



gender equality and judicial practice in bosnia and herzegovina

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Banja Luka, March 2008

Title:

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Issuing of the publication "Gender Equality and Judicial Practice in Bosnia and Herzegovina" was supported by Canadian International Development Agency - CIDA.



PODRŽANO OD STRANE VLADE KANADE
SUPPORTED BY THE GOVERNMENT OF CANADA
SOUTENU PAR LE GOUVERNEMENT DU CANADA

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1. INTRODUCTION

The study "Gender Equality and Judicial Practice in Bosnia and Herzegovina" represents the result of homonymous project implemented by nongovernmental organization Helsinki Citizens Assembly Banja Luka during 2007 and the first three months in 2008. Several things directed a path and methodology of project implementation, and its content was primarily influenced by the fact that since adoption of Gender Equality Law in 2003 until middle 2006 we did not have any case of the judicial practice or judicial implementation of this Law.

We wanted to check factual situation if any court in Bosnia and Herzegovina recorded any case based on Gender Equality Law of Bosnia and Herzegovina, and based on acquired information to determine "culprits" for non implementation of this very important Law from the aspect of women's human rights.

This leaded us to analysis of all articles of the Law in order to eliminate eventual textual understatements that hinder clear legal/juridical interpretation, as well as the implementation of the Law in the practice. During the preparation of the project, it also turned out there is a large dilemma which courts have jurisdiction to act upon this Law. According to opinion of some of our collocutors, only the Court of Bosnia and Herzegovina has jurisdiction act upon this Law, while others believe that municipal or entity jurisdiction of courts can not and must not be an obstacle in application of any umbrella law, including the Gender Equality Law.

Article 19 of the Gender Equality Law clearly says that "everyone whose right set by this law has been violated shall have the right to initiate criminal or civil proceedings before courts of general jurisdiction." Why then we do not have registered examples of judicial practice? How much judges and prosecutors are really familiar with Gender Equality Law, and how much victims of gender based discrimination know it exists? These were some of the questions we tried to answer in this Study.

We should remind that during 2005 the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, supported by UNDP created the working groups for implementation of the Law, with emphasis on media, public life, education and social and health protection. This was done with objective of integrating Gender Equality Law in social life of Bosnia and Herzegovina. The working groups had a task to determine situation in a field, and provide recommendations for implementation of the Law in these four areas.

However, that practical part - possibility of accomplishing judicial protection in a case of violation of the Law - stayed out of reach and interest of working groups.

With ignoring the articles of Law related to possibility of judicial protection, compensation of damages and penal provisions, we additionally marginalize the issue of equality of women and men in society, and persons discriminated on the basis of this Law are not

motivated to continue with seeking to acquire their rights. We believe that if only one case would be processed based on this Law, it would motivate others to start with using this Law as a tool for realization of their rights. This would increase legitimacy of a legal state, which we insist on. Therefore, with non-implementation of Gender Equality Law in courts, victims of discrimination stay deprived of judicial protection, and are perceived as vulnerable and marginalized category, and not as someone that has power to initiate application of the Law in the practice and ensure rule of law.

Overall aim of the project "Gender Equality and Judicial Practice in Bosnia and Herzegovina" is to enable practical application of Gender Equality Law of B&H in terms of realization of right to judicial protection regulated by this Law.

As a part of this project we conducted three-months field research and collected data from courts, prosecutor's offices, pedagogical institutes, ministries of education, Gender Centers in both entities, Agency for Gender Equality, Regulatory Agency for Communications, Press Council, trade unions, and nongovernmental organizations that are providing legal assistance services to women and men citizens. Second part of the research focused on analysis content of the Law and providing commentary.

Following persons were making a team that was engaged in the research part of the project "Gender Equality and Judicial Practice in B&H": Vildana Helić, a Judge of the Cantonal Court in Tuzla, Selma Šaćirović, a Judge of the Basic Court in Bijeljina, Hajrija Hadžiomerović Muftić, a Prosecutor in Prosecutor's Office of Federation of B&H, Zilka Spahić Šiljak, a Coordinator of Post Graduate Program of Religious Studies in the Center for Interdisciplinary Postgraduate Studies (CIPS) at University of Sarajevo, Natalija Petrić, a Legal Advisor of NGO United Women Banja Luka, and Aleksandar Živanović and Dragana Dardić, activists of nongovernmental organization Helsinki Citizens Assembly Banja Luka.

We hope this Study will provide solutions for some of the issues related to implementation of Gender Equality Law of Bosnia and Herzegovina, and that we set a path we should use in a future in order to encourage active usage of this Law in the judicial practice. However, above the all, we hope this way we will encourage victims of gender based discrimination to seek for protection of their rights in courts, as Gender Equality Law of B&H enables that.

This booklet is a short English language version of the Study "Gender Equality and Judicial Practice in B&H". It provides the key findings, conclusions and recommendations that are results of the research.

The booklet has been updated with some new findings and data that came out after October 2007 when the Study was printed.

2. INTERNATIONAL LEGAL FRAMEWORK

"We women do not know much about our own history and our own identity; we are unknown even to ourselves, and deprived from a possibility to get to know ourselves; we are ready to believe in myths about us, even if they are opposing to our reality; we are prevented to examine ourselves clearly; we are so busy with watching others that we stay in their shadows; we are told that a way others see and understand us is sufficient for our existence."¹

2. 1. Why Women's Human Rights

Equal rights and possibilities for women and men are one of the fundamental principles of international norms and standards that have been established and developed during second half of 20th century. However, soon after adoption of the Universal Declaration on Human Rights, it became obvious that special attention should be paid on affirmation of women's human rights, with stronger participation of women in preparation and defining of new international norms and mechanisms for promotion and protection of gender equality. That was really important step toward improving status of women, because, as introductory citation shows, women know very little about themselves and are satisfied with what others have to say about them, with accepting a status defined by others.

Even if the existing legislative framework offers equal perspective of sexes through universal norms and standards, women often do not have enough strength to fight against patriarchal cultural norms and customs that are situating a woman as 'other' in relation to a man, which was and still is a norm with which everything should be adjusted. If we advocate for universal human rights and equal possibilities, it is still necessary to speak independently about women's human rights, because reality still shows that majority of countries have the same norms treating differently men and women, which results with unequal possibilities in enjoyment of human rights.

Quick look through the past shows that first declarations on rights and freedoms were both terminologically and legally excluding women. Proclamation that human rights are immanent to a human being with birth, because people are born free and equal in their rights (American Declaration of Independence from 1776, and French Declaration on Rights of a Man and Citizen from 1789) does not equally target women and other marginalized groups on basis of race and other essential characteristics. Slavery was still acceptable, and women were not perceived as equal participants of "social contract" (Hobbs, Rousseau), as they also did not enjoy the same citizens and political rights as men.

As response on exclusion of women from citizens and political rights, the first voices of resistance and protest to open discrimination against women are emerging. On 1791, Olympia de Gouge published the Declaration about Rights of a Woman and Citizen as

1 M. Lagarde, *Memoria Feminista*, Otra Guatema, No.12, 1990. 17.

2 Klimenkova Tatjana, *A Woman as Cultural Phenomena*, (Belgrade: Center for Women's Studies, 2003), page 25

her response to the French Declaration on Rights of a Man and Citizen. Naturally, her Declaration, as well as debates of Mary Wollstonecraft with liberal philosophers J. J. Rousseau and J. Lock about inferior female nature in relation to a man stayed unknown to a wide public until feminist critique did not promote them in the light of fighting for application of already recognized civil and political rights in middle 20th century.

After the Second World War, modern context of human rights has been established whose foundations are strengthened with the Charter of United Nations (1945). After that, the Universal Declaration on Human Rights and Fundamental Freedoms (1948) has been adopted, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966). Beside these documents, many other international standards have been adopted with objective of strengthening existing catalogue of human rights and providing effective response on needs and requests that United Nations were facing during that period. This was still not enough for women to acquire equal treatment in all spheres of life, especially in the field of public policy and decision making. Thanks to the efforts of the UN Commission for Position of Women (1947), which can take credits for adoption of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and organizing four world conferences on women - in Mexico, Copenhagen, Nairobi and Beijing - women's human rights were placed in focus of public attention and recognized as integral part of human rights. Vienna Declaration and Program for Action clearly define this determination:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

2. 2. Concept of Equality

The basic references of human rights discourse are equality and equal possibilities for all, regardless sex or some other identity. However, there are two concepts of understanding and approach to the equality in the international and national law. Equality of women and men should be all-encompassing, which means this should be also formally expressed through law, but also should respect the specific needs of women and men as individual human beings, taking into consideration real situation in a society³. These two concepts are different, but also mutually connected and interwovened.

Juridical equality relates to equality of sexes guaranteed by constitution, law and other acts adopted by a state with the purpose of promotion and implementation of equal treatment of women and men, for which state institutions are responsible and they are implementing adopted laws and determined action policies. According to this concept,

³ About concept of equality see: Fredman Sandra, *Discrimination Law*, Oxford University Press, 2002

it is not allowed to make discrimination of women in relation to men on any ground, and both sexes are having equal possibilities. If that happens, we have direct discrimination of one sex in relation to other sex.

*Contrary to that, **substantial equality** can not be accomplished only with adoption of legislation and determining action policies, but we need to take into consideration specific needs of women or men, as well as the equal results and possibilities. This means, for example, that equal treatment in some specific situations can produce unequal results for women, because of multi-century inferior position of women and their exclusion from power positions. In that case we have indirect discrimination, because law ensures equal treatment to everyone, but its implementation causes discriminatory effects in the practice, because of institutionalized and cultural exclusion of women in public life. Therefore it is needed to take into consideration the economic, social and cultural differences that exist in some societies, in order to have more efficient and helpful results for women. One of the ways is for a state to take special protection measures to in order to bring discriminated groups into position of equal enjoyment of the rights guaranteed by law.⁴ These measures are also called positive discrimination, and they protect rights of specific groups and women and men as individual human beings. The practice showed it is difficult to apply universal principles of equality in socio-cultural and political context that marginalize women and other sensitive groups. Therefore, it is necessary to use mechanisms of protection and support to overcome existing obstacles. Special measures are regulated by CEDAW Convention in the Article 4, with explanation that such measures are not considered to be discriminatory, until achievement of the goal and creation of equal opportunities for both sexes. General Recommendation No. 23 on the CEDAW Convention explicitly requests introducing quotas in order to reach equal participation of women and men in politics. Following this recommendation, "women's quota" has been introduced in many countries with aim to ensure greater participation of women in politics.*

Many successful⁵ female politicians admitted that quotas are double edge sword because in the same time they require from men and society to involve women, but also leave the possibility for those who participate in elections to vote for women that are not posing real threat to male authority and domination, so they put on election lists those women that can not make success on elections and can not be real competition.⁶

2. 3. International Documents on Gender Equality

This chapter lists all key international documents that are promoting gender equality and require from state signatories to eliminate any form of gender based discrimination. The way how international instruments for human rights are regulating gender equality issues and discrimination is very similar by terminology, however, there are differences in practical application, which depends on jurisdiction of each document:

4 TemporarySpecial Measures, General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention, A/59/38 Part I ; CEDAW/C/2004/I/WP.1/Rev.1

5 Christine Pintat from Switzerland says about quotas: On one way, quotas represent remedy for illness, but in some cases this can lead to other illnesses too. As we could see in countries of Central and Eastern Europe, quotas leaded to situation where they became maximum of accomplishment in political representation. Quotas were the reason why these countries are not developing political culture on basis of which women are joining the political system. Presented in Dahlerup Drude, *Using Quotas to Increase Women's Political Representation in Women in Parliament: Beyond Numbers*, IDEA, Stockholm, 1998. page 101

6 See more in: Spahić-Šiljak, Zilka, Political Representation of Women in Croatia: *Analysis oh the Socio-cultural, Socio-economic and Political Obstacles for Full Representation of Women in Politics*, MA at the CIPS Sarajevo (International Master Program Sarajevo-Bologna), 2001/2002

