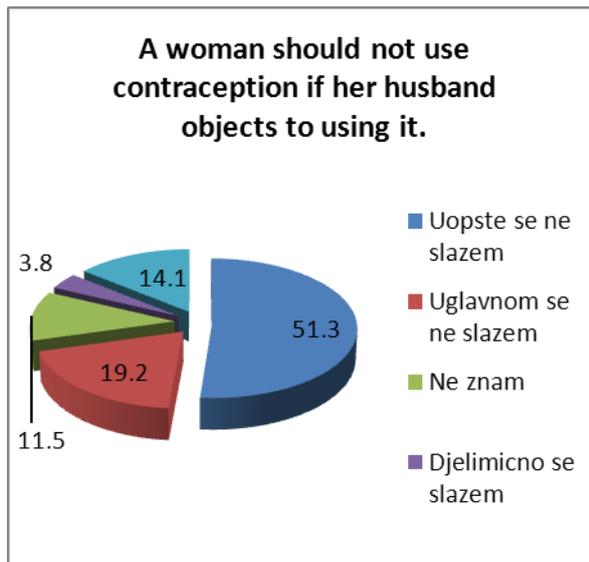
Graph 8: Attitudes towards violence against women

Graph 8 legend (left-right): A private matter, Concerns only the women and their families, A state issue, All of the above

By analysing Graph 8, we can determine that the women respondents in BiH predominantly recognize domestic violence as a general social and state issue (76.9%). This finding is associated with a higher than average education level of the respondents involved in the research. However, almost a fifth of respondents still believe that it is a private matter that concerns only the marital/non-marital partners or their families. This is still a worrisome percentage if we take into account the high average level of education of our respondents, and the fact that it is only a general attitude, which in itself does not imply the willingness of women to seek judicial and administrative protection in case of violence.

Graphs 9 and 10 show the attitude of the respondents in terms of accepting or rejecting assertions regarding a woman's right to self-determination and family planning. At the foundation of the first assertion ("A woman should not use contraception if her husband objects to using it") is the rejection of women's right to self-determination, or in other words, her right to be equal to her partner regarding the decisions about planning a family. The second assertion ("Every woman has the right to an abortion") measures similar value-based attitude associated with a woman's right to self-determination. The specificity of the second assertion is that, in addition to patriarchal values referring to the dominant role of women as mothers and housewives, it may suffer the influence of the respondents' religious affiliation.

Graph 9: Right to family planning



Graph 10: Right to self-determination



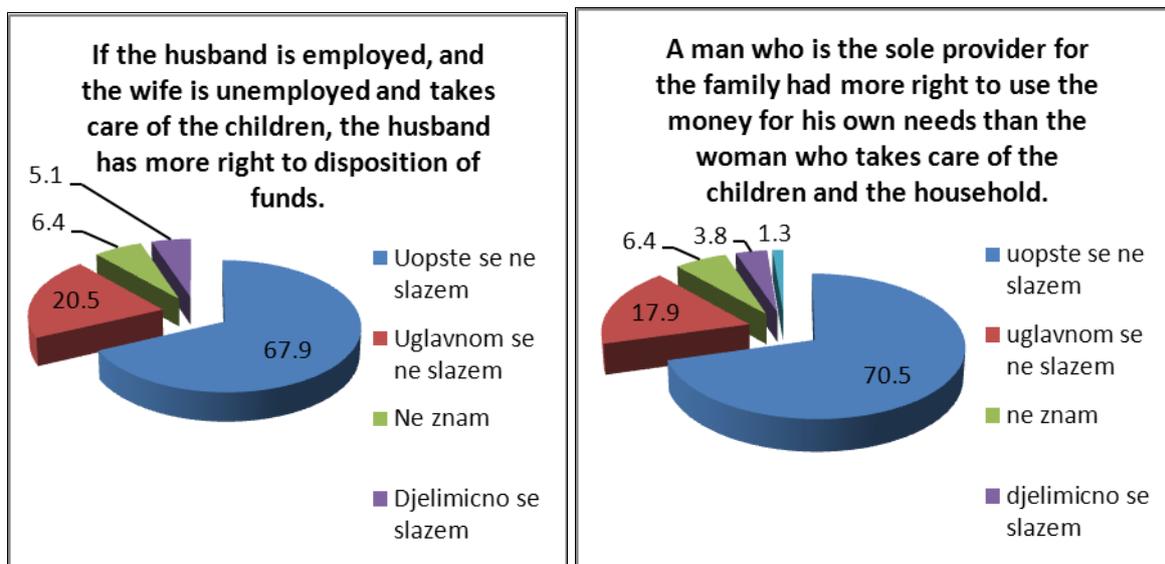
Graph 9 legend (top-bottom): I completely disagree, I mostly disagree, I don't know, I partially agree

Graph 10 legend (top-bottom): I completely disagree, I mostly disagree, I don't know, I partially agree, I completely agree

By analysing Graph 9, we see that women respondents predominantly recognize their right to self-determination, which is the foundation to equal participation of women in family planning. Although much smaller, there is a significant proportion of respondents (11.5%), who were indecisive in this matter, which indicates the importance of further education of women in BiH about their rights. Graph 10 shows a somewhat different picture. Only 65% of women fully or partially agree with this statement. Although it may be a reflection of religious or moral beliefs, the foundation of this assertion is always a woman's right to self-determination, and thus, this finding may also be indicative of the need for further education of women in BiH about their rights.

The subsequent graphs show the level of respondents' agreement with assertions reflecting the acceptance of a perceived "lesser" right of women to the income earned within the marital or civil partnership, if they themselves are not employed. Graph 11 shows the level of agreement with statements which imply the acceptance of the claim that a man who has a job also has more right to use the income for his own needs, in comparison to a woman who "merely" takes care of home and children. Thus, the contribution of women in the family is minimized, i.e. the woman is seen as unequal to men, and with fewer rights.

Graphs 11 and 11a: Equal right to income in a marriage

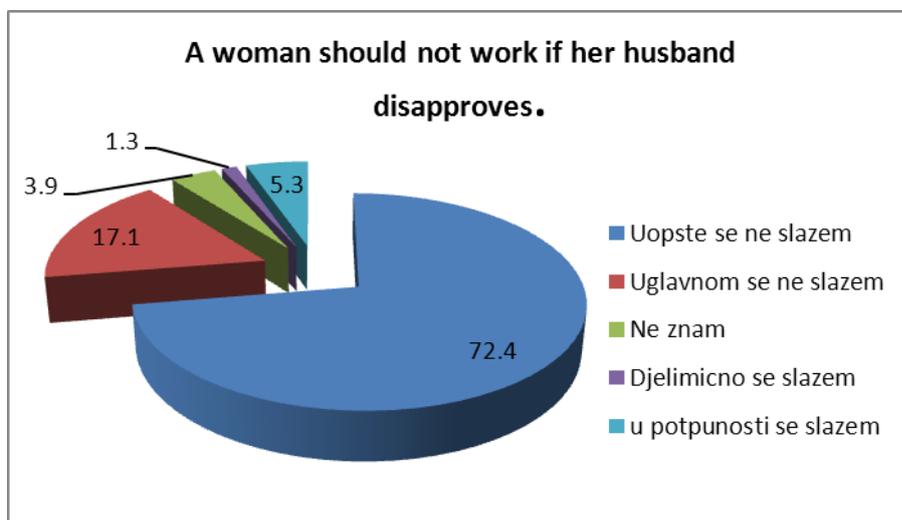


Graph 11 and 11a legend (top-bottom): I completely disagree, I mostly disagree, I don't know, I partially agree

By analysing both previous graphs, we see an approximately identical image. Only about 70% of women completely disagree with such inequality of women. However, a small number of them (3-5%) agree with this assertion, reflecting a level of consciousness of women in BiH, i.e. the recognition of their right to equal access to mutual income and assets.

