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**Lada Sadikovic, PhD and Denis Hadzovic**

# **HUMAN RIGHTS IN THE ARMED FORCES OF BOSNIA AND HERZEGOVINA**

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## **FOREWORD**

By ratifying the Convention for the Protection of Human Rights on July 12<sup>th</sup> 2002 Bosnia-Herzegovina has assumed responsibility that it will ensure the exercise of all human rights and fundamental freedoms regulated by the Convention and its protocols, for all individuals under its jurisdiction. This responsibility clearly implicates the protection of human rights for all individuals under its jurisdiction, regardless of the walks of life or organizational forms they belong to. It means that apart from human rights related to all individuals in BiH society, there are some areas which inherently do not allow for general realization and protection of human rights.

Human rights pertaining to the members of armed forces fall within this category. On one hand, members of armed forces enjoy all rights and fundamental freedoms as granted by the European Convention, while, on the other hand, by the nature and requirements of their profession they inevitably experience numerous restrictions in terms of exercise of such human rights. It is only logical to assume that within the Armed Forces of Bosnia and Herzegovina, it will not be possible to exercise fully all human rights which are typically granted to those involved with the civilian sector, because of high level of subordination and centralization of such function.

The delicacy of our task stems from the need to reconcile and harmonize human rights granted to all individuals with the obligatory restrictions immanent to the armed service. In accordance with the existing practice in modern European countries, the need arose to ensure the exercise of human rights for the individuals within that walk of life, at least inasmuch as it is feasible in such conditions, and, at the same time, without impeding normal functioning of the armed forces in terms of its defensive role.

With this premise in mind, the objective of our research in Bosnia and Herzegovina is to examine the relationship between freedom of an individual member of the Armed Forces of Bosnia and Herzegovina and the need to successfully perform primary duties of the Armed Forces of Bosnia and Herzegovina. This task is especially delicate since, this is the first time that in Bosnia and Herzegovina, the concept of professional armed forces was introduced instead of former compulsory military service.

This will give us the opportunity to use experience of developed democratic European countries which achieved certain results in this field and conducted research into relationship between armed forces and human rights of individual members of armed forces. It means that the project will mostly tackle the human rights fields which were subject to research in European countries, in order to pinpoint specific and characteristic aspects of our situation.

Its most striking feature in this field is the fact that the armed forces are not mentioned specifically in the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina), but in Annex 2 of the said Agreement. It is clear that future amendments to the Constitution will also regulate the constitutional status of the armed forces. Nevertheless, this research will be focused on the current state of affairs, regardless of the fact that the Dayton Agreement stipulated separate implementations for military and so-called civilian aspects of the Agreement, and that High Representative of the International Community is in charge of this field in accordance with Annex 10 of the Dayton Peace Agreement.

## INTRODUCTION

Within certain state institutions, human rights are greatly determined by the nature and the character of their function. In that respect, human rights within the armed forces of each individual country, including Bosnia and Herzegovina (hereafter referred to as BiH), certainly have a very specific character. Armed forces of each country are characterized by an extremely high level of centralization and subordination this thus narrows the space available for the protection of human rights within a standard meaning of that word. It is therefore, rightfully, presumed that members of the armed forces cannot enjoy the same level of human rights and freedoms, which is enjoyed by employees within other sectors of the state apparatus.

Traditional understanding of the organization and function of the armed forces does not take into account human rights and basic freedoms, which are, for example, listed in the European Convention on Protection of Human Rights and Basic Freedoms. However, the process of democratization, both of society and the state, has generated a need to consider the armed forces from a human rights standpoint, irrespective of the specific nature of their organization and function. Therefore, human rights of the armed force employees have to be introduced into the basic principles of the organization of the armed forces, as much as possible.

It must be emphasized that up to date, no research has been conducted, in Bosnia and Herzegovina, in the field human rights protection of members of the armed forces; as such no relevant bibliography exists on this subject. This research is the first; it can even be described as the pioneer undertaking in researching in the position of human rights in the BiH Armed Forces operation. For that reason, this research is both a good basis and an incentive for further studies in this delicate, relatively new and very specific field of application and protection of human rights and basic freedoms.

Some authors are of the opinion that human rights and military service are two contradicting terms, and that this contradiction has a real psychological, historical and cultural basis.<sup>1</sup> There are also reasons which may motivate military personnel to respect rights of a conscript, such

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<sup>1</sup> Ilona Kis „*Protection of Rights of Conscripts in Peace Time: Problems and Prospects in Eastern European and Central Asian Countries*“, „*Protection of Human Rights in Army and Police*“, prepared by Miroslav Hadzic, Centre for Civilian/Military Relations, Belgrade, 2003; pg. 161

as utilitarian, professional, communicational, national security reasons, social, educational-pedagogical reasons, public opinion, humanitarian, and reasons of specific nature.<sup>2</sup>

All these opinions and dilemmas also appear in relation to the organization and the functioning of the Armed Forces of BiH. Namely, Article 2 (1) of the BiH Defence Law prescribes that the Armed Forces are a professional, single military force organized and controlled by Bosnia and Herzegovina. The Armed Forces have active and reserve components, while military forces – Article 3(1) – all formations and units, for combat and support, land force, air force and air defence force, are organized by the BiH institutions. „Armed Forces may not be used for political purposes, or for the activities of any political parties (Article 5 of the Defence Law). The Defence Ministry is to be made up of civil servants, employees and professional military personnel as they are seconded there, in compliance with effective laws and the Rulebook on Internal Organization of the Defence Ministry (Article 14 of the BiH Defence Law). According to Article 33 of the same Law, the Armed Forces consist of professional military personnel, reserve personnel in military service, civilians and cadets.