- *Universal Declaration on Human Rights and Fundamental Freedoms*
- *Convention on Political Rights of Women*
- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights and Convention of International Labor Organization (ILO) Remedy*
- *Convention on Elimination of All Forms of Discrimination Against Women*
- *Declaration on Elimination of Violence Against Women*
- *Convention on the Rights of the Child*
- *Beijing Declaration*

2. 4. European System of Human Rights Protection

*Beside the international system of human rights protection, there are also regional human rights systems: European, African and American system. Within this chapter, we will focus only on European system of human rights protection, which represents one of the oldest regional approaches to regulation of universal human rights. Establishment of this system has its historical background of multi-century struggle for human rights and establishing democratic system of governance in European region. The European Convention on Human Rights represents certainly the most important document on the level of Council of Europe. Almost every European country is a member of Council of Europe, Bosnia and Herzegovina as well, since this membership brings certain privileges but also obligations. One of the obligations is implementation of the **European Convention on Human Rights**, as well as respecting numerous political norms and agreements that are regulating standards of behavior and acting of countries members of Council of Europe.*

When it comes to gender equality and prohibition of discrimination, Article 14 of the European Convention is a key:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 has been interpreted as "unlimited" (open-ended) prohibition of discrimination, because end of this article says "or other status". However, protection from discrimination is "dependant", because it covers only those rights regulated by the Convention and its Protocols, which means if a party calls upon Article 14 this must refer to discrimination in enjoyment of rights guaranteed by the Convention, such are: right to privacy and family life (Article 8), freedom of thought, conscience and religion (Article 9) and other rights.⁷

The European Convention is especially important document for signatory countries because it offers strong mechanism that protects women and men individuals from too strong state. The European Court for Human Rights with headquarter in Strasburg currently has monitoring role over implementation of provisions of this Convention. When

⁷ Commentary of the Article 14 of European Convention see in: Kevin Kitching, *Non-Discrimination in International Law: A Handbook for Practitioners*, INTERIGHTS - The International Centre for the Legal Protection of Human Rights Lancaster House, London, 2005, pages 44 - 46
More on jurisprudence of the European Convention see at: <http://www.echr.coe.int/Eng/Judgments.htm>

we talk about the level of European Union, we should remind it consists of 27 member states, and they are obliged with EU laws (directives and contracts)⁸ and jurisdiction of the European Court of Justice. Laws of the European Union have supremacy over laws of member countries that willingly reduce their sovereignty in favor of the Union. Over the time, this competence expanded from economic to social and political rights, including the issues of asylum and human rights. Supreme legislative body of the EU is Council, and European Commission is supervisory mechanism that carries out the policy of European Union, while European Court of Justice has the authority to interpret the laws of European Union, and resolve disputes between member countries.

Gender equality is also represented in legislative framework of European Union in a form of recommendations, directives and resolutions. Key articles that are regulating issues of equality and nondiscrimination on basis of sex are **Articles 13 and 141 of the Treaty Establishing of European Community (EC), Article 6 of Treaty on European Union and Article 39 of Treaty on European Commission.**

Article 13 is particularly important, because it provides strength to European Union to fight against discrimination, so the Council adopted following two directives that are providing framework to member countries to fight against discrimination:

- Directive of the Council (2000/43/EC, 29 June 2000) that requires implementation of the principle of equality before the law regardless race or ethnical origin
- Directive of the Council (2000/78/EC) that relates to equal conditions in employment and choosing profession

A

rticle 141 of the Treaty on Establishing European Community established principles of equal pay for male and female workers. EU adopted numerous Directives on the basis of Article 141 in relation to discrimination in employment and equal wages, such are:

- Council Directive (75/117/EEC) on harmonization of laws of member states on equal pay for women and men⁹
- Council Directive (76/207/EEC) on equal treatment as regards access to employment, vocational training and promotion, and working conditions¹⁰
- Council Directive (79/7/EEC) on progressive implementation of the principle of equal treatment for women and men in matters of social security regulated by law.¹¹

8 More information on legal framework of European Union at: <http://curia.eu.int/en/index.htm>

9 Text of Directive can be accessed on web page of Council of Europe in documents of the Parliamentary Assembly: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc05/edoc10484.htm>

10 The text is available at web site: http://assembly.coe.int/ASP/Doc/DocListing_E.asp

11 The same web site

3. ABOUT GENDER EQUALITY LAW OF B&H

Gender Equality Law of Bosnia and Herzegovina is result of two -year long process and work, with participation of numerous female and male experts from governmental and nongovernmental sector. Prior to adoption of this Law, working groups were formed to prepare text of the Law, and they used translations of laws from Bulgaria, Ireland, the Netherland, Norway, draft Law from Croatia, as well as experiences of preparation of similar laws in other countries. Their work was followed by organizing public discussions and incorporating remarks and suggestions in the text of the Law.

Gender Equality Law in Bosnia and Herzegovina was adopted by the Parliamentary Assembly of B&H on sessions of House of Representatives and House of Peoples that were held on 22 April 2003 and 21 May 2003. It has been published in Official Gazette of Bosnia and Herzegovina, No. 16/03.

The Law contains of 31 articles that include the term of discrimination - what can be seen as discrimination on the basis of sex in the fields of education, work and employment, social and health protection, sport and culture, public life and media. Articles of the Law also regulate prohibition of violence, compensation of damage, obligations of authorities, monitoring and supervision over implementation of the law, penal provisions, as well as interim and final provisions.

This Law regulates, promotes and protects substantive gender equality and guarantees equal opportunities to all citizens, in public as well as private life, and prevents direct and indirect gender based discrimination.

The Law says sexes shall be equal, and prohibits discrimination based on sex and sexual orientation.

3. 1. Domestic Legal Framework

Beside Gender Equality Law of Bosnia and Herzegovina that clearly regulates prohibition of discrimination based on sex in public and private life, numerous other domestic laws are containing provisions that prohibit discrimination, not only based on sex, but also based on race, language, religion, national and social origin. The highest legislative act of Bosnia and Herzegovina also contains clear anti-discriminatory provisions. Article 2 (4) of the Constitution of Bosnia and Herzegovina regulates that:

"Enjoyment of rights and freedoms provided for in this Article or in the international agreements listed in Annex I of this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status."

Following legal documents of domestic legislation are containing anti-discriminatory provisions:

- *Constitution of Republika Srpska*
- *Constitution of Federation of Bosnia and Herzegovina*
- *Constitutions of Cantons of Federation B&H*
- *Labor Law of RS, consolidated text (Official Gazette of RS, No. 55/07)*
- *Labor Law of Federation B&H (Official Gazette of FB&H, No. 43/99, 32/00)*
- *Law on Changes and Amendments of Labor Law FB&H (Official Gazette of Federation of B&H, No. 29/03) contains provisions that are prohibiting discrimination at work and workplace relations, among other things also based on sex*
- *General Collective Contract for Territory of Federation of B&H (Official Gazette of Federation of B&H, No. 54/05)*
- *General Collective Contract for Territory of Republika Srpska (Official Gazette of RS, No. 27/06 and 31/06)*
- *General labor law document of employers*
- *Law on High Education of Bosnia and Herzegovina, adopted by the Parliamentary Assembly of B&H on session held on 30 July 2007*
- *Family Law of Federation of B&H (Official Gazette of FB&H, No. 30/05 and 41/05)*
- *Family Law of Republika Srpska (Official Gazette of RS, No. 54/05)*
- *Law on Local Self- Governance (Official Gazette of RS, No. 101/04, 42/05 and 118/06)*
- *Election Law of Bosnia and Herzegovina (Official Gazette of B&H, No. 28/02)*
- *Law on Employment in RS (Official Gazette of RS, No. 38/00)*
- *Law on Changes and Amendments of the Law on Employment of RS (Official Gazette of RS, No. 85/03)*
- *Law on Protection from Domestic Violence of RS (Official Gazette of RS, No. 118/05)*
- *Law on Protection from Domestic Violence of FB&H (Official Gazette of FB&H, No. 22/05 and 51/06)*
- *Criminal Code of Federation of B&H (Official Gazette of Federation of B&H, No. 36/03)*
- *Criminal Code of Republika Srpska (Official Gazette of RS, No. 49/03 and 96/03)*

3.1.1. Criminal Law Protection

Criminal Codes of Bosnia and Herzegovina, Federation of B&H, RS, and Brčko District are regulating general part of criminal legislation in Bosnia and Herzegovina (basic principles, basic terms, authority of courts, exemption of courts and prosecutor's offices, rights and authorities of prosecutors, rights on defense, activities on gathering evidences, definition of criminal offence, and criminal sanctions).

These laws are also providing definitions of criminal offences that can be closely related to violation of rights based on gender equality. Therefore, it often happens that one criminal-legal offence has characteristics of two criminal offences - criminal offence as defined in Criminal Code and criminal offence as defined in penal provisions of Gender Equality Law of B&H, for example, sexual intercourse with abuse of position and sex-

ual harassment based on Article 27 of Gender Equality Law of B&H. In this and similar examples, the criminal prosecution is most often initiated for criminal offence defined in criminal code, and criminal offence defined in Gender Equality Law of B&H is being neglected, although there is possibility to observe it as two criminal offences at juncture.

3. 1.2. Data of Prosecutor's Offices in Bosnia and Herzegovina

Requests for sending information about number of initiated procedures based on Gender Equality Law of B&H were sent during the research to addresses of all prosecutors' offices in Bosnia and Herzegovina. The Chart 1 presents responses which we acquired from prosecutors' offices about number of reported persons for criminal offences related to provision of the Article 27 in relation to Article 4 of Gender Equality Law of Bosnia and Herzegovina, number of indicted persons, and types of court decisions. Acquired responses are confirming there is no clear distinction between authority of prosecutors and courts when it comes to implementation of Gender Equality Law of B&H. Namely, according to some interpretations of this Law, Prosecutor's Office of B&H and Court of B&H have real jurisdiction for acting in these cases. From information we received, it is visible that other prosecutor's offices were initiating criminal procedures for the same criminal offence, and in relation to that, other authorized courts were adopting decisions and were founding accused persons guilty for committing criminal offence from the Article 27 in relation to Article 4 of Gender Equality Law of Bosnia and Herzegovina.

Chart 1 probation

Cantonal Prosecutor's Office (CPO)	Article 27 in relation to Article 4 of Gender Equality Law	Remark
<i>CPO of Una Sana Canton BIHAĆ</i>	<i>1</i>	<i>Ceded to CPO Tuzla + 50 persons reported for criminal offences against dignity of a person and moral, rape, and other acts.)</i>
<i>CPO SARAJEVO</i>	<i>6 persons + 1 report</i>	<i>1 person accused and sentenced (8 months of prison) Probation 1 year 1 person -report of testing 5 persons -on going investigation</i>
<i>CPO of Zenica Doboj Canton ZENICA</i>		
<i>CPO of Tuzla Canton TUZLA</i>	<i>3 persons</i>	<i>1 person -indictment initiated - the main hearing scheduled 1 person - validly sentenced 1 person - order for investigation</i>
<i>CPO Herzegovina Neretva Canton MOSTAR</i>	<i>-</i>	<i>-</i>
<i>CPO of Middle Bosnia Canton TRAVNIK</i>	<i>-</i>	<i>-</i>
<i>CPO of West Herzegovina Canton ŠIROKI BRIJEG</i>	<i>-</i>	<i>-</i>
<i>CPO of Canton 10 LIVNO</i>	<i>Reported 3 minor persons</i>	<i>Sexual harassment (sexual recording of minor person) - request for initiating preparatory procedure</i>
<i>CPO of Bosnia Podrinje Canton GORAŽDE</i>	<i>-</i>	<i>53 persons reported for criminal offences against dignity of person and morale (rape, sexual intercourse with a child, obscene acts, etc. domestic violence, forcing onto prostitution, etc. 44 persons accused, 37 persons sentenced - 1 prison, 28 probation, 1 court warning, 2 released, 4 rejected, 1 mentally incompetent</i>
<i>CPO of Posavina Canton ORAŠJE</i>	<i>-</i>	<i>-</i>
<i>TO T A L :</i>		<i>-</i>

3.1.3. Criminal Offence as Per Gender Equality Law of B&H - Article 27 of the Law

DEFINITION:

Article 27 of Gender Equality Law: "Any person who COMMITS gender based violence, harassment or sexual harassment as described in Article 4 of this Law shall be punished for a criminal offence and sentenced for 6 months to 5 years of imprisonment."