Graph 12 shows the level of acceptance of the assertion reflecting the limitation of a woman's right to work by her husband.

Graph 12: Women's right to work



Graph 12 legend (top-bottom): I completely disagree, I mostly disagree, I don't know, I partially agree, I completely agree

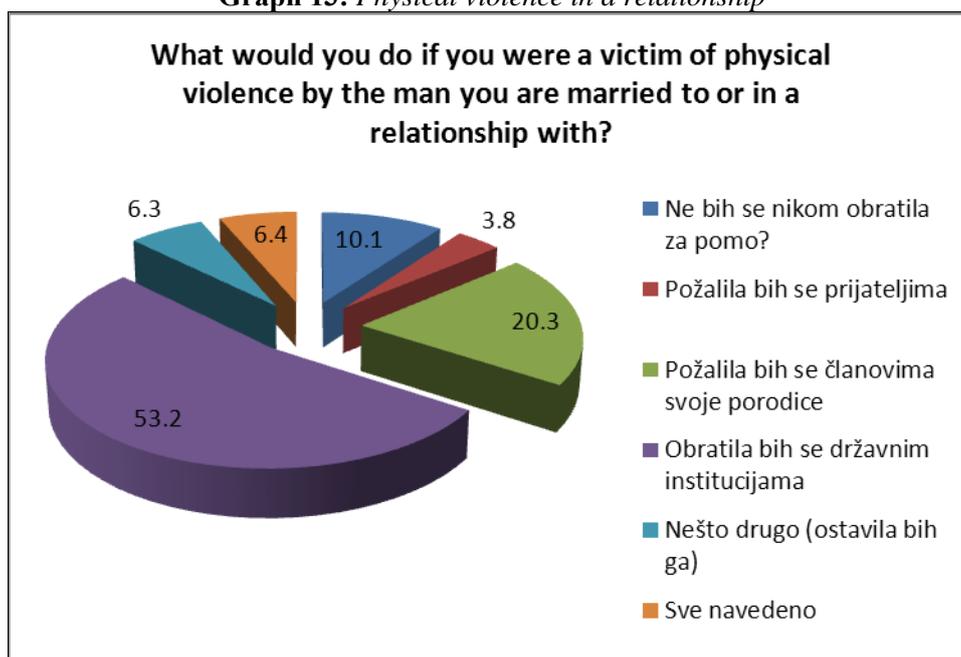
From the previous graph, we see that women mostly recognize their right to work in terms of their marriage relationship. However, the significance of partial agreement with this statement remains unknown, in the sense that we can say that a group of 17.1% of our respondents ("I mostly disagree") in a way still accept the restriction of their right to work under certain conditions.

All these results point to the importance of further education of women in BiH on their fundamental rights, in relation to family planning and disposal of the income acquired during marriage, but also the right to the protection by the state institutions in cases of partner violence

1.2.2. Protecting the right of women to a life without violence

Violence represents the harshest form of violation of women's rights, especially the right to life, safety, personal integrity and respecting of dignity, which are all included in the right to a life without violence. Since 2000, domestic violence was introduced as a criminal offense in the Criminal Code of the Republic of Srpska, and since 2003, violence is treated as a criminal offense in the Law on Gender Equality in BiH. In doing so, the state has formally "accepted" domestic violence as an important general social issue that threatens the core values of a society. In this regard, it also took over the responsibility of the institutional response in preventing, investigating, and sanctioning domestic violence. However, even 10 years later, the impact of persistent patterns of a once dominantly patriarchal, traditional society on the individual consciousness is still present, and represents one of the major obstacles for the implementation of new humanistic standards contained within the new legislative framework. In this regard, we have explored the attitude of women toward the violence in marital/partnership relations, i.e. whether they believe that the protection from such serious violation of human rights should be a responsibility of private systems of support (family, friends), or formal state institutions. In the following text, we will demonstrate how women respondents answered the question regarding which of these systems they would contact in case of physical, psychological, or sexual violence in partnership or marital relations.

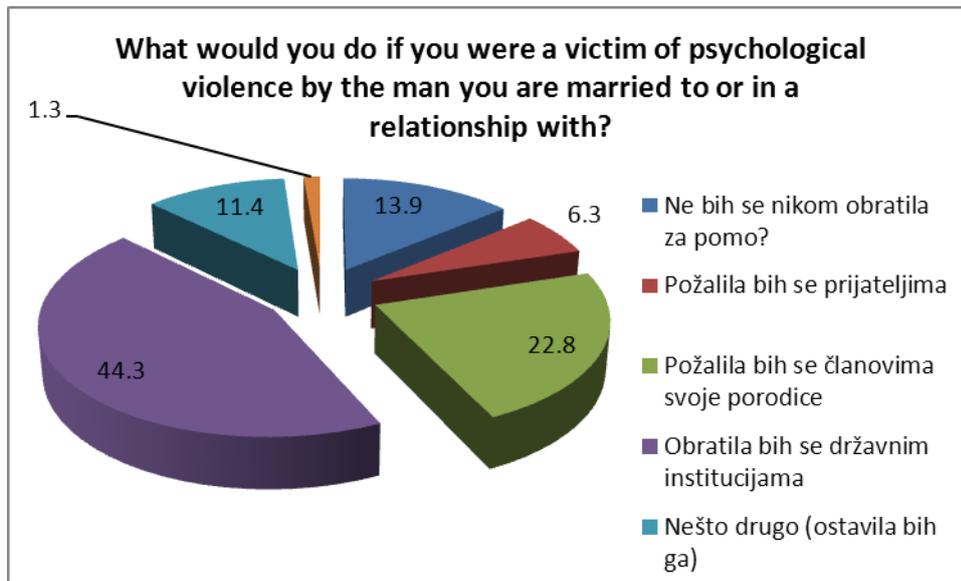
Graph 13 shows the data related to a form of protection women respondents choose in case of physical violence by their male partners.

Graph 13: Physical violence in a relationship

Graph 13 legend (top-bottom): I would not seek assistance from anyone, I would complain to my friends, I would complain to my family members, I would contact the state institutions, Other (I would leave him), All of the above

The research results confirm the persistence of traditional, patriarchal beliefs according to which domestic violence is a "private matter", and not a general social issue. In this regard, by analysing Graph 13, we notice that only 59.6% of women respondents would contact the state institutions in case of physical violence by their partner. The majority of those who would not contact the authorities would ask for assistance from their family (20.3%). Even within the group of respondents who would ask for institutional protection, 11.4% of them do not know which institution they should contact, which implies the unavailability of the overall institutional system of protection, which should serve and be easily recognized by its core beneficiaries – the citizens. Additionally, the majority of respondents believe they would contact the police, or a centre for social work, which indicates the importance of testing the public trust in these institutions.

Indicators of psychological violence are much more complex and difficult to measure than the indicators of physical violence. However, in Graph 14 we see a similar situation as with physical violence.