OBJECT OF PROTECTION:

Content of the principle of gender equality, namely rights, is in protection of gender equality and guaranteeing equal possibilities of all citizens, both in public and private sphere, and prohibition of direct or indirect discrimination based on sex. Term sex in the spirit of this Law shows importance given to biological determination within the society.

What is discrimination based on sex:

- *Any distinction, exclusion, restriction or preference based on sex, legal or factual, which has the purpose of nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms by individual/s in political, educational, economic, social, cultural, sports, civic or any other field of public life.*

Direct gender discrimination is any situation wherein an individual has been or is or may be treated less favorably than another individual in a similar situation, on the basis of sex.

Indirect gender discrimination is any situation wherein an apparently neutral legal norm, criterion or practice, equal for all, puts persons of one sex at a particular disadvantage compared with persons of the other sex.

ACT OF CONDUCTING CRIMINAL OFFENCE

This criminal offence can be conducted by violence, harassment, and sexual harassment.

VIOLENCE BASED ON SEX:

- *any act causing physical, mental, sexual or economic damage or suffering, as well as threats of such actions, which hinder the enjoyment of rights and freedoms based on gender equality, in public and private life, including trafficking in human beings for the purpose of forced labor, and any restriction or arbitrary deprivation of liberty, for persons exposed to such acts*

Deprivation as itself can not be interpreted as restriction or arbitrary deprivation of liberty. This means that court will judge circumstances of each individual case, taking into consideration not only objective circumstances (concrete situation as consequence of committed offence) but also motives of offender, his/her ruthless and thoughtless behavior, and other subjective circumstances.

HARASSMENT BASED ON SEX:

- any situation where an unwanted conduct related to sex occurs, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation

SEXUAL HARASSMENT IS:

- any action whereby any form of verbal, physical or psychological conduct based on sex occurs, with the purpose or effect of violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation, and which is for the individual an undesirable physical, verbal, implied or **other behavior**.

Contrary to harassment that can exist when two conditions were cumulatively met - action is committed with objective of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation, and having as result of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation, in a case of sexual harassment criminal offence will exist is **one of these conditions is met**, or when certain behavior **has the objective** of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation, or when certain behavior **has the result** of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation.

Offence from the Article 27 of Gender Equality Law can be committed with using force, threat or other illegal behavior (namely using a method and means that are prohibited by law or other regulations). Illegal means and methods are also those that can affect a free will of a person, based on scientific findings and life experiences.

All acts with which this offence can be committed can consist of undertaking some activity (doing) or some omission (passive behavior). It is not necessary for these acts to be manifested through adoption of some written document/act, but they can also manifest through creation of factual situation which, directly or indirectly, relates to consequence. It is necessary for existence of this offence that committed acts are done based on "difference in sex."

This condition leads to interpretation that offence includes behavior motivated by discrimination based on sex.

CONSEQUENCE OF ACT

Consequence of this offence can be:

- physical, mental, sexual or economic damage or suffering, which hinder the enjoyment of rights and freedoms based on gender equality, in public and private life (**violence**), as well as threat with such acts which hinder the enjoyment of rights and freedoms based on gender equality, in public and private life

- *violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation (**harassment**);*
- *Violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation, and which is for the individual an undesirable physical, verbal, implied or other behavior (**sexual harassment**).*

The offence has been committed when these consequences occur, and with initiating each act of committing, there is an attempt of this offence, which is liable to punishment.

OFFENDER:

*Offender can be any person that has opportunity to commit violence, harassment, and sexual harassment, which is motivated with affiliation to different sex or different sexual orientation, therefore **physical person, official person of state authority, official and responsible person in juridical entity**.*

Offender commits this offence because of his/her relation toward sex. When doing it, it is irrelevant if the base of offender's motive represents love toward one group or hostility toward other group.

Although violence can occur in public and private sphere, including also trafficking of people for the purpose of forced labor, and any restriction or arbitrary deprivation of liberty, violence which can occur in performing some official authority has special importance because of complete impossibility or restricted possibility of a person to resist unlawful performing of official or public authorities. However, legislator entirely equalized such behaviors with behaviors in a private sphere. We are emphasizing that definitions of discrimination do not explicitly contain the term of private sphere of life.

*Criminal responsibility for this offence exists only if offender acted with **premeditation**, meaning that he/she was aware of his/her behavior and consequences that occurred, and he/she wanted it.*

Passive subject can be one or more persons whose rights or lawful interests are violated based on sex, both adult and minor person.

If criminal offence was committed several times against a same person or within certain period of time, one extended criminal offence will exist and not juncture of criminal offences, if are existing other conditions for finding of extended criminal offence, as regulated by the Article 54 of Criminal Code of Bosnia and Herzegovina, Article 55 of Criminal Code of Federation of B&H, and Article 55 of Criminal Code of Brcko District of B&H.

3.1.4. Examples from the Practice

Having in mind the information we have, past implementation of this Law in the area of Bosnia and Herzegovina show that, for now, only sexual harassment has been recognized as criminal offence, and criminal persecution for this criminal offence is conducted in limited area.

Which acts have been recognized as sexual harassment:

- **hugging of a female employee, touching breasts with hand, as well as directing threats,** (Valid sentence of Municipal Court in Kalesija, no. 029-0-K-06-000037 from 22 September 2006);
- **deceitful taking of a minor girl** in a bathroom, in which he previously turned off the light, placing hand on right shoulder and kissing cheek, taking shoulder with hand with normal seize, dragging with right side to his body and **grabbing her bottom with a hand**, which frightened a girl and she ran away.....

This case is not resolved yet.

- **He asked: "how big are your boobs"** - to a minor girl which was alone in a house, and when she told him it is not his business, he was showing with his hand how big her breasts are, with opening and closing his fingers, and **insisted her showing him her breasts, with offering her money**, and took her right hand and wrist, but she succeeded to run away.

Indictment of the Cantonal Prosecutor's Office of Tuzla Canton (Number Kt 1945/05) was confirmed in this case and trial is currently ongoing;

- **Criminal procedure was initiated against three minor male offenders because of reasonable doubt they were video recording other persons (minor girls) without their consent, and were sexually harassing them with objective of harming their dignity through hindering them to enjoy their rights and freedoms on principles of equality of sexes. With these acts they committed two criminal offences at juncture - unauthorized optical recording from the Article 189, Paragraph 1 of Criminal Code of Federation of B&H, and violated provisions of Article 4, Paragraph 1, Point d) of the Gender Equality Law of B&H (Cantonal Prosecutor's Office Livno in 2007).**

Case of V. Dž.

During evening hours in February 2006, when he noticed that his neighbor H.J. left his house, V.Dž. went to his house and knocked on the entrance door. A minor girl, which was 12 years old than, opened a door, and he asked her if she is home alone. After she said her father is in neighborhood, V.Dž. asked her: "How big are your boobs?" When she said that is not his business, he started showing her with his hands how big her breasts are, with opening and closing his fingers, and insisted her showing him her breasts and offering her money. Than he took with her right hand and wrist, but she resisted and run away into house.

Cantonal prosecutor on duty initiated criminal procedure against V.Dž. for criminal act **from the Article 27 in relation to Article 4 of Gender Equality Law of Bosnia and Herzegovina.**

Case of H. H.

In March 2005, H. H. hired Z.D. as saleswoman in his store, where he tried to hug her several times, telling her that he likes her, that she has nice body, and that he would like to hug her and kiss her. She was refusing him and saying she is too young for him, and he has a wife he should hug and kiss. On one occasion, when Z.D. stayed late at work, H.H. offered her to drive her home, which she accepted as she promised her mother she would come home at time to help her something. During the drive, while he was driving his vehicle, H.H. tried to hug Z.D. several times, with pulling her toward himself. When she tried to resist, he told her: "tonight you will be mine and God's," which she resisted. H.H. was holding a wheel with his left hand, and was squeezing Z.D. and pulling her toward himself with his right hand. In the same time, he was touching her breasts and saying: if you do not give me tonight, I will drive you at M... and there you will have to give me, wanting that or not." When Z.D. requested him to let her go immediately with threats that she will report him, he told her: "you just dare to say a word, you must not tell anyone for this", and constantly repeated: "if you do not give me tonight, I will drive you to M..., and there you will have to give me, wanting that or not", but Z.D. repeated she will report him if he does not let her go. H.H. was repeating that she has to give him, otherwise he will drive her to M... and leave her there...

*Authorized cantonal prosecutor initiated criminal procedure against H.H. for **criminal offence from the Article 27, Paragraph 1 of Gender Equality Law of B&H**, which was accepted by the authorized municipal court, which found H.H. guilty and ordered probation (court determined 6 months prison sentence, and declared it will not be implemented if H.H. within 2 years from the order does not commit new criminal offence).*

Therefore, this criminal offence can exist individually, but also can appear at juncture with other criminal offences, as previously explained, as well as at juncture with criminal offence of violating equality if discrimination was committed because, for example, affiliation to certain national group or because of discrimination in the area of employment.

PENAL POLICY

Assessment of the penal policy for now can not be given because of small number of court judgments. In two judgments, from which one is legally invalid, two probation sentences were issued.

Judgment of the Municipal Court in Kalesija issued probation sentence, 6 (six) months of prison with trial period of 2 (two) years, and damaged client was directed to law-suit to acquire proprietary legal request. When judging about criminal-law sanction, a court determined as extenuating circumstances that accused person is a family man, a father

Case of N. N.

B.M. a female student of fourth year of Law Faculty reported against professor N.N., which tried to kiss her in his office, placed his hands around her belt and pulled her toward himself, which she did not allow. N.N. told B.M. he is sweating because she is sexually exciting him, and was telling her she will have benefits with him on exam, which she did not accept. When she succeeded to leave his office after longer period (he kept her around half an hour), she went to a faculty dean and told him what happened. She also told her female friend what happened, which told B.M. that the same professor was asking her a strange questions alluding on her sexuality (he asked her if she has a boyfriend, was giving her compliments, and telling her she is attractive girl, etc.). After taking a statement from reported professor, which denied committing criminal offence, and from B.M. which described in details behavior of reported professor on critical occasion, authorized public prosecutor terminated investigation against suspect for criminal offence from Article 208, Paragraph 1, of Criminal code of Federation B&H, and attempt of criminal offence of sexual intercourse with abuse of position from Article 205, Paragraph 1 of Criminal Code of Federation of B&H, in relation to Article 28 of the same Law, because he found "insufficient evidences that suspect committed criminal offence". B.M. filed complaint on this decision, and prosecutor's office rejected it as unfounded. After that, B.M. sent petition to Prosecutor's Office of Federation of B&H. After examining the case, Federal Prosecutor's Office judged that petition of B.M. is proven, and pointed out to the authorized prosecutor's office that decision in this case is not based on correctly and completely determined factual situation. Because of that, the previous decision should be re-examined and correct and lawful decision should be made upon assessment of all evidences, individually and in mutual relation.

Federal Prosecutor's Office especially emphasized implementation of Gender Equality Law in B&H that regulates all forms of sexual harassment based on sex in the Article 4, and for which criminal law sanctions should be applied, as per Article 27 of the Law.

of two children from which one child is minor, a middle aged man, and only wage earner in a family.

Similarly, Municipal Court in Sarajevo issued probation sentence in legally invalid judgment.

3.1.5. Misdemeanor per Gender Equality Law of BiH - Article 28

This article defines perpetrators of misdemeanor, relations between misdemeanor, penal and civil procedures and jurisdictions of the courts.

Misdemeanor offences can be perpetrated by private and legal entities. Neither one regulation of this article can be interpreted as restriction or limitation of the right to penal or civil procedure, under conditions prescribed by this Law, while jurisdiction for misdemeanor proceedings is in the relevant institutions on the entity level and Brčko District of Bosnia and Herzegovina, until The Misdemeanor Act of BiH is passed.

Defining types of misdemeanor offences, the legislator has not precised violation of which articles of the Law should be considered a minor offence, neither it determined penal acts can also be perpetrated as a misdemeanor, which is inconsistent since not every act necessarily implies a criminal procedure.

Misdemeanor Offences:

1. *failure to take appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender, harassment and sexual harassment (this might relate to Article 6, Paragraph 3; Article 12; Article 13, Paragraphs 2 and 3; Article 14, Paragraph 2; Article 15, Paragraph 2; and Article 17, Paragraphs¹²);*
2. *failure to take appropriate steps to eliminate and prevent prohibited discrimination on the grounds of gender in labor and employment as defined by Articles 7 and 8 of this Law;*
3. *failure to introduce curricula and methodologies in education institutions that will guarantee elimination of stereotypical content that results in discrimination and inequality of treatment between sexes (Article 6, Paragraphs 1 and 2);*
4. *failure to disaggregate by gender the statistical data and information collected, recorded and processed (Article 18, Paragraph 1);*
5. *prevention of public access to statistical data recorded pursuant to this Law (Article 18, Paragraph 2);*
6. *the public portrayal of any person in an offensive, humiliating or demeaning manner with regards to gender (Article 16, Paragraph 2).*

THE OFFENDER

The offender can be represented in legal entity and person responsible within the legal entity, as well as in individuals who perform their work personally and independently with citizens' property.

By implementation of The Law it is important for victim to be aware of who is hidden behind the phrase "legal entity", particularly when "relevant institutions" or "health institutions" are mentioned as offenders.

PENALTIES

A fine from 1,000 KM to 30,000 KM shall be imposed on a legal entity, and from 100 to 1.000 KM on an individual.

EDUCATION - ARTICLES 5 and 6 OF THE GENDER EQUALITY LAW

Article 5 of The Gender Equality Law guarantee equal rights to all regardless of sex.

It is also stipulated that relevant authorities, education institutions and other legal entities shall take no disciplinary or other punitive measures against a person, for a reason that person has brought proceedings for discrimination, harassment or sexual harassment or has given evidence in relation to discrimination, harassment or sexual harassment. However, what happens if the authority in charge takes disciplinary measures against a person who complained about discrimination?

The Law does not regulate sanctions against legal entity and responsible person in the legal entity if he/she undertakes disciplinary or other punitive measure against a person who filed complaint or testified.

*Penalties related to violation of Articles 5 and 6 regulate that authorities, education institutions and other legal entities will be **sanctioned**:*

- if they fail to introduce curricula and methodologies in education institutions that will guarantee elimination of stereotypical content that results in discrimination and gender inequality;

- if they fail to take measures and efficient protective mechanisms against gender based discrimination and sexual harassment. As harassment is not mentioned in the Article 6, Paragraph 3 of The Law, harassment would not be sanctioned at all.

Therefore, Article 6, Paragraph 3 of The Gender Equality Law should bind legal entities to provide efficient protective mechanisms against discrimination resulting from harassment.

EMPLOYMENT, LABOUR AND ACCESS TO ALL KINDS OF RESOURCES - ARTICLES 7 AND 8 OF THE GENDER EQUALITY LAW

The Law guarantees gender equality to all persons in employment and prohibits gender based discrimination in labor and employment with regards to acts which are specified and listed in this Article, but also with regards to all other acts which represent forms of direct or indirect discrimination defined in Article 3, Paragraphs 3 and 4 of The Law.

Penalties related to violation of Articles 7 and 8 of The Law relate to failure to take actions to eliminate and prevent prohibited gender based discrimination in labor and employment, as defined in Articles 7 and 8.

Article 8 of The Law does not prohibit sanctioning of a person who testified on harassment, sexual harassment or gender based discrimination, due to which neither legal entity, nor responsible person within the legal entity are sanctioned in case they take disciplinary or other punitive measure against person who complained.

SOCIAL WELFARE - ARTICLE 11 AND 12 OF THE GENDER EQUALITY LAW

Articles 11 and 12 of The Gender Equality Law regulates that the authorities shall ensure the laws and other regulations and mechanisms related to access and enjoying social welfare are not discriminatory on the grounds of gender, directly or indirectly.

Article 28 does not contain specific regulation which sanctions violation of Articles 11 and 12 of The Law, however taking into account the content of penalties, the regulations of Article 28, Paragraph 1, Line 1 of The Law may be applied.

HEALTH CARE - ARTICLE 13 OF THE GENDER EQUALITY LAW

Relevant authorities shall:

- take all necessary steps to protect and advance reproductive health of women.*

Health care institutions shall:

- take all necessary steps to prevent gender based discrimination in enjoying of all forms of health care.*

Article 28 of The Law does not contain specific regulation about violation of the quoted Article, however taking into account the content of penalties, the regulations of Article 28, Paragraph 1, Line 1 of The Law may be applied.

SPORTS AND CULTURE - ARTICLE 14 OF THE GENDER EQUALITY LAW

Relevant authorities, institutions and legal entities are required to:

- take all possible measures to prevent gender based discrimination and to ensure equal opportunities for: access to fields of sport or culture; development and provision of support for particular fields of sport or culture; granting of community awards for outstanding achievements in sport and culture within the same field of sport or culture.*

Article 28 of The Law does not contain specific regulation about violation of the quoted Article, however taking into account the content of penalties, the regulations of Article 28, Paragraph 1, Line 1 of The Law may be applied.

PUBLIC LIFE - ARTICLE 15 OF THE GENDER EQUALITY LAW

Bodies of state and local authority, corporate management bodies, political parties and other non-profit organizations shall ensure and promote equal representation of sexes in management and decision-making.

To achieve the ends set forth in Paragraph 1 of this Article, relevant authorities shall design special programs and plans with measures to improve gender balance that will be used to improve gender balance in representation in the bodies of governance at all levels.

Article 28 of The Law does not contain specific regulation about violation of the quoted Article, however taking into account the content of penalties, the regulations of Article 28, Paragraph 1, Line 1 of The Law may be applied.

MEDIA - ARTICLE 16 OF THE GENDER EQUALITY LAW

Media are required to raise awareness on gender equality through their programs.

Public presentation and portrayal of any person in an offensive, humiliating or demeaning manner with regards to gender is prohibited.

Article 28, Paragraph 1, Line 6 regulates legal entity and responsible person within the legal entity shall be sanctioned for misdemeanor if publicly presenting any person in an offensive, humiliating or demeaning manner with regards to gender.

PROHIBITION OF VIOLENCE - ARTICLE 17 OF THE GENDER EQUALITY LAW

The law prohibits all forms of gender based violence in private and public sphere.

Relevant authorities shall take appropriate steps to eliminate and prevent gender based violence in public and private life, and apply instruments for provision of protection, assistance and compensation to victims of violence.

Article 28 of The Law does not contain specific regulation about violation of the quoted Article, however taking into account the content of penalties, the regulations of Article 28, Paragraph 1, Line 1 of The Law may be applied.

STATISTICAL RECORDS - ARTICLE 18 OF THE GENDER EQUALITY LAW

All statistical data and records collected, recorded and processed in state bodies at all levels, public services and institutions, state and private corporations and other entities must be gender disaggregated.

Article 28, Paragraph 1, Lines 4 and 5 of The Law sanction as misdemeanor failure to disaggregate by gender statistical data and information collected, recorded and processed, and preventing public from insight to statistical data recorded pursuant to this Law.

ARTICLE 29 - URGENCY IN PROCEEDING

Practice of relevant judicial institutions shows procedure from filing complaint until final judgment (res iudicata) lasts at least one year, regardless of the fact The Article 29 of The Law regulates processing and passing of judgment in cases of criminal offences and misdemeanors defined by this Law are of urgent nature and shall take priority in the operations of the relevant authorities.

Examples from penal procedure show, for example, that first instance judgment for a criminal act committed at the beginning of March 2005 was passed in September 2006 and the second instance judgment in February 2007.

3.1.6. Problems in Implementation of The Article 28

Content of The Article 28, Paragraph 1, Line 1 of The Gender Equality Law implies sanctions for failure to provide appropriate measures and efficient protective mechanisms against gender based discrimination, harassment and sexual harassment, however it does not call upon the basic provisions related to these penalties.

Moreover, The Gender Equality Law does not contain regulation that would sanction as misdemeanor a failure to submit action plans to a relevant gender centre, unlike The Gender Equality Law of Republic of Croatia¹³.

Furthermore, this regulation does not provide possibility that a person who committed violation in private sphere can be processed for misdemeanor act.

This means, Article 28, Paragraph 1, Line 1 of The Gender Equality Law should be more specific.

Article 28 should also regulate sanctions against a legal entity and responsible person within the legal entity if he/she takes disciplinary or other punitive measure against a person who filed complaint or testified on discrimination in education (Article 6, Paragraph 3) and labor and employment (Article 8, Paragraph 2).

Paragraph 2 of the same Article should incorporate prohibition of sanctioning of a person who testified on discrimination.

It is important to stress The Gender Equality Law does not contain neither one regulation to sanction individual for misdemeanor in private sphere of life, nor a minor. It also does not provide protection of minor victims of misdemeanors.

During the research requests for information on number of initiated misdemeanor procedures based on The Gender Equality Law of BiH were sent to all cantonal and municipal courts in Federation of BiH and all regional and basic courts in Republic of Srpska. 47 courts responded and according to them, in the period 2003 - April 2007, there were no misdemeanor cases processed pursuant to The Gender Equality Law of BiH.

¹³ Responsible persons in legal entities with public authority and legal entity whose major owner is the state or a unit of a local and regional selfgovernance, which fail to submit the action plan to the Office, will be sanctioned for misdemeanor (Official Gazette of Republic of Croatia, July 14th 2003).

Tables 1, 2 and 3 present responses of the institutional gender mainstreaming mechanisms about number of received complaints related to violation of The Gender Equality Law and the actions they took to sanction discriminatory practice.