Graph 14: *Psychological violence in a relationship*

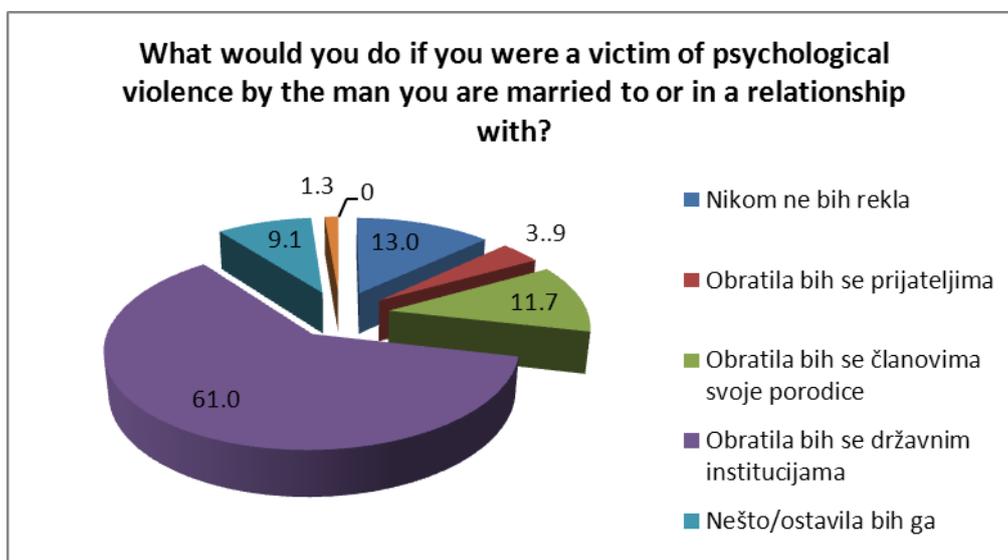
Graph 14 legend (top-bottom): I would not seek assistance from anyone, I would complain to my friends; I would complain to my family members, I would contact the state institutions, Other (I would leave him)

The respondents opt for institutional response in cases of psychological violence by their partners only 10% less frequently than in cases of physical violence. An approximately similar percentage of respondents would turn to their family (22.8%), or would try to resolve the problem on their own instead of contacting anyone else (13.9%). Almost identical attitudes of respondents in cases of physical and psychological violence actually undermine the credibility of the obtained data, i.e. the justification of the assumption that the respondents would actually contact the institutional system or the relevant non-governmental organizations in case of violence. Given that the consequences of physical violence are often visible (bruises, cuts, haematomas, fractures), and as such can be documented during medical examination, women victims of domestic violence almost exclusively only report the cases of physical violence. In the course of court proceedings certain evidence of the committed violence is necessary, most commonly contained in a medical certificate. On the other hand, psychological violence is much more subtle, more hidden, longer lasting, and leads to a gradual weakening of psychological capacities of the victim – insecurity, lack of self-esteem, anxiety, depression. Women victims of violence in such condition rarely decide to report violence to any of the relevant institutions. Another problem with psychological violence is that it is hard to provide necessary evidence for the successful initiation and completion of judicial procedure. If the women respondents provide approximately proportionate responses

in terms of contacting the relevant authorities in cases of physical and psychological violence, we believe that it may rather be a case of socially acceptable answering, i.e. recognizing violence as a public rather than a private issue, and may not reflect their true commitment to seeking institutional protection. This conclusion is also supported by the fact that approximately one fifth of the overall number of the respondents declaring they would request the support of the institutional system, or 19.0% of them, do not which institutions they should address.

The attitude toward sexual violence against women by their partners or husbands is also strongly determined by the influence of the values of a dominant culture. That is how, in a patriarchal society, the husband had more rights than his wife in their marital relationship, including the right to sexual relationship as a part of the overall "marital duties". Only through development of a liberal society, with the emphasis on human rights of any individual over the rights of family or community, the concept of "marital rape" can begin to be considered in a traditional, collectivist society such as BiH. Graph 15 shows the attitudes of the respondents regarding sexual violence by a man within the marriage/relationship.

Graph 15: *Sexual violence in a relationship*



Graph 15 legend (top-bottom): I would not tell anyone, I would talk to my friends, I would talk to my family members, I would contact the state institutions, Other (I would leave him)

Unexpectedly, the majority of women respondents (61.0%) said that they would contact the state institutions in cases of sexual violence, when compared to other forms of violence by their partners. This data is indicative of the increased awareness of women regarding some of their fundamental human rights within a relationship. Additionally, a significantly lower

willingness to contact the family (11.7%) and friends (3.9%) in relation to other forms of violence, could be understood when linked to the shame these women might feel. A sense of shame as one of the obstacles for contacting family or friends could represent a special form of danger in cases of women who would opt for institutional support, but do not know which institutions they should contact (as many as 22.8% of the overall number of those who would contact state institutions). These women, as well as those who stated that they would not contact anyone for help (13.0%), feel left on their own in cases of violation of their fundamental human rights through sexual violence by their partner.

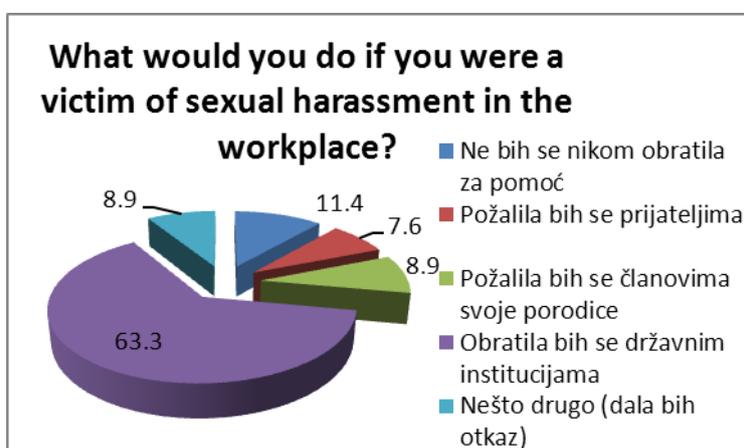
We can conclude that the majority of women respondents choose to contact state institutions in cases of sexual violence (61.0%), when compared to other types of violence by their partners. Slightly fewer of them believe they would contact the state institutions in cases of physical violence (53.2%), and the least number of them would do so in cases of psychological violence (44.3%). An important fact is that, within this group of the respondents opting for institutional support, a significant portion of them do not know which institutions they should actually address (11.4% in case of physical, 19.0% in case of psychological, and 22.8% in case of sexual violence, of the overall number of those opting for the institutional support). This is an important piece of information which shows that the institutional system of protection in cases of domestic violence against women is not recognizable or familiar enough to its core beneficiaries, i.e. that the procedure for initiating the mechanisms of protection is unclear and unknown to them. Respondents opting for institutional protection without knowing which/how are similar to the group of respondents opting not to contact anyone for help – in cases of psychological (13.9%), sexual (13.0%), and physical violence (10%) by the man they are in relationship with or married to. They all have in common the feeling of helplessness regarding the external systems of protection, whether formal or informal. Perhaps precisely because of that, instead of opting for formal and informal systems of protection, one group of respondents stands out by opting for independent action – leaving their partner (6.3% in case of physical, 11.4% in case of psychological, and 9.1% in case of sexual violence). However, the etiology of violent behaviour is such that it can rarely be interrupted by the attempt to leave the partner. Moreover, such an attempt could provoke an increase and culmination of violence against women by their partners, and can occasionally even lead to homicide. The family stands out as an alternative to formal form of protection, which the respondents would opt for most

frequently in case of psychological (22.8%) and physical violence (22.3%), and significantly less frequently in case of sexual violence (11.7%).

1.2.3. Women's rights in the workplace

The right of women to work is closely linked to respecting their fundamental rights in the workplace. The work environment is also one of the places in which women might be treated unequally in comparison to men, or even become the victims of gender-based violence. Graph 16 represents the opinion of women about whom to contact if they were a victim of sexual harassment in the workplace.