RESPONSES OF THE GENDER CENTRES OF RS AND FBIH AND THE GENDER EQUALITY AGENCY OF BIH

Table 1

THE GENDER CENTER OF REPUBLIC OF SRPSKA	
1. <i>How many requests to investigate violation of The Gender Equality Law of BiH have been filed until now to your institution?</i>	Upon The Rule on Investigating Violation of The Gender Equality Law (Official Gazette RS, 90/06 and 100/06) entered into force 13 requests have been filed for investigation of violation of The Gender Equality Law.
2. <i>What are the most frequent complaints, upon which articles of The Gender Equality Law the parties called upon?</i>	<i>The Gender Centre of RS received nine (9) complaints related to Article 8 of The Gender Equality Law of BiH - discrimination in labor and employment. Out of these, four (4) relate to violation of Article 8, line 5 and 7 of the Paragraph 1 - dismissal from work as a consequence of discriminatory treatment due to workers' pregnancy.</i>
3. <i>What measures have you taken with regards to filed complaints?</i> 4. <i>What were the results?</i>	<i>Upon findings of the investigation The Gender Center issues recommendations, reports and conclusions and tries mediation between the parties and voluntary settlement of the case. The Gender Centre issues two recommendations, of which the institution fully complied with one, while the other was not implemented. In five cases, complaints were passed to the institutions in charge along with the expert opinion of The Gender Centre on each specific case.</i> <i>One case was solved successfully in a meeting and a conclusion was made. Two cases were mediated, which didn't result in settlement, upon which conclusions were made. In one case, the complaint was rejected as insufficient, in one the party cancelled the procedure, while one case has still being investigated.</i>

Table 2

THE GENDER CENTRE OF FEDERATION OF BiH	
1. <i>How many requests to investigate violation of The Gender Equality Law of BiH have been filed until now to your institution?</i>	<i>Five (5) requests for investigation of violation of The Gender Equality Law were submitted.</i>
2. <i>What are the most frequent complaints, upon which articles of The Gender Equality Law the parties called upon?</i>	<i>Violation of labor and employment rights, right on paid wages during maternity leave.</i>
3. <i>What measures have you taken with regards to filed complaints?</i> 4. <i>What were the results?</i>	<i>In 4 cases The Gender Centre passed 4 recommendations. In 2 the institutions complied with them, while in one case the institution provided explanation on reasons why recommendation can not be implemented, while in the fourth case the terms for compliance with Recommendation have not expired yet. The fifth request is still in investigation procedure.</i>

Table 3

THE GENDER EQUALITY AGENCY OF BIH	
1. <i>How many requests to investigate violation of The Gender Equality Law of BiH have been filed until now to your institution?</i>	<i>The Agency received seven (7) complaints from private entities and nongovernmental organizations.</i>
2. <i>What are the most frequent complaints, upon which articles of The Gender Equality Law the parties called upon?</i>	<i>The complaints related to violation of Articles 3, 7, 8, 9 and 15 of The Law. Specifically, they related to examination of decisions on appointments, implementation of The Law in application of system of points for candidates, equal representation of sexes in public life, sexual harassment and discrimination, dismissal from work during maternity leave.</i>
3. <i>What measures have you taken with regards to filed complaints?</i> 4. <i>What were the results?</i>	<i>Upon receipt of complaints, The Agency, can prepare recommendations, and if needed send inquiries whether the institutions in charge reconsidered decisions. In one case the list of promoted police officers of The State Investigation and Protection Agency was cancelled. The remaining cases are still investigated.</i>

4. EXPERIENCE OF NONGOVERNMENTAL SECTOR

Four years after The Gender Equality Law was passed, nongovernmental organizations in Bosnia and Herzegovina, the initiators of drafting of such a document, are still facing significant problems in its implementation. According to testimonies of activists of free legal aid providers, antidiscrimination organizations or those advocating for realization of basic human and women's rights, only narrow groups of people are familiar with this Law. Institutions which are supposed to implement it, hardly know its content and due to differences in interpretation of its provisions, fail to apply it or apply it in inappropriate way. On the other hand, victims of discrimination face problem of proving discrimination or the fact that discrimination was gender based, they feel afraid and uncertain about efficiency and effectiveness of this relatively new Law in an environment which does not understand its essence.

For the purpose of analysis of experience of nongovernmental organizations in application of The Gender Equality Law in judicial and institutional protection of related rights, a questionnaire was prepared and distributed to organizations and their publications were analyzed. Questionnaire was distributed to addresses of ten organizations legal aid providers, of which six responded in written or asked for live interviews. These are: "Udružene žene" (eng: "United Women") Banja Luka, offices "Vaša prava" (eng: "Your Rights") in Sarajevo, Banja Luka and Prijedor, "Global Rights" and Helsinki Committee for Human Rights BiH.

Although organizations with large number of beneficiaries do not keep records on cases by violation of a specific law, data of all interviewed show there are few cases started pursuant to the Gender Equality Law of BiH. Most of the organizations do not present specific data on the cases due to principle of confidentiality, however their responses show the organizations provided legal aid services in cases of violation of labor rights, public and political life, media and domestic violence, as well as in relation to the articles on gender based discrimination.

Office of the organization "Vaša prava" in Sarajevo filed a suit to Municipal Court Sarajevo in April 2007 in a case of reported violation of Article 7 of The Law, in which a woman reported discrimination in a job interview. There is still no response from The Court. Mrs. Harisa Bačvić, lawyer of this organization said there had been reported cases of discrimination in employment even before that in which in job interviews women were asked whether they plan children in closer future, whether they have small children, etc. If the answer was positive, it would automatically mean elimination from competition. The biggest problem in such reports is a lack of evidence that would prove discrimination in the court.

"The biggest problem with regards to application of the Gender Equality Law is collecting evidences to prove gender based discrimination. It is very hard to prove that specifically gender based discrimination was a reason for a certain decision on which our

beneficiary complaints. If you have some obvious statistical data, for example in political life, so everyone can see there are no women, discriminated woman can prove that easier, however in discrimination in labor, employment it is very hard", she said. According to her, proving discrimination is even harder since the judicial system of BiH abandoned the principle of searching for material truth, and introduced a principle of hearing, so the whole burden of providing evidences is on prosecution, "whose party very often lacks elementary knowledge and skills for doing so".

Mrs. Snježana Cepić, senior lawyer in the region West in the Office "Vaša prava" Prijedor, said this office processed no cases in which it called upon the Gender Equality Law of BiH.

"Regarding gender equality issue, there are many cases of divorce, alimony rights, some related to violation of labor rights. However, all these fields are regulated by other laws, such as The Law on Civil Procedure, The Family Law, The Law on Obligations, as well as other laws (...) so we always primarily call upon the regulations directly covering our beneficiary's problem", Cepić said. Recently a woman came to our office reporting dismissal from job while she was pregnant. They informed the labor inspection, and in case the inspection does not solve the problem, Cepić believes in this case, apart from The Labor Law, The Gender Equality Law could be used as well as international conventions regulating these issues.

Banja Luka Office of the same organization had several reported cases of domestic violence, where it called upon The Gender Equality Law, and reports of six women dismissed from job, however, there was no legal basis in this case to call upon The Gender Equality Law, since in that company almost all employed were women. Head of Banja Luka Office "Vaša prava" Mr. Slobodan Popović said proving discrimination in such cases is very complex, number of witnesses is limited or there are no witnesses at all, beneficiaries hesitate to provide information, some are afraid of consequences and retribution, uncertainty about the results of court procedure, some lack knowledge; therefore our lawyers need "good skills to get necessary information".

Organizations "Udružene žene" Banja Luka and Helsinki Citizens' Assembly Banja Luka issued many appeals and warnings about violation of Article 15 of The Gender Equality Law which proclaims equal representation of women and men in public life. However, the institutions neglected these appeals, being aware that there is no sanction in The Law for violation of this Article. Therefore, these two organizations filed complaint to The Gender Equality Agency of BiH with regards to appointment of the last Council of Ministers of BiH, after general elections in 2006. They requested this institution to initiate procedure before the court with subject matter and territorial jurisdiction against Central Election Committee of BiH and The House of Representatives of The Parliamentary Assembly of BiH because of the violation of Article 15 of The Gender Equality Law. The organizations claimed The Central Election Committee had broken The Law issuing compliance certificates to candidates stating there is no legal obstacle for them to be appointed in The Council of Ministers of BiH, while The Parliamentary Assembly violated The Law voting for the candidates list. The Gender Equality Agency

informed the organizations it is not actively legitimate to start the court procedure. Upon such response, the organizations filed a suit to The Administrative Department of the Court of BiH against the decision of The Central Election Committee of BiH and violation of The Article 15 of The Law.

It is interesting that in the case against decision of The Central Election Committee non-governmental organizations are plaintiffs, since it is not known whether and which woman wanted to become a member of The Council and whose right was directly violated. These organizations stated that even in earlier cases in which they had information on woman whose rights were violated; she didn't want to start court procedure and fights for rights guaranteed through The Gender Equality Law.

In 2005 Helsinki Citizens' Assembly Banja Luka and "Udružene žene" Banja Luka filed a complaint to The Communication Regulatory Agency (CRA) of BiH requesting sanctions against TV "Pink BiH" for violation of Article 16 related to media in the morning program called "Balkan net". The subject were relations between sexes, sexist language was used addressing guests in the program, while reports programmed were stereotypical and describing "how to beat your wife", "how to prepare ideal meal for a Balkan man" and insulting and vulgar language was used. The Broadcasting Code of Practice of this institution was not harmonized with The Gender Equality Law and the organizations mentioned they had faced problems to find basis for complaints in these documents, due to which they called upon articles on discrimination and insulting program content. CRA issued a warning for the TV station because of inappropriate content for morning program, however decided the content does not violate The Code, but "it was satirical". Organizations had not been satisfied with such decision of CRA, and continued actions for improvement of The Code of this institutions and quality of the media in general.

Helsinki Committee for Human Rights of BiH received six complaints related to violation of The Gender Equality Law, however it didn't initiate any procedure, since it is not within its mission. This organization assisted creation of one appeal about unsatisfactory decision of The Prosecutor's Office, which was submitted to The Constitutional Court of BiH /reported by M.J. Committee called upon Article 6, Paragraph 1 and Article 14 of The European Convention on Protection of Human Rights and Fundamental Freedoms, Convention on Elimination of Discrimination Against Women, and Articles 3 and 4 of The Gender Equality Law of BiH/.

Most of the organizations, who responded to our requests, see courts as key protectors of human rights regulated by The Gender Equality Law. They are disappointed in performance of mandate of institutional gender mainstreaming mechanisms, which according to available information and practice, are not in charge or withdraw from mandate to start court procedures. "Institutional gender mainstreaming mechanisms which are a part of executive and legislative power cannot provide adequate protection to citizens. Therefore, an institute of public attorney for gender equality should be introduced into the system, as it is in Croatia, to provide such protection", activists of "Udružene žene" Banja Luka said. Lawyers of "Vaša prava" testify that gender centers very often refer

beneficiaries to the NGOs to provide legal aid. Despite such practice, Helsinki Committee for Human Rights of BiH sees institutional gender mainstreaming mechanisms and NGOs as main protectors of rights proclaimed in The Gender Equality Law.

None of the organizations is satisfied with implementation of The Law. Major problem is its regulations are too general, which does not necessarily imply they are inapplicable, however this makes application complicated. "Generally speaking, The Law contains neutral legal norms which are hardly, but not impossibly, applied in practice. This particularly relates to Article 15 which regulates the institutions will 'as by the rule, reflect equal representation of sexes'. 'As by the rule' is differently interpreted and opens space for manipulation by public institutions", activists of "Udružene žene" stated.

Lawyers of "Vaša prava" also mention The Law is too general and among numerous laws they try to select regulations which they "consider effective, reliable and tested, which are mostly the laws directly regulating issues of their beneficiaries and which have longer tradition in judiciary". According to them, this Law lacks implementation measures, interpretation, bylaws and rules, particularly in proving of discrimination. Additionally, there is no public promotion or a practical guide for citizens and lawyers which would suggest how to proceed in cases of violation of this Law.

Organization "Global Rights" which coordinated preparation of The Shadow Report of Bosnia and Herzegovina on implementation of CEDAW and which analyses BiH policies from gender perspective, estimates The Gender Equality Law is not implemented, procedures of its implementation are unclear, particularly those related to Article 15 on public life.

Another problem they point out is lack of active legitimacy in cases of violation of The Law, when individuals hesitate to initiate procedure or there is no direct victim of discrimination or she/he is not known. There is no clearly defined possibility that interest group or institution in charge of gender equality issues start procedure against illegal discriminatory decisions, which damage public interest and violate rights of all citizens. Therefore, in this segment "Udružene žene" expect the suit filed against Election Committee of BiH will enlighten the path for future advocacy for improvement of laws and practice.

With regards to research and information of nongovernmental organizations related to implementation of The Gender Equality Law in practice in segment of institutional protection, resources are limited. The annual report of The Helsinki Committee for Human Rights on status of human rights in BiH for 2006 mentions subjects involved in combating domestic violence are not effective enough, particularly in sanctioning perpetrators of violence. "There are no procedures based in The Law on Protection from Domestic Violence and Gender Equality Law. They are mostly conducted pursuant The Penal Code, which brings victims into unfavorable position, brings mild sentences and decrease preventive and repressive effect of judgments", as stated in The Report¹⁴.

The only registered association working on protection and promotion of human rights of sexual and gender minorities The Association "Q" Sarajevo also faces problems in application of The Gender Equality Law of BiH. Their publication "Rights and Freedoms of LGBTIQ persons in BiH - Analysis of Relevant Legal Documents", reports The Law only prohibits gender/sex/sexual orientation based discrimination in its introductory articles, while in further text it only uses word "sex", which only relates to biological determination of a person and focus on relations between men and women only. The Law does not define sexual orientation as well.

*"Currently there is no regulation that would prohibit discrimination based on sexual identity, gender identity or/and expression of intersexual characteristics, deal with hatred language and hate crimes and provide legal, social and health protection to persons which are *inter alia* transgender, transsexual or intersexual¹⁵", the publication reports. In a situation when The Gender Equality Law is hardly implemented even in relations between two sexes and in environment of complete lack of sensitivity of institutions for gender issues, the question how its norms would be implemented in cases of LGBTIQ persons stays open.*

¹⁵ Damir Banović, Svetlana Đurković: "Rights and Freedoms of LGBTIQ Persons in Bosnia and Herzegovina - Analysis of Relevant Legal Documents", Association "Q" for Promotiona and Protection of Culture, Identity and Human Rights of Queer Persons, Sarajevo, 2006, p. 5

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Results of The Research

According to data collected during the research, since The Gender Equality Law of BiH entered into force (May 2003) until May 2007 there have been **only two judgments** passed, of which one is not final.

One judgment was passed by The Municipal Court in Kalesija¹⁶, and the other, which is not final yet by The Municipal Court in Sarajevo finding Mr. Vlado Adamović guilty of sexual harassment determining suspended sentence of eight months against him¹⁷.

However, data collected from prosecutors' offices show number of reports filed for gender based discrimination is significantly larger. According to data of four cantonal prosecutors' offices there were reports for gender based discrimination filed against **13 persons**. It is important to point out that penal codes (on state, entity and District Brčko levels) define criminal acts which can be closely connected to violations of rights proclaimed by The Gender Equality Law, so very often two criminal offences can be perpetrated by one criminal act: 1) criminal offence defined in The Penal Code and 2) criminal act defined in penal regulations of The Gender Equality Law of BiH. For example, sexual intercourse by abuse of position and sexual harassment as defined in Article 27 of The Gender Equality Law of BiH. In this and similar cases perpetrators are mostly prosecuted for criminal offence defined in The Penal Code, while the offence mentioned in The Gender Equality Law of BiH is neglected, although there was an opportunity to qualify these offences as **two criminal offences committed in concurrence**.

Until now, the most often violation of rights were **various forms of sexual harassment and violence**, which are usually committed in combination with other criminal offences defined in penal codes in force in Bosnia and Herzegovina. Offenders were criminally prosecuted only for one criminal act, while the protection defined in The Gender Equality Law is neglected or not recognized at all.

On the other hand, entity gender centers and The Gender Equality Agency of BiH provided us data which show citizens recognize and report in the area of **labor and employment**. Until May 2007, the institutional gender mechanisms for implementation of The Gender Equality Law received **25 requests for investigation of violation of The Gender Equality Law of BiH**. Most of them related to investigation of violations of Articles 7, 8 and 9, related to discrimination in labor and employment.

Gender based discrimination is recognized in the media too. The Communication Regulatory Agency of BiH received several complaints of citizens and legal entities which complained about discrimination against women in programs such as "Maca show" of TV OBN and "Balkan net" of TV PINK BiH. In case of program "Maca show" The Agency **sanctioned TV station with 30.000 KM fine, inter alia because of complaint referring to gender based discrimination**.

¹⁶ Municipal Court in Kalesija brought suspended sentence of 6 months imprisonment for sexual harassment, with probation time of 2 years, while the victim was referred to litigation in order to realize damage claim. (*Final judgment of Municipal Court in Kalesija, no 029-0-K-06-000037 of September 22nd 2006*)

¹⁷ Explaining the judgment against Mr. Vlado Adamović, the judge of Municipal Court in Sarajevo Mr. Goran Radević mentioned it was undoubtedly found that Mr. Adamović sexually harassed eighteen-years-old worker of one Sarajevo flower shop and kissed her mouth against her will. He explained the sentence is adequate in comparison to severeness of offence committed by Adamović. "I base this judgment above all on a statement of injured person which was sincere and convincing. There were other evidences confirming her words. Defendant tried to present this event differently, interpreting a kiss as a harmless physical contact, which is unacceptable", stated judge Radević adding the judgment against Adamović is the first in of a kind after adoption of The Gender Equality Law as well as the first sentence brought for sexual harassment. "Nezavisne novine" (daily paper), no. 3082, March 9th 2007, p. 2

*In the period May 2003 - April 30th 2007, The Press Council of BiH received **five complaints** related to reporting of press about queer population, one complaint about using inappropriate grammar gender for titles and functions of persons and one complained related to discrimination against women in the report.*

Nongovernmental organizations in BiH are also familiar with discrimination cases related to The Gender Equality Law.

*For example, "Vaša prava" Office in Sarajevo filed a suit in April 2007 before the Municipal Court in Sarajevo, related to violation of Article 7 of The Law, upon a woman reported discrimination during a job interview, while Helsinki Committee for Human Rights of BiH received **six complaints reporting violation of The Gender Equality Law**, however it didn't take any further steps since court procedures are not in its mission. This organization assisted creation of one appeal about unsatisfactory decision of The Prosecutor's Office, which was submitted to The Constitutional Court of BiH. In this Appeal The Committee called *inter alia* upon Articles 3 and 4 of The Gender Equality Law of BiH.*

Recently a woman came to Office of "Vaša prava" in Prijedor reporting dismissal from job while she was pregnant. Labor inspection was informed, and in case the inspection does not solve the problem, lawyer of this organization believes in this case, apart from The Labor Law, The Gender Equality Law could be used as well as the international conventions regulating these issues.

*Organizations "Udružene žene" Banja Luka and Helsinki Citizens' Assembly Banja Luka **filed a suit to The Administrative Department of the Court of BiH** against the decision of The Central Election Committee of BiH and violation of The Article 15 of The Law which proclaims equal participation of women and men in public life.*

Public and institutions are mostly not familiarized with The Gender Equality Law of BiH and obligations BiH has according to the international conventions and other documents, as well as with other laws regulating equal access to education, labor and advancement in career and prohibiting discrimination. Educational institutions sill do not use opportunities provided by the law to sanction gender based discrimination and they still haven't provided educational plans and programs which eliminated stereotypical portrayal of social roles of women and men. This also implies they still haven't open equal opportunities in selection of professions which are traditionally divided into so called male and female professions. Overview of situation in the period 1999-2005 prepared by The Statistic Agency of FBiH entitled 'Women and Men' shows there is still division in professions and that women mostly wish to get employed in education, health and services, while men in technical engineering, construction, architecture and politics.

If a standard of equal representation of women and men in public life is a ratio recommended by The Board of Ministers of The Council of Europe stating representation of one sex must not be below 40%, we may say Bosnia and Herzegovina is far below standard. Not only women of Bosnia and Herzegovina are marginalized in political life and decision making, but they are completely excluded from some bodies. Women are not

represented in the executive power of Bosnia and Herzegovina. All ten members of The Council of Ministers are men. All three members of The Presidency of Bosnia and Herzegovina are men, and women are minority in the legislative power too. In the House of Representatives of The Parliamentary Assembly of BiH 14,29% of delegates are women, while percentage in The House of People is 13,33%.

Based on all aforementioned, it can be concluded discrimination is present in all areas of life, but it is not recognized by judicial and prosecutorial institutions as defined in The Gender Equality Law.

Another problem is long duration of court procedures. Although The Law regulated urgency in proceedings of criminal and misdemeanor offences, the research showed procedure from filing report to final judgment lasts at least one year.

5. 2. Problems in Practice

In research and analysis of Articles of The Gender Equality Law the following weaknesses were found:

- Variety in **determination of subject matter jurisdiction of the courts and prosecutors' offices** which process cases of criminal offences as defined in The Gender Equality Law of BiH.

Although jurisdictions in these cases is in The Prosecutor's Office of BiH and The Court of BiH, according to information collected in the research other prosecutors' offices prosecuted and courts sentenced offenders for criminal offences regulated in Article 27, with referral to Article 4 of The Gender Equality Law of BiH. One judgment was made by The Municipal Court in Kalesija and the other, not final yet, by The Municipal Court in Sarajevo.

- **Lack of knowledge about The Gender Equality Law of BiH**

Many relevant institutions who should apply this Law are not familiar with it or if they heard about it, are not familiar with its content.

- **Incompleteness of some regulations of The Law**

Defining types of misdemeanor, the legislator has not precised violation of which articles of the Law should be considered a misdemeanor, neither it determined penal acts can also be perpetrated as a misdemeanor, which is inconsistent since not every act necessarily implies a criminal procedure.

Content of Article 28, Paragraph 1, Line 1 of The Gender Equality Law of BiH implies sanctioning of failure to take appropriate measures and efficient mechanisms of protection against gender based discrimination, harassment and sexual harassment, **however it does not refer to basic regulations connected to the penalty.**

For example, The Law does not contain any regulation which would sanction legal entity and responsible person of the legal entity if he/she takes disciplinary or other punitive measure against a person complaining or testifying about discrimination in labor and employment. Also, the regulation does not provide sanctioning of an individual for offence committed in private sphere of life.

- There were also problems in practice related to criminal offences connected to violation of gender equality rights (usually these are sexual offences), with regards to **application of procedural laws, particularly when minors are involved.**

Above all, the legal framework related to criminal law is not harmonized with international standards determined by The Convention on Child's Rights and other international documents, according to which every person younger than 18 is considered a child.

According to definition of penal law (Article 2, Paragraphs 9 and 10 of The Penal Code of BiH), a child is defined as a person younger than 14, while a person younger than 18 is considered a minor. Same definitions are found in The Penal Code of The District of Brčko, while there is no definition of a child or a minor in The Penal Code of RS, with exception of Article 69 of The Penal Code of RS which defines penalties against minors which vary for minors at the age of 14, 16 and 18.

With regards to this, in material penal law in area of criminal offences against sexual freedoms and moral (sexual offences) and criminal offences against marriage and family there are still differences in qualifications of criminal acts and sanctions depending of child's age (below 14 and above 14).

There is a same observation for other criminal offences which relate to violation of gender equality rights. For example, criminal offence of domestic violence (Article 222 of The Penal Code of FBiH, Article 218 of The Penal Code of The District of Brčko and Article 208 of The Penal Code of RS), and other offences against "sexual freedoms and moral" and criminal offences against "freedom, human and citizen's rights" and criminal offences in labor, are defined as same offences but sanctioned differently in different laws.

Another problem relates to procedure of taking into account of statement of witness/victim of criminal offence, on which the judgment is largely based. Current legal framework is not completely satisfactory, because it does not guarantee protection to a victim from revenge, it does not guarantee fully objective treatment of her/his statement and motives for reporting the offence, and finally it does not guarantee the maximum level of determination of material truth.

With regards to domestic violence, which is most often recognized form of violation of gender equality rights, there are problems in implementation of the entity laws on protection from domestic violence, because the relevant ministries have not passed bylaws that would ensure efficient and effective implementation of protection measures defined by these laws.

5.3. Conclusions and Recommendations

Conclusions and recommendations were (re)defined upon presentations of The Study "Gender Equality and Court Practice in BiH" held in Sarajevo, Banja Luka and Gračanica, and according to suggestions and comments provided by participants in these events.