Graph 16: Sexual violence in the workplace

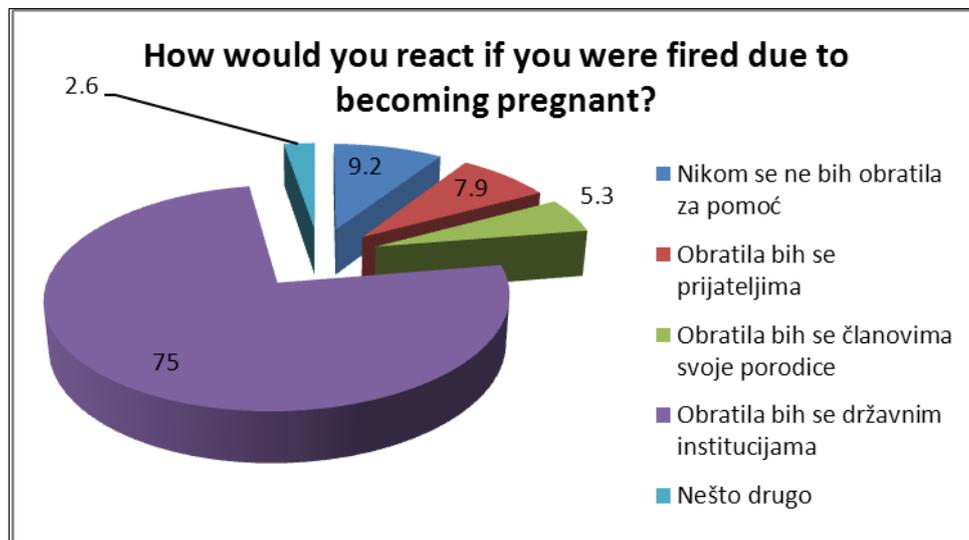


Graph 16 legend (top-bottom): I would not seek assistance from anyone, I would complain to my friends, I would complain to my family members, I would contact the state institutions, Other (I would quit my job)

After examining Graph 16, we notice only a slightly higher determination of women to seek institutional support in cases of sexual harassment in the workplace (66.3%) in comparison to sexual violence in a relationship (61.0%). However, as many as 25.3% of women who would contact the responsible authorities do not know which institutions can provide the help they require. These findings are also indicative of the sense of insecurity of women in cases of sexual violence, in the family and the working environment. This is supported by the portion of the respondents who would not contact anyone for help (11.4%). Informal systems of support, such as family (8.9%) and friends (7.6%), are somewhat less represented than in cases of domestic violence. As one of the passive-active forms of protection of their rights, as in domestic violence, the most prominent is the escape or leaving the threatening relationship – through quitting a job (8.9%).

The right to protection of health and reproductive rights of women has its significant implications for the treatment of women in the workplace in case of pregnancy. One of the most severe violations of women's right to work and the right to protection of reproductive rights is manifested through an arbitrary termination of employment by the employer at the onset of pregnancy of a female employee. In this light, the data in the Graph 17 show whom the women would contact for protection in such case of severe violation of their rights.

Graph 17: Termination due to pregnancy



Graph 17 legend (top-bottom): I would not seek assistance from anyone, I would talk to my friends, I would talk to my family members, I would contact the state institutions, Other

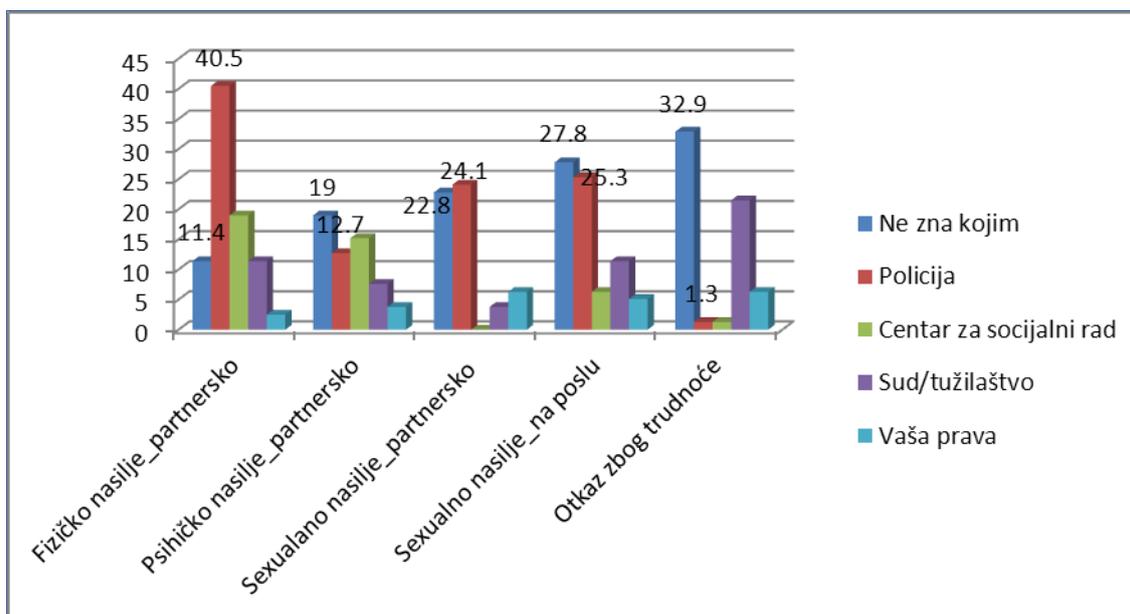
By analysing Graph 17, and in relation to previous data, we can determine that women recognize the arbitrary termination of employment by the employer in case of pregnancy as a violation of their rights due to which they would be most willing to contact the state institutions for protection (as many as 75% of them), in comparison to all the other previously mentioned forms of violence in a relationship or at the workplace. In this case, there is a significant "decrease" in the frequency at which they seek help from the family and friends as the informal systems of support. The fact that as many as 9.2% of women respondents would not contact anyone for help, even in such a case of violation of their rights, is alarming.

We can conclude that there is an increase in recognition of the importance of contacting the responsible institutions for help in cases of serious violation of women's rights in the

workplace, in the form of sexual harassment or termination due to pregnancy, However, there is still a significant number of women (about 10%) who would not contact anyone for help even in these cases. At the same time, the confusion or ignorance of women in terms of which institutions to contact in case of violation of rights in the workplace is also significantly increased. In that regard, of the total number of women who stated that they would seek institutional support in such cases, significantly highest is the number of those women who do not have any knowledge of whom to contact. These are significant data because they speak not only of the importance of further education of women on their rights, but also of the importance of development of the entire system of protection of women's rights in the workplace. This is supported by the fact that almost one third of women opting for institutional support in cases of severe violations of their rights in the workplace (32.9% in case of termination due to pregnancy, and 27% in case of sexual violence) do not know which institutions they should contact for protection. Once again, it is confirmed that the system of institutional protection of fundamental women's rights in BiH is alienated from its core beneficiaries, and is complex and ambiguous.

1.2.4. Level of trust in the facilities and institutions for the protection of human rights

In connection with previously reported findings, we have also examined the level of trust the women in BiH place in those institutions which are established as the subjects of protection by the relevant legislative frameworks, and which are obliged to provide the protection from violent behaviour. These are the police, the prosecutor's offices, and the centre for social work, or the social protection services in cases of domestic violence (the Law on Protection from Domestic Violence in RS and the Law on Protection from Domestic Violence FBiH). Graph 18 provides the overview of the institutions recognized by women respondents as the systems of support and protection in case of violation of their rights in a relationship/marriage, or in the workplace.