General conclusion was that **changes and amendments to The Gender Equality Law of BiH are necessary** due to textual incompleteness which caused various problems in implementation, and that the working group in charge of this task should use recommendations from The Study "Gender Equality and Court Practice in BiH" as a legal basis for its work. One of the notes refers to disharmony in laws at different administrative levels of BiH, which causes same offences are sanctioned differently, due to which harmonization of the laws in BiH should be started.

CONCLUSIONS AND RECOMMENDATIONS

Implementation of The Law

Conclusion

Although The Gender Equality Law of BiH was passed in 2003, public is still not familiar enough with its content. Statistics on implementation of this Law shows it is (more or less) not implemented.

Women in BiH society are still disadvantaged in comparison to men, since they do not have equal opportunities as men, they are treated differently and enjoyment and realization of their rights is limited only because they are women.

(For example, regulation in the statute of a political party "the party will not put women as candidates for the highest positions in executive power", represents direct discrimination against women.)

Female and male citizens, including representatives of judicial authority, still do not recognize elements of harassment, privilege, restriction and other forms of gender based discrimination which we face on a daily basis.

Recommendation

Adoption of every new law should be followed by promotion to raise awareness of judges, prosecutors and all other relevant subjects responsible for its implementation.

Continuous education of judges and prosecutors, associates and interns is necessary. Judicial and Prosecutorial Training Centers of RS and FBiH and Judicial Commission of The District of Brčko should include training about gender based discrimination in their annual plans of trainings.

Since some participants asked "what acts are defined as gender based discrimination and how to protect oneself from discrimination", nongovernmental organizations and entity gender centers and The Gender Equality Agency of BiH should initiate a media project to familiarize public with issues of direct and indirect discrimination and affirm principles of protection from discrimination through judicial system of BiH.

Education should involve schools (teachers, pedagogues...) and students through program "ALPHABET OF GENDER EQUALITY" which would introduce them to gender terminology, forms of gender based discrimination and possibilities for protection.

Jurisdiction

Conclusion

Based on the analysis of judicial practice in application of The Gender Equality Law of BiH variance in practice of determination of court and prosecutors jurisdictions in cases of criminal offences defined in The Gender Equality Law of BiH was noted.

Recommendation

Precise jurisdictions of entity and The District of Brčko courts and prosecutors' offices for prosecution of criminal offences defined in this Law.

Misdemeanors

Conclusion

Certain articles of The Gender Equality Law are declarative, without producing any specific obligations.

Defining misdemeanor offences, the legislator didn't precise violation of which articles would be treated as misdemeanor offence, neither it regulated that criminal offences can also be committed as misdemeanor offences, because not every act necessarily implies criminal proceedings.

*Content of Article 28, Paragraph 1, Line 1 of The Gender Equality Law of BiH implies sanctioning of failure to take appropriate measures and efficient mechanisms of protection against gender based discrimination, harassment and sexual harassment, **however it does not refer to basic regulations connected to the penalty.***

Article 28 of The Gender Equality Law does not contain any regulation which would sanction private entity for offence committed in private sphere of life, neither sanctioning of minor offenders and protection of minor victims is regulated.

*Furthermore, The Law is inconsistent. Defining harassment and sexual harassment first it is mentioned "which as a **goal and result has...**", while later it says "**goal or result...**"*

Recommendation

Article 28 of The Gender Equality Law should be amended and precisely defined, since it does not contain regulations which would regulate and sanction violation of Article 8, Paragraph 2, and violation of Articles 11, 12, 13, 14, 15 and Article 17, Paragraphs 2 and 3 of The Law. Currently, according to the content of penalties, regulation of Article 28, Paragraph 1, Line 1 might be applied.

Proposals:

Article 28, Paragraph 1, Line 1

- *Article 28, Paragraph 1, Line 1 of The Gender Equality Law should be precisely defined.*

Articles 6 and 28

- Article 6, Paragraph 3 of The Gender Equality Law should bind the legal entities to provide efficient mechanisms of protection from discrimination which results from harassment.

Article 28 should regulate sanctioning of legal entity and responsible person of the legal entity if they take disciplinary or other punitive measures against a person who reported, complained or testified about discrimination.

Article 8, Paragraph 2 and Article 28

- Article 8, Paragraph 2 should prohibit sanctioning of persons who testified about offence.

Article 28 of The Gender Equality Law should regulate sanctioning of the legal entity and responsible person of the legal entity if they take disciplinary or other punitive measures against a person, who reported, complained or testified about discrimination.

Penal Regulations

Conclusion

With regards to criminal offences as defined in The Gender Equality Law of BiH, we noted criminal prosecution is mostly conducted for criminal offence defined in penal codes while criminal offences defined in The Gender Equality Law is neglected.

Recommendation

Prosecutors' offices should by bringing criminal charges, use opportunity to **qualify certain criminal offence as two criminal offences in concurrence, calling upon both - penal codes of the entities and The Gender Equality Law of BiH.**

New forms of criminal offence which would cover all forms of gender/sex/sexual orientation based harassment should be introduced into penal codes of the entities and The District of Brčko as defined in Article 4 of The Gender Equality Law of BiH.

Protection measures which would be taken in cases of violation of Article 27, with relation to Article 4, of The Gender Equality Law should also be introduced into entity penal codes, particularly referring to sexual harassment.

Urgency in Proceedings

Conclusion

Although The Law regulated urgency in proceedings, the research showed procedure from filing report to final judgment lasts at least one year.

Recommendation

It is necessary to ensure urgency in proceedings. In order to provide penal cases and misdemeanors have priority in procedure - through which Article 29 of The Law would be implemented, rules and bylaws regulating these procedures should ensure cases of violation of Gender Equality Law are marked as URGENT.

Status of a Victim

Conclusion

Injured persons/victims/witnesses are very often humiliated and their role minimized during questioning.

Recommendation

Promote a word "victim" instead of "injured person", in order to strengthen mechanisms of protection of victims which are currently inadequate and ineffective.

Ensure protection to victims through institutionalization of professional services which, depending on need and upon request of actors in process, should provide professional assistance and advice, that could be treated as valid evidence, same as court expert's opinion, which would ensure maximum objectivity and prevent influence of interested parties on the result of procedure.

"Relevant Authority"

Conclusion

In certain articles of The Law "Relevant Authority" is supposed to take measures to prevent gender based discrimination, while it is not clear who or what lies behind the phrase "Relevant Authority".

Recommendation

Precise who is hidden behind the phrase "Relevant Authority".

For example, Articles 12 and 13, Paragraph 3, state "Relevant Authority" will ensure/undertake... while it is not clear who the authority is.

Education

Conclusion

The Study showed neither one educational institution (ministry of education and/or educational institutes) had provided gender sensitive educational plans and programs and eliminated stereotypical portrayal of social roles of women and men.

Recommendation

Ministries of education should adopt by laws necessary for application of The Gender Equality Law to precise the process of implementation of its regulations which are currently, as for example Article 6, very general. It is necessary to determine what it means that relevant institutions will ensure efficient and effective protection mechanisms from discrimination and sexual harassment. Apart of that, it is important to systematically and continuously promote this Law in educational institutions, to ensure they become ready to respond to obligations defined in The Gender Equality Law.

Public Life

Conclusion

Equal representation of women and men was not ensured in public life with regards to obligation of the state bodies and bodies of local self governance and managing bodies of companies to ensure equal representation in management and decision-making. For example, in The House of Representatives of BiH 14,29% of delegates are women, while the percentage in The House of People is 13,33%.

Recommendation

*It is proposed that changes and amendments to The Gender Equality Law in the area of public life precisely define minimum number of persons of less represented sex necessary to establish any institution or a managing body. This **minimum number should be 40% which is in line with recommendation of The Council of Europe**. Furthermore, Article 15 should be amended in a way to introduce quota of 40% as imperative precondition for establishment of any mentioned institution or a body. We believe this way gender equality in public and political life would be introduced in practice as well.*

Role of Institutional Gender Mainstreaming Mechanisms

Conclusion

Several participants asked about the role of institutional gender mainstreaming mechanisms in BiH and duties these mechanisms have in implementation of The Law. It was concluded these institutions have not used all possibilities provided in the legal framework.

Recommendation

It should be precised what is hidden behind the obligation of The Gender Equality Agency of BiH to monitor implementation of The Law and Paragraph 1 of Article 25 regulating that entity gender centers "have the right to investigate violation of this Law upon requests of the ministries, citizens, nongovernmental organizations or upon their own initiative". Their mandate should be clearly defined.

The Gender Equality Agency of BiH and gender centers should be allowed to start procedures before the courts and other institutions in charge and represent the victims in cases that are of significant importance for prevention of gender based discrimination and promotion of gender equality.

Gender centers should have more active role in implementation of the Law, which is already regulated in its text. They should remind The Court of BiH, Prosecutor's Office of BiH and entity courts and prosecutor's offices about their obligation to provide urgency in proceedings as regulated by Article 29 of The Gender Equality Law.

5.4. Recommendations of the Nongovernmental Organizations

Aforementioned problems and experience the nongovernmental organizations faced in implementation of the law, request new actions of public advocacy and more intensive engagement of all institutions and organizations involved in its enforcement. Interviewed activists mentioned the following recommendations for more efficient implementation of The Gender Equality Law and providing of court and institutional protection:

- 1) *Prepare official comment of The Gender Equality Law with purpose to facilitate proceedings in institutions of BiH started pursuant to its articles.*
- 2) *Develop the bylaws and rules which will be more specific in regulating the issues covered by the state Law, facilitate its implementation and providing evidences of discrimination.*
- 3) *Comply with obligation of harmonization of all other laws in BiH with The Gender Equality Law in order to avoid possibility for the law enforcement authorities to select which regulation and sanction should be applies. The recent practice showed they mostly choose to apply these less favorable for victims of discrimination.*
- 4) *It is necessary to incorporate definitions of gender, gender identity, sexual orientation, expression and intersexual characteristics, definitions of discrimination based on them and provide protection of LGBTIQ persons.*
- 5) *Along with the other laws upon which they base court procedures, the lawyers should call upon The Gender Equality Law as well if possible, in order to promote its enforcement and examine its opportunities and weaknesses.*
- 6) *Development in initiated cases should be monitored; court and institutional practice should be analyzed, recorded and called upon in future proceedings. It is extremely important to monitor and record the decisions of constitutional and higher courts, since judges will not deviate from their practice in future similar cases.*
- 7) *Clarify the mandate of institutional gender mainstreaming mechanisms, particularly the mandate of gender centers and The Gender Equality Agency and determine why they do not have mandate to initiate court procedures or request other institutions to initiate them with regards to violation of The Gender Equality Law. If it turns out that they can not play this role, a new institution should be established - such as **public attorney for gender equality with approved such a mandate.***
- 8) *Sensitize judicial workers and employed in other Law enforcement institutions in gender issues, so they are able to recognize gender based discrimination.*
- 9) *Introduce education on implementation of The Gender Equality Law in regular training of judiciary at all levels, in which the judicial and prosecutorial training centers and institutional gender mainstreaming mechanisms should play the leading role, supported financially by the governments of BiH and its entities.*
- 10) *All employed in enforcement of The Law should be educated and sensitized for the work with LGBTIQ issues.*

6. CASE OF JUDGE ADAMOVIC

As one of the research team' members that worked on preparing this Study noticed, the general public in Bosnia and Herzegovina probably would never find out for Gender Equality Law of Bosnia and Herzegovina if there was not a case of Vlado Adamović. This case gained high media publicity thanks primarily to the fact that it was related to a judge of the highest court in the country, charged for sexual harassment punishable by Gender Equality Law with prison sentence from 6 months to 5 years.

Part of this brochure is dedicated to a case of Vlado Adamović, because of several reasons:

- Because of first instance condemning judgment and second instance releasing judgment in which the Cantonal Court in Sarajevo offered, in any case, confusing justification with releasing Vlado Adamović of guilt for sexual harassment
- Because of women and girls that could face similar situation in a future
- Because of expectations and believes that this releasing judgment would not become a role model for other same or similar cases
- Because of wish for women and men in our society to feel protected from unwanted and humiliating forms of harassments motivated solely with affiliation to certain sex or sexual orientation.

Therefore, on 8 March 2007, Municipal Court in Sarajevo adopted judgment in which it found Vlado Adamović guilty for sexual harassment of a saleswoman S. Š. in one flower shop in Sarajevo, and issued probation sentence of 8 (eight) months of prison. The Municipal Court in Sarajevo, presided by Judge Goran Radević, found Vlado Adamović guilty because he pulled to himself a saleswoman S. Š. against her will, and tried to kiss her mouth, which caused feeling of fear and severe humiliation of S. Š. With this act, Vlado Adamović committed criminal offence from the Article 4, Point d) of Gender Equality Law in B&H, for which criminal sanctions should be applied according to Article 27 of the same Law.

"The Court accepted entire testimony of S. Š. as sincere, convincing and truthful, believed the incident happened precisely on the way she described, and found that her testimony cannot be doubted in any moment and with any reason." says, among other things, the final first instance judgment. Contrary to that, the Court assessed defense of offender as **"constructed, invincible, untruthful, and opposite of factual situation."** With reminding what represents the sexual harassment as defined by the Article 4, Point d) of Gender Equality Law of B&H, the Court concluded that "offender sexually harassed S. Š. against her will, with behavior of using acts of sexual nature that resulted with making harm to a dignity of S. Š., creating for her frightening and humiliating situation, which was motivated based on sex because it is clear that offender conducted described acts toward S. Š. right because of her opposite sex, which represented and represents unwanted physical, verbal and suggestive behavior for S. Š."

Additional justification of the first instance judgment is especially interesting, because it states this judgment represents the first case of judicial sanctioning of criminal offence of discrimination based on sex in relation to application of Gender Equality Law in

B&H which would "easily leaded uninformed observer to conclude that we live in one happy society in which there is no discrimination based on sex and no violation of women's human rights. Unfortunately, as we all know, that is not truth, we are living in patriarchal society which is based on gender injustice, society where domination of one half of population (men) exists over other half of population (women) based on sex." *Justification of the first instance judgment also states that with adoption of Gender Equality Law, our country joined community of enlightened states and peoples, since "it adopted the Law which undoubtedly represents civilized accomplishment."*

Yet, Vlado Adamović appealed on this judgment, and case was transferred to the second instance court. Eight months latter, the second instance court - Cantonal Court in Sarajevo adopted judgment which released Vlado Adamović from guilt for sexual harassment.

Cantonal Court in Sarajevo concluded that a person can commit criminal offence of sexual harassment "only in position of an employer or a person with authority to decide about position of a damaged person in a fields of labor and labor relations, education, employment, social and health protection, sport and culture, and public life, in terms of possibility and representation in governance institutions."

Tripartite Council of the Cantonal Court in Sarajevo further stated that offender must be in position of a superior in order to be in position to discriminate some person, meaning that this person must have a possibility to influence on position of damaged person, equal to influence of employer, in order to commit discrimination related to Article 3 of Gender Equality Law of B&H. According to this Court, these circumstances did not exist in case of Vlado Adamović.

There is a logical question what kind of relation exists between a customer and a saleswoman/salesman? Is there any relation of superiority and inferiority? Can unsatisfied customer with his/her complaints and remarks lead to saleswoman/salesman to get fired? What if it is a case of regular customer which is also important public person which decided about destines of people? Which law in our state can protect a saleswoman that someone tries to touch and kiss against her will at her workplace? What rights and possibilities she has to protect herself from such customer?

Responses on these questions can be given only by the Constitutional Court in case of initiating the petition for assessing legality of the judgment of Cantonal Court in Sarajevo.

Judgment of the Cantonal Court in Sarajevo provoked stormy reaction of nongovernmental organizations that are working on protection of women's human rights. On 18 December 2007, NGO Foundation CURE from Sarajevo organized protests in front of the Cantonal Court in Sarajevo with slogan "STOP TO IMUNITY OF JUDICIAL AND POLITICAL POWER PEOPLE".

Armed with whistles and megaphone, women activists of CURE, representatives of other nongovernmental organizations, some media, and women and men citizens of Sarajevo protested against "scandalous judgment with which the Cantonal Court in Sarajevo legalized discrimination based on sex, and legalized immunity unjustifiably enjoyed by judicial and political power people!"

CALL FOR PROTEST

In front of the building of Cantonal Court in Sarajevo

Against scandalous second instance judgment of the Cantonal Court in Sarajevo with which Vlado Adamović is released from guilt for violating Gender Equality Law.

Let us remind that on 8 March 2007, Vlado Adamović, a Judge of the Court of Bosnia and Herzegovina, was found guilty by the Municipal Court for sexual harassment of eighteen years old S. Š., at her workplace, in flower shop on Grbavica in Sarajevo.

LET US STOP VIOLENCE

Nine months latter, Tripartite Council of Cantonal Court, Katarina Tomic, Dženana Latić and Jasmina Kosović, annulled this judgment with justification that Vlado Adamović was not in a position of superior to the victim?!

Sexual harassment: any action whereby any form of verbal, physical or psychological conduct based on sex occurs, with the purpose or effect of violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation, and which is for the individual an undesirable physical, verbal, implied or other behavior.

Protesti zbog presude u korist sudsije Adamovića

Stop imunitetu sudskih i političkih moćnika!

Ako je Adamović častan čovjek, povući će se, smatra Omersoftićeva

"Ne želimo sudsije perverznjake", "Stop imunitetu sudskih i političkih moćnika", "Nasilnicima sankcije, a ne nagrade"..., samo su neke od parola koje je uutorak uzvikuvala grupa oko 30 osoba, većinom žena, na protestima održanim ispred zgrade Suda Kantona Sarajevo.

S transparentima u rukama, demonstranti su prozivali Katarinu Tomic, Dženannu Latić i Jasminu Kosović, članice Vijeća Kantonalnog suda, koje su početkom decembra pobili presudu iz marta ove godine kojom je Općinski sud u Sarajevu, sudsiju Suda BiH Vlado Adamovića proglašio krivim za seksualno uznemiravanje 18-godišnje S. Š., na njenom radnom mjestu, u cvjećari na Grbavici.

Tročlano Vijeće Kantonalnog suda svoju je presudu obrazložilo riječima da Ada-

mović nije bio nadređeni žrtvi!

"To što je presuda zasnovana na manjkavosti zakona ne znači da ne postoji moralna odgovornost. Ako je Adamović častan čovjek, povući će se i otici na neku drugu funkciju. U našem je društvu pitanje seksualnog zlostavljanja i mobinga i dalje previjena velom tajne, a tako će biti sve dok se jednom ne shvati da svacičja kćerka može biti žrtva", smatra Amila Omersoftić, koja je pred zgradom Suda pridružila demonstrantima.

Na protestima je bila i Besima Borić, u ime Kantonalnog odbora SDP-a, koja je iznijela podatak da su u toku četiri godine, koliko već postoji Zakon o ravнопravnosti spolova, donesene samo dvije presude koje su vezane za njega. Jedna od njih, ona koja se odnosi na Vladu Adamovića, poništena je sada u decembru.

N. ČANO



Demonstranti okupljeni ispred Suda

SARAJEVO Protest pred Kantonalnim sudom

„Cure“ nezadovoljne presudom Adamoviću

Upućen zahtjev disciplinskoj komisiji da sudiju Suda BiH ne vrati na posao

„Ne želimo sudije perverznjake“, „Zaustavimo nasilje Vlade Adamovića“, „Nasilnici -ma sankcije, a ne nagrade“, bili su samo neki od transparenta na protestu članova Fondacije „Cure“ koji su se okupili ispred zgrade Kantonalnog suda u Sarajevu.

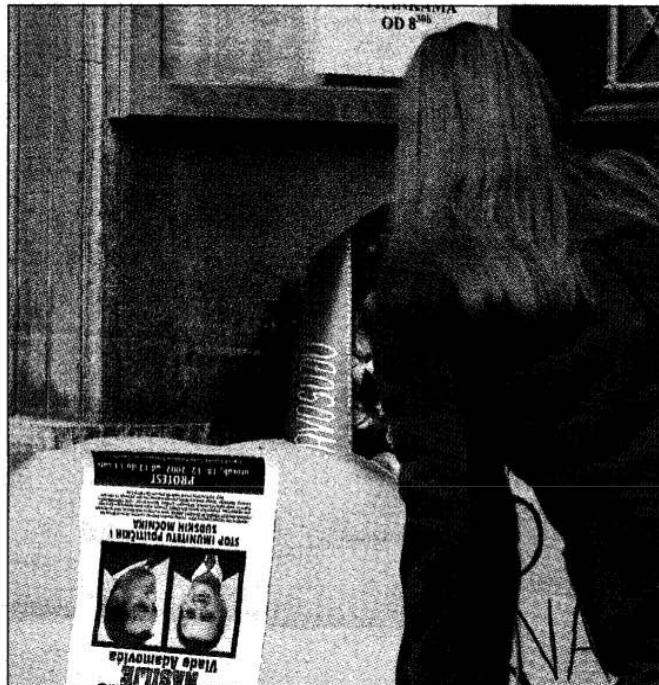
Oni su time izrazili nezadovoljstvo presudom kojom je sudija Suda BiH Vlado Adamović oslobođen optužbi za kršenje Zakona o ravnopravnosti spolova.

- Šokirani smo ovakvom odlukom Suda i zapanjilo nas je što su upravo sutkinje donijele oslobođajuću presudu.

Teško da možemo sada nešto učiniti, ali zahtijevamo da mu disciplinska komisija, koja još nije donijela odluku o privremenoj suspenziji, ne dozvoli povratak na radno mjesto - rekla je aktivistkinja Belma Bećirbašić.

Ispred ulaza u Sud postavljen je vijenac s posvetom „Nezavisnom pravosudu od diskriminiranih žena“.

Adamovića je Općinski sud ranije osudio na uvjetnu kaznu zbog seksualnog uzneniranja 18-god



Sarajevo: Ispred Suda aktivistkinje položile vijenac

(Foto: I. Šebalj)

dišnje radnica u sarajevskoj cvjećari „Evergrin“, ali ga je Kanto-

nalni sud u drugostepenoj odluci oslobođio optužbi.

I.M.

The latest information related to the case of Vlado Adamović arrived on 14 February 2008 when it was announced that the First Instance Disciplinary Commission of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina released Vlado Adamović from position of a judge.

The First Instance Disciplinary Commission assessed that behavior of Vlado Adamović, a Judge of Court of Bosnia and Herzegovina, in the court and out of the court harmed the reputation of a judicial function, and issued a disciplinary measure of releasing him from a position of a judge.

With making decision to use the hardest disciplinary measure, First Instance Disciplinary Commission assessed the case as very serious disciplinary offence with difficult consequences for dignity of judicial system, and in relation to a weight of offence

and related circumstances, this Commission founded the offender incapable and unworthy of further performing a duty of judge. The First Instance Disciplinary Commission took into consideration that during a course of this case, offender did not express sincere or any other regret because of his act and behavior.

Parties can appeal on this decision upon which the Second Instance Disciplinary Commission will decide. If the Second Instance Disciplinary Commission issues a disciplinary measure against the offender, he can appeal to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, which in full composition can change or confirm decision about issued disciplinary measure. In a case that High Judicial and Prosecutorial Council of B&H in full composition release the offender from a duty, the offender can initiate a judicial procedure in front of the Court of Bosnia and Herzegovina.



Publisher:
Helsinki Citizens Assembly Banja Luka

For the Publisher:
Lidija Živanović

Design:
Maja Ilić

Print:
"Grafid", Banja Luka



PODŽANO OD STRANE VLADE KANADE
SUPPORTED BY THE GOVERNMENT OF CANADA
SOUTENU PAR LE GOUVERNEMENT DU CANADA