Graph 18: *Institutions and services recognized as the subjects of protection of women's rights***Graph 18 legend:**

Left-right: Physical domestic violence, Psychological domestic violence, Sexual domestic violence, Sexual violence at work, Termination due to pregnancy

Top-Bottom: Do not know which, Police, Centre for social work, Court/Prosecutor's Office, Vaša prava

By analysing Graph 18, we conclude that, in cases of physical and sexual violence in a relationship/marriage, as well as in cases of sexual violence in the workplace, our respondents see the police as "the most visible" and the most important institution for the protection of women's rights. Physical violence is such a severe form of violation of women's rights, that it boasts the lowest level of indecision and confusion of women in terms of institutional system of protection – "only" 11.4% of women do not know whom to contact, although they recognize the importance of the institutional response. Despite the recognition of its necessity, this alienation from the institutional support "increases" with more and more complex forms of violence, and reaches its culmination in cases of termination due to pregnancy. It is also interesting to note a significant decrease in decision to contact the centres for social work in cases of sexual violence, both in a relationship and in the workplace. We assume that this is due to the unpreparedness and a lack of sensibility of these social protection services in providing adequate support in cases of sexual violence against women. The willingness of women to seek judicial protection is lowest in cases of psychological (7.6%) and sexual violence (3.8%) in relationship/marriage, as well as in cases of sexual harassment in the

workplace (5.1%). These data show that women do not recognize the courts as the systems which could offer support and compensation in cases of serious violations of their rights. Only a slightly higher percentage of respondents (11.4%) recognize the court as the institution they could address in cases of physical violence in a relationship/marriage, and the highest number of them would do so in cases of termination of work due to pregnancy (21.5%). *Overall, we can conclude that the women respondents do not recognize the court as an important institution which can provide the protection and compensation in cases of domestic/family violence and sexual harassment in the workplace. Although there is an increase in the level of recognition of the court as a system of institutional protection in cases of termination due to pregnancy, it is still disturbingly low and generally indicative of the extreme alienation of the court from women who are potential victims of domestic violence or violence in the workplace. We have also determined that non-governmental organizations, such as Vaša prava, have been recognized as systems which can provide support in the analysed cases.*

Finally, Table T4 and Graph 19 show the established level of trust the women have in the systems of institutional support in cases of violation of their fundamental human rights.

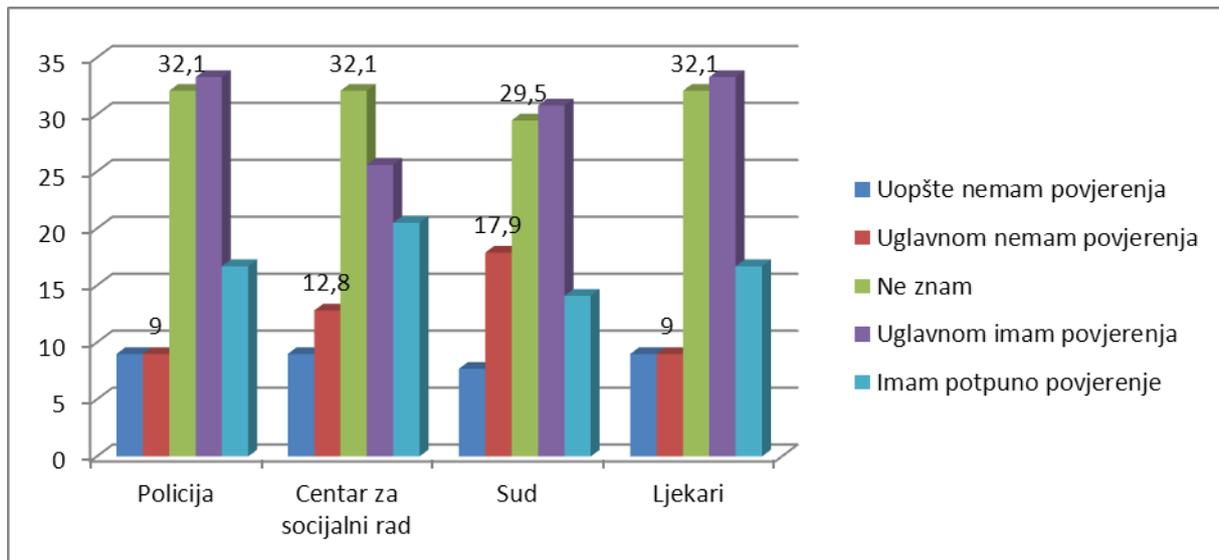
Table T4: *The level of trust in services/institutions for the protection of human rights*

Service / institution	<i>I complete trust them</i>		<i>I mostly trust them</i>		<i>I don't know</i>		<i>I mostly don't trust them</i>		<i>I don't trust them</i>		Mean
	<i>F</i>	<i>%</i>	<i>F</i>	<i>%</i>	<i>F</i>	<i>%</i>	<i>f</i>	<i>%</i>	<i>F</i>	<i>%</i>	
Police	17	21.8	25	32.1	20	25.6	9	11.5	7	9.0	3.46
Centre for social work	16	20.5	20	25.6	25	32.1	10	12.8	7	9.0	3.36
Court / Prosecutor's Office	11	14.1	24	30.8	23	29.5	14	17.9	6	7.7	3.26
Health services	13	16.7	26	33.3	25	32.1	7	9.0	7	9.0	3.40

By analysing the mean values in table T4, we observe a similar average level of trust in all the mentioned institutions, centred in the median, i.e. at the border between trust and distrust. This means that when asked a direct question regarding the level of trust in the mentioned institutions, the respondents display indecisiveness or hesitation. We believe these results are partially a reflection of providing socially desirable answers, meaning that the actual level of trust is significantly lower, primarily taking into consideration the previously analysed results.

More specifically, if women respondents trusted the court, the police, or the centre for social work, why would they fail to recognize them as the institutions which can provide support or compensation in cases of the most serious violations of their rights? Graph 19 provides a clearer overview of their trust in the institutions.

Graph 19: *The level of trust in services/institutions*



Graph 19 legends:

Left-Right: Police, CSW, Court, Medical professionals

Top-Bottom: I don't trust them, I mostly don't trust them, I don't know, I mostly trust them, I completely trust them

The analysis of Graph 19 confirms the conclusion based on the analysis of mean values. The highest number of respondents is indecisive when it comes to trusting any of the mentioned institutions (25-30%). Partial trust in those institutions is almost equally or slightly more represented (25-30%). The highest prevalence of complete trust is awarded to centre for social work (20%), and the lowest to the court (14%). In any case, we observe almost negligible differences and a similar distribution of different levels of trust and distrust toward all institutions.

2. Qualitative research – workshops with women

2.1 Objectives of the workshops

Workshops with women were organized with *two main objectives* in mind: 1) collection of data on difficulties in accessing the protection of women's rights in BiH from their own perspective, and 2) psycho-social empowerment of women in BiH.

Regarding the data collection objective, the workshops represent a form of qualitative research within the focus groups, with the aim of examining the level of awareness of women on their rights, the factors affecting the information available to them (prejudices, patriarchal society), the significance of specific rights for women themselves, the way they understand the access to court and administrative response in case of violations of women's rights, the attitudes they have toward the representatives of the system of protection of human rights in general (police, court and prosecutor's offices, centre for social work, non-governmental organizations), the trust they have in the institutional systems of protection of human rights, and finally, the direct experiences of women regarding the violations of their human rights, as well as the resources and difficulties in the access to justice that stem from those experiences. All of this information contributes to the women's recognition of difficulties in the protection of their rights in BiH.

At the same time, the workshops were developed with the aim of psycho-social empowerment of women in BiH. Although we cannot achieve the full capacity of strengthening of psychological capacities of women in such a short period of time, the

focus on informing women on their rights and mechanisms of protection in case of violation of these rights in BiH certainly contribute to a better knowledge and understanding of their rights, specific cases of their violation, as well as of formal mechanisms of protection and access to justice. These are all outcomes that contribute to psychological empowerment of women. Additionally, the workshops were based on respect for fundamental human rights, such as equal access, respect of dignity of any individual, respect for diversity. The workshops focused on strengths and were an incentive for an active approach to the protection of vulnerable rights. In this manner, female participants gain the experience of group work based on the protection of their rights, and the recognition of their strengths and abilities to fight for more adequate social support. One of the outcomes of this experience is a higher level of psycho-social empowerment of women.

2.2 Timeframe of the Workshops

Workshop timeframe is 5 hours per group of participants. A 5-hour workshop was held in Prijedor, and another one in Mostar. Total duration of workshops was 10 hours.

2.3 Human and Technical Resources

Human and technical resources were provided for the purpose of holding the workshops. For the *workshop in Mostar*, three lawyers from the association Vaša prava and a workshop facilitator/educator were provided as *human resources*. The following technical resources were required: work space (Hotel Bristol), projector, laptop, voice recorder, pens, notebooks, cards with women's rights, lunch, and refreshments for the participants. For the *workshop in Prijedor*, two lawyers from the association Vaša prava, and a

facilitator/educator were used as *human resources*. *Technical resources* included: work space (Hotel Prijedor), projector, laptop, voice recorder, pens, notebooks, cards with women's rights, lunch, and refreshments for the participants.

2.4 Participants

The workshop in Prijedor included women from various particularly vulnerable categories of the population, who are affected by combined risk categories: single mothers, unemployed victims of domestic violence, victims of persisting domestic violence with housing problems, Bosniak women who are members of the families of fallen soldiers, uneducated and unemployed Roma women with multiple children, unemployed women representatives of the association of single parents. In general, poverty and unemployment stand out as risks affecting all women participants, and many of them have experienced different forms of domestic violence.

Workshops in **Mostar** were also attended by the women affected by combined risks categories: women with persisting experience of most brutal violence by the partner and child as well as the women victims of various forms of physical, psychological, sexual, and economic violence, unemployed women, women with dependent children, poor and unemployed single mothers with more than three children and without alimony support from the former partner, unemployed women affected by a malignant disease, retired women without family support who were illegally deprived of the ownership of their flat, women leading the organizations for support for women victims of violence.

In conclusion, all workshop participants were affected by poverty and various forms (temporary or long-term) of unemployment. Majority of them have experienced violence in relationship/marriage. More than half of the participants also have minor children.

2.5. Implemented Activities

The following activities, which can be classified into six different categories, were implemented within the workshops. Each category of the activities, together with an explanation of its significance and content, is individually presented in the text below.

2.5.1. Working in small groups, creative workshops

At the very beginning of the work, these activities included a joint preparation and illustration of posters with the rules of group work (*what is important to us while we are working in a group, what do we want or do not want from other participants*). The second part of this type of activity included illustration and discussion of the cards with women's rights and the institutions for the protection of human rights (the police, centre for social work, court, and the prosecutor's office). Each woman participant chose a card containing one of the fundamental woman's rights, and had the task to present that right to other participants - what it means for her, how she perceives it - focusing on personal experience of the violation of women's human rights.

2.5.2. Education

In order to inform the participants of their rights and to stimulate further discussion on personal experiences and perspective, *power point* presentations on women's rights were held (based on the Convention on the Elimination of All Forms of Discrimination against Women, 1979). The focus was on the rights of women in partnership relation and in the family (private sphere), rights related to work and working place, as well as rights in public and political life. Women were invited to interactively participate during the presentation by sharing their understanding of

the meaning of certain rights, and to provide an illustration of their personal experience of violations of that right. In addition, we provided a *power point* presentation on the institutional and non-institutional systems of protection in cases of violation of human rights, including women's rights. The objective was to better familiarize the participants with those mechanisms of protection, as well as to assess their understanding and attitude toward specific systems. Discussions were held and clarifications were provided following both presentations.

2.5.3. Film Screening

During the workshop, we screened a Spanish movie "I give you my eyes", based on the illustration of physical, psychological, sexual, and economic violence against a woman, as well as on various levels of social factors (family, police, health care) which directly or silently support those forms of violence. The goal was to motivate the participants for discussion on personal experiences of the violation of rights.

2.5.4. Guided Discussion

After the presentations and the film screening, guided discussions were held focusing on the personal experiences of the women participants, which might illustrate the meaning of the specific rights, instances of their violation, as well as the experiences with the institutional system of protection. The goal was to hear the "beneficiary's perspective", i.e. to examine how and to which extent women understand their rights, and how they experience the institutional system of protection.

2.5.5. Demonstration of respect for fundamental human rights of women participants

Creative workshops, discussions, and presentations are based on the respect of uniqueness and dignity of each participant, their right to self-determination and diversity, equal access, focus on strengths, and the belief in the capacity for change. It is a humanist management of group process, based on the respect of fundamental human rights of the participants.

2.5.6. Evaluation

Through the use of semi-structured interviews and focus group discussions, the process culminated with the evaluation of the effects of participation in the workshop. The goal was to receive feed-back information from the participants on the benefits and difficulties of participation in the workshop.

2.6. Methodology

Methodology of the workshops can be represented within five segments: 1. establishing the process of work in group, 2. establishing trust and cooperation with women participants, 3. using the skills which focus on respecting the fundamental human rights of women participants, 4. informing of women, 5. assessment of knowledge, experience, and needs, in relation to protection of their fundamental rights and access to justice. Each of those methodological segments was used with the aim of qualitative data collection and psycho-social empowerment of the participants.

As a part of **establishing the process of work in group**, we held presentations by the organizers, and introduced the goals and objectives of the workshop, as well as the work schedule. This was followed by joint development of rules of work in group, with the aim of establishing the basis for group structure and dynamics that lead to the realization of the previously defined objectives.

Establishing trust and cooperation with women participants is a methodological framework which includes the demonstration of the respect for uniqueness and diversity of each participant, the respect of dignity, equal approach to all participants, the ethics of participation – the recognition of women participants as the "experts of experience", focusing on their strength and resources to fight for the protection of their rights. The main goal was to establish a safe and confidential environment in which the women are free to express their perceptions and personal experiences.

Using the skills which focus on respecting the fundamental human rights of women participants included the application of the following skills:

- Skills of active listening and empathic understanding
- Skills of managing and directing the discussion
- Skills of asking in-depth questions
- Skills of helping women to clearly identify and present their experience
- Focus on the initiative, strength, and power of women participants
- Skills of finalizing the process and evaluation.

Use of these skills oriented the group processes toward obtaining the answers to previously set research questions, in a way which contributes to psycho-social empowerment of women for recognizing and exercising their rights.

Informing of women is a methodological framework that includes education on two main aspects of women's rights and their protection: 1) informing the women on significance and content of fundamental women's rights (the Convention on the Elimination of All Forms of discrimination against Women, 1979) in the family, the workplace, and in public and political life; and 2) informing the women on the access to justice in BiH, in cases of violation of fundamental women's rights in the family and in the workplace – with a focus on the system

of institutional protection in cases of human rights violations and violations of women's rights in the local community, its specificity, formal and informal procedures in cases of violations, etc.

Finally, **the assessment of knowledge, experience, and needs, in relation to protection of their fundamental rights and access to justice** includes:

- Assessment of the level of awareness of women regarding their rights, with focus on the personal experience of participants
- Assessment of the level of awareness of women participants regarding violations of their rights, with focus on personal experience of the participants
- Assessment of knowledge on the mechanisms for access to justice, with focus on personal experience
- Assessment of the attitudes and feelings regarding the systems and services for protection in cases of human rights violations (police, centre for social work, court, and the prosecutor's office, NGOs)
- Assessment of difficulties in the protection of women's rights, with focus on personal experience
- Assessment of the needs for strengthening the protection of certain rights regarding particularly vulnerable categories.

The main benefit of such assessment is to obtain personal perspectives and experiences of the women themselves, in relation to significance and content of their fundamental rights, as well as in relation to the mechanisms of protection in cases of their violation.

2.7. Difficulties and Methods for Resolving

During the course of workshops certain difficulties arose, and were successfully resolved. We will present those in reference to particular workshops in Prijedor and Mostar.

During the **workshop in Prijedor** we faced certain specific difficulties:

- *Illiteracy of the Roma women group*

Due to illiteracy of the group of Roma women, there were difficulties in the implementation of certain activities, such as the analysis and illustration of cards with rights and institutions, as well as with reading the translation during the film screening. This obstacle was resolved by one of the lawyers present at the workshop who read for those women who could not read on their own.

- *Large group heterogeneity*

In the group of women at the workshop in Prijedor, there was a discrepancy between the uneducated Roma women on the one side, and, on the other side, the women who are socially active through leading non-governmental organizations. This initial obstacle was overcome by building the group cohesion through focusing on mutual problems: poverty and unemployment on the one hand, and inequality in relationships on the other, as well as on difficulties in protection of women's rights regarding the relevant institutional systems.

During the **workshop in Mostar**, we encountered the following difficulties:

- *Emotionally overwhelmed women with extremely traumatic experiences*

There were several women in the group with specifically traumatic experiences, such as decades of living a life in fear of their husbands, the attempted murders, mothers renouncing their parental right and obtaining a court issued restraining order due to threats to life made by a chronically mentally ill son, poverty of a single mother with four children who could not feed them, and so on. These women had a strong need to continuously talk about their experiences in a way that reflects helplessness and hopelessness. This challenge was overcome by the workshop facilitator who summarized their stories by connecting them with the interpretation of certain rights and institutions which provided or should have provided the protection, and invited other participants to join a discussion with similar examples of threats to certain rights, such as right to life and safety.

- *Insisting on obtaining specific legal advices*

Several women had a strong need for obtaining specific legal advices by the lawyers from the association *Vaša prava* who attended the workshop. A woman who suffers from a serious illness and cannot afford her medication wondered if she could somehow exercise the right to additional financial compensation for the treatment. Another woman lost her apartment and was curious to learn how to regain the right to ownership. A third woman had a problem because her ex-husband refused to pay child support, and she is unemployed with four children she can hardly afford to feed. Another was interested in the options for protection in cases of domestic violence, considering that she had to return to her abusive husband after a few years due to a long and ineffective judicial process regarding the allocation of assets. This obstacle was overcome by briefly answering their questions, and subsequent scheduling of meetings in the association *Vaša prava* for further legal consultations. Although such "interventions" posed certain difficulties in the realization of the planned schedule, the women's need for legal answers was recognized as the priority based on respect of perspective of the beneficiaries, which is why the workshop facilitator showed flexibility and created space for answering those needs.

2.8. Specific contribution / resources which were strengthened through workshops

Specific contribution of the held workshops, in accordance with previously defined objectives, can be presented within several sections.

Primarily, the participants were **informed of the basic significance and content of women's rights**. Some of them did not even know the content of the basic concept, and one of them connected women's rights only with partner relationships ("*My husband died, let those who still have a husband talk about it...*"). Additionally, some of the participants were unaware of a woman's right to refuse sexual intercourse in marriage if she does not want it ("*He (the husband) says: I'll*

go to another woman, or I'll get it by force... what can I do, it's better for me to please him."). Other participants did not understand the scope of certain rights, believing that everyone has the right to ownership of an apartment (*"They won't give me an apartment because I'm a Roma woman"*). In any case, through the presentation on the meaning and content of fundamental women's rights, as well as through guided discussion afterwards, we made a specific contribution to informing the participants of the significance and content of their fundamental rights in different spheres of private and social/public.

Additionally, participants were **informed of the available means of protection of their rights and access to the institutional system of protection**. This was one of the most important previously defined objectives in our work within the workshops, since the quantitative research showed the lack of knowledge on the system of protection in cases of violation of certain rights, as well as an ambivalent attitude when it comes to trust and availability.

The important specific resource of this research is the fact that data was collected directly from the perspective of women themselves, from their own understanding and experience. Thus, we received the **authentic data** on whether and to what extent women know and understand their rights, as well as an insight into their attitude toward the institutional system of protection in cases of violation of their rights.

Finally, through such approach to research, we have also recognized the main risks within the system of protection of women's rights in BiH regarding the **specific, particularly vulnerable categories of women**. Those categories of high risk include poor and unemployed single mothers, without the support of a father in terms of child care, whether because he is deceased (when there is no alimony support, or any other type of specific compensation), or because he refuses to pay child support. The problem with non-

payment of child support is specific in terms of the BiH system of social and judicial protection. Namely, a significant number of fathers have jobs which do not require them to sign the employment contract (they work the "under the table"), or are receiving the financial support of the family abroad. In that case, even though they may have a large income on their bank account, there are no mechanisms of ensuring the payment of child support. Another category at a particular risk are women who decided to end the long-term domestic violence by leaving their partners, they are poor and unemployed, do not have any accommodation, have minor children (length of stay in a "Safe House" is limited to a few months). Because of complex and lengthy litigation, those women are sometimes forced to return to the joint household and the violent husband. As a special risk for women's rights in the Roma population, we recognize not only the lack of basic education of the Roma women, but also their lack of understanding the importance of education as a whole. The importance of education is associated with basic literacy ("I can always learn how to read and write"), while the role of education in achieving the right to work and the improvement of women's rights in general is not recognized. All of these women show deep distrust and disappointment with the institutional system of protection and, with the exception of the Roma participants, also show an alarming, pervasive level of hopelessness and helplessness in terms of protection of their fundamental rights.

In spite of the above, we believe that a great strength of these workshops is the fact that they have created in women participants a high level of motivation for attendance. Although they were insecure, passive, and hopeless at the beginning of the workshop process, women shared their perspectives and experiences with human rights violations and the systems of protection, with a gradually increasing enthusiasm. Within the manner in which these workshops were conducted, women received a positive experience of support and empowerment, during a

relationship based on acceptance, respect, and confidence in their capacities and resources.

2.9. Specific weaknesses / critical factors identified during the workshops

During the workshops, the following four most important critical factors were singled out:

- short time-frame for conducting the workshops,
- overly broadly defined objectives in relation to the time-frame,
- overly heterogeneous group of participants, and
- a high level of emotional distress of some of the participants, related to years of experiencing vulnerability and inability to exercise some of their fundamental rights, particularly the right to life.

The heterogeneity of the sample stems from a broad set of main objectives of the workshops. Voluntary participation and the need of women for such workshops were one of the basic criteria for attending a workshop, which brought a factor of unpredictability that contributed to high heterogeneity of the workshop groups. Although such diversity of women's difficulties surely brought certain benefits in terms of defined work objectives, I would suggest a more homogenous group of participants for the next sample selection. Additionally, it is reasonable to assume that a longer time-frame of workshops would contribute to a more adequate and more comprehensive realization of defined project objectives.

Generally speaking, one of the dominant critical factors regarding women themselves is that they overwhelmingly struggle to achieve some of their most fundamental rights associated to mere existence, such as the right to life (from threats and attempted murders, physical violence, to the right of having access to food). Due to being overwhelmed by the experience of sifting through garbage bins in search of food or feeding their children in public charity kitchens, the participants could

not focus on the discussion about women's rights in the workplace or in social and political life. Preoccupation with fundamental existential problems, as an attempt to respond to basic existential needs, does not leave much energy and motivation for self-actualization of women and, within that, the struggle for a fairer society. In this regard, in addition to the importance of support for fundamental existential safety of these women and their minor children, we identified a strong need for continuous psycho-social support, as well as for psychological help for the integration of traumatic experiences of women participants.

2.10. The impact of the implemented activities on the lives of women and their families

We draw a conclusion that the activities implemented during the workshops contributed to certain positive changes in the personal perspectives of women participants, which directly affects the contribution to their parental capacities. Also, the identified weaknesses of the institutional system of protection and the suggested recommendations based on them may encourage new researches which will initiate the important changes within the system of protection itself. These contributions will be presented within the next seven separate segments.

- Informing the women of their rights, primarily in private, but also public/political areas, is the first step in development of a society in which women recognize their rights
- Informing them of the representatives of the women's rights protection system incites an increase of women's security in their local community and in the society as a whole, i.e. an increase of the perception of a woman's right to request assistance the self-confidence that comes with it,
- Highlighting and recognizing education as a way for developing new competencies for increasing the existing level of protection of women's

rights, or simply as a way to better protect their rights, may contribute to an increase in motivation for further education of women participants

- Each subsequent education and motivation of women for their rights indirectly increases their parental capacities for a more adequate protection of their children's rights
- Recognising the need to organize specific activities in the local community for adequately informing the women of their rights and access to mechanisms of protection
- Recognising the need to organize specifically sensibilised courts for working with specific categories of victims of violations of fundamental human rights/women's rights can represent a modest contribution to a struggle for a more adequate judicial protection of vulnerable women in BiH
- Recognising the need for organizing continuous psycho-social support for women victims of serious violations of their rights can represent the initiation of new project activities which will ultimately contribute to enrichment of the institutional system of support and protection for this specific type of service.

2.11. Relevant observed aspects regarding the access of women to the institutional system of human rights protection

During the workshops, we identified certain risk aspects regarding the access of women to the institutional system of human rights protection:

- Complicated and unclear procedures for accessing the institutional system of protection in cases of human rights violations in BiH
- Lack of special, adequate, and timely judicial reaction and the protection in cases of certain specific risks requiring priority response, such as domestic violence, primarily in case of families with dependent children

- Lack of long-term self-sustainable overall protection of women who decide to leave their husband after years of abuse, primarily if they have dependent children
- Lack of special, adequate protection and care for minor children of women who do not have the support of the other parent (he is dead, or does not pay child support)
- Limited access to the protection system for non-educated, illiterate Roma women
- Lack of adequate and timely psychosocial protection for women with particularly traumatic experiences
- And finally, the unique institutional system of protection is not sensibilised for different, specific categories of problems related to women's rights violations.

2.12. Women's rights in public and political life

Even though a special place within the workshop content was designated for discussion on women's rights in public and political life in BiH, this issue did not stir the interest of the participants. On the contrary, each attempt to analyse some of the rights within public and political life (such as the right of women to vote and be elected, the right to take a leadership position, to assume and perform all public functions in all levels of the government, in political parties, etc.), the participants brought the discussion back to some of the most fundamental human rights such as the right to life, right to life without violence, related to the specific risks posed by poverty, unemployment, and child care in single-parent families. We have analysed this focus of women on the fundamental human rights regarding the protection of the basic physical and psychological integrity from two perspectives. The first, an individual-psychosocial perspective focused on the hierarchy of needs and related rights. The second is a macro-level perspective, from which we observe the specifics of the BiH

society as a whole, related to public and political rights of women.

On an individual level, we perceive the participants as people whose primary needs have not been met. Maslow named these as physiological needs and needs for safety (1943). The need for food is one of the physiological needs. In cases of the participants who sift through garbage bins in search for food, or who have nothing to make for their children's lunch and have to take them to public charity kitchens, those basic physiological needs are occasionally not met. However, due to a lack of a permanent job or due to different types of vulnerability as a consequence of continuous violence, a dominant basic need which is not satisfied in case of our participants is the need for personal and family safety. Maslow considers physiological and safety needs as the needs of the most basic level, which means that if they are not met, the individual is primarily preoccupied with them, and lacks the motivation to deal with anything other than satisfying those needs. On the other hand, participation in social and political life can be considered to be motivated by what Maslow named the need for respect and self-actualization, and they appear only when the lower level needs are satisfied. Regarding our workshop participants, this would mean that their primary preoccupation for satisfying some of the basic physiological and safety needs is preventing them to become motivated for participation in social and political life. In the situation when they do not know how they will feed their children the following day, when there is a continuous threat to their life or their children's life due to violence by their partner, when they do not have permanent (or any) job so they cannot ensure the sustenance for their family in any future period, in short, when their own and their children's current and future survival is uncertain, women are not interested in participation in social and political life. Paradoxically, this type of participation would enable them to ensure some of their fundamental rights, and meet the needs related to these rights.

On the other hand, we observe the attitude toward women's rights in social and political life in BiH in general. At the legal-institutional level, numerous reforms and strategies were made toward the improvement of representation of women in public and political life in BiH. In accordance with the Gender Equality Law in Bosnia and Herzegovina (article 26, item a), a special Gender Equality Agency of Bosnia and Herzegovina was established for monitoring and analysing the state of gender equality in Bosnia and Herzegovina. It submits its reports on the subject to the Council of Ministers of Bosnia and Herzegovina. Reports, opinions, suggestions, and recommendations are created based on their analyses, and submitted to responsible bodies at the state level. In 2013, one of the recommendations led to the Amendment to the Election Law of Bosnia and Herzegovina, which establishes that there is equal representation when one gender represents 40% of the total number of candidates on the list (prior to the Amendment, the quota was 33%).

Gender Equality Agency in BiH presented the analysis of the overall participation of women in the legislative authority bodies in BiH, in reference to the elections in 2014. Thus, there was a total participation of 23.8% women at the level of the House of Representatives of the BiH Parliamentary Assembly, which represents an increase of 4.9% compared to 2010. There are 21.4% of women within the members of the House of the Representatives of the Parliament of the FBiH, which also represents an increase of 4.1% compared to 2010. In contrast to those bodies, at the level of the National Assembly of Republic of Srpska, the participation of women is 15.6%, which represents a decrease of 7.6% compared to the elections in 2010. The average percentage of elected women at the cantonal level is slightly lower (18.4%), whereby it is possible to determine huge differences among certain cantons. For example, total participation of women in the Parliament of Una-Sana Canton is just 6.7%

(*resource://pdf.js/web/*). It is interesting to note that such results come just one year after the amendments increased the quota for equal participation in government to 40%. In any case, we can determine that the occasional increase and decrease of the participation of women at different government levels seen at the elections in 2014 confirm that the improvement of the legislation is not directly related to the actual social change such normative reform aimed to achieve. In this regard, rather than providing the basis for final conclusions, these results suggest the need for further examination of social-political factors that dictate the growth or decline of women's participation in public and political life in BiH.

Changes of the normative framework, independently, do not mean the improvement of the participation of women in public and political life. Similarly, their representation within the legislative and executive power, in itself, does not mean the equality in making decisions regarding the important social issues. We are not only speaking of the fact that the actual percentage of women in legislative and executive power on all levels is below the

established quota (about 20%, on average). The actual participation of women in decision-making is not always directly related to their position, even within the legislative power. In BiH, the sources of power are primarily in political parties, i.e. in money and connections around which the party hierarchy has been built. In such a pyramid of power within the political party, women are most often at the bottom of the pyramid (if they exist at all), and have to accept the political rules adopted from the top of the hierarchical scale, in accordance with their position. The information on how many women are actually close to the top of the decision-making pyramid in some of the political parties cannot be found in any reports or research findings. The fact that there is not a single political party in BiH, with any degree of influence, with a woman at its helm leaves room for a justified concern that, despite formal-legal reform, this society is still dominated by the values of traditional, patriarchal society, according to which a man has a higher value and more rights than a woman, whose dominant role is the role of a mother and a housewife.



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