The Law on Service in the BiH Armed Forces defines the service in AF BiH, AF composition, rights and duties of persons serving in AF, their status during service, system of personnel classification, assessments, promotions, management of the personnel registry and military personnel careers, ranks and insignia in AF, standards of conduct and other status issues related to persons serving in AF (Article 1 of the Law).

According to Article 3(1) of the Law on Service in AF BiH, the following persons may serve in AF: 1) military personnel; 2) civilians; 3) cadets. Military personnel are professional military personnel, and reserve personnel while in service. Article 3(2) specifies that professional military personnel are as follows: a) soldiers, b) non-commissioned officers, c) officers, d) generals. Civilians serving in AF are civil servants and employees to whom the provisions of the Law on Civil Service in BiH Institutions<sup>3</sup> and the Law on Work in BiH Institutions<sup>4</sup> apply. Reserve personnel are as follows: a) reserve soldiers, reserve non commissioned officers, reserve officers, reserve generals (Article 3(4)). During their military

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<sup>2</sup> Ibidem, pg. 164, *Categorization in „Methodological Reference Guide for Military Judiciary Training; COLPI/OSI, Budapest, 2001, manuscript)*

<sup>3</sup> Official Gazette BiH, no: 12/02, 8/03, 35/03, 4/04, 17/04, 26/04 i 37/04, 48/05

<sup>4</sup> Official Gazette BiH, no. 26/04, 7/05 i 48/05



service, reserve personnel enjoy the same rights and duties as professional personnel, if not otherwise specified in the Law (Article 3(5)). Reserve personnel service refers to the time spent in training, exercises, and missions. According to Article 3(7) of the Law, cadets are persons who are educated in professional military schools and academies for professional military service in the Armed Forces. Cadets' rights and duties are prescribed by this Law and regulations passed by the BiH Defence Minister.

It is also necessary to mention here the OSCE's Code of Conduct on Political/Military Security Aspects. It was adopted on the 91st Plenary Session of the Special Commission of CSCE Forum for Security and Cooperation in Budapest, on December 3, 1994 (Doc.FSC/1/95), and it certainly represents the basis for BiH's obligations in the field of defence and security. According to the Code of Conduct, it is the obligation of the state to provide for, and maintain democratic control over the Armed Forces of Bosnia and Herzegovina (AF BiH), intelligence agencies and police. Those forces should meet legitimate security interests of the state, and must remain politically neutral, in such a manner, as to enable each member, including the members of the Armed Forces, to realize his/her basic rights and freedoms, as specified in Article 32 of the Code.<sup>5</sup>

In accordance with the results of the 2008 Human Rights Report, citizens of Bosnia and Herzegovina are insufficiently informed of both the guarantees offered to them by the state as well as the potential restrictions to their human rights and basic freedoms. In that sense, 59 % of citizens think that their human rights are guaranteed by international documents, 29.5 % of citizens are convinced that the state of BiH guarantees their rights and freedoms, whilst 11% are completely unaware of how their human rights are protected.<sup>6</sup> A conclusion drawn from the aforementioned is that the citizens of BiH are even less informed about which human rights are guaranteed, and which human rights may be restricted, in compliance with the Law, for members of the professional Armed Forces of BiH. Since human rights and basic freedoms are also guaranteed by the BiH Constitution, and European Convention on Protection of Human Rights and Basic Freedoms, which is directly applicable in our state, and supersedes the Constitution, this certainly demands precise legal definition of restrictions of certain human rights and freedoms.

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<sup>5</sup> [http://www.oscebih.org/security\\_cooperation/bos/?d=4](http://www.oscebih.org/security_cooperation/bos/?d=4) from Sept 2, 2009

<sup>6</sup> *Human Rights in BiH 2008, Sarajevo University Center for Human Rights*) pg. 458



## **I THE APPLICATION OF THE EUROPEAN CONVENTION ON PROTECTION OF HUMAN RIGHTS AND BASIC FREEDOMS FOR MEMBERS OF THE BIH ARMED FORCES**

Bosnia and Herzegovina was accepted into the Council of Europe on April 24, 2002. On July 12, 2002, it ratified the European Convention on Protection of Human Rights and Basic Freedoms. In compliance with Article 2(2) of Annex 4 of the Constitution of Bosnia and Herzegovina, the provisions related to human rights and basic freedoms, prescribed by the European Convention and its protocols, are directly applicable in Bosnia and Herzegovina, and supersede every other law. Simultaneously with direct application of the EC in BiH, there started the application of control mechanisms, among which the most important one is without a doubt the Court of Human Rights in Strasbourg.

Upon joining the Council of Europe, BiH signed the Statute of the Council of Europe, which explicitly specifies in Article 3 that „Each member of the Council of Europe shall recognize the principle of rule of law, and the principle according to which each person under its jurisdiction must enjoy human rights and basic freedoms, therefore it shall undertake to cooperate, in honest and efficient manner, in achieving the goal defined in Chapter I“.

In relation to the application of the European Convention on Protection of Human Rights and Basic Freedoms to the BiH Armed Forces' employees, Article 1 of the European Convention is crucial, since it emphasizes the obligation that each member state of the Council of Europe has in „providing each person under their jurisdiction the rights and freedoms specified in the Convention and protocols attached to the Convention“. Each state which ratified the European Convention, and undertook to provide human rights and freedoms from the Convention to every person under its jurisdiction, has simultaneously undertaken to accept international jurisdiction, in case that they do not meet the accepted obligations. The European Convention protects „not only the rights of citizens, but also the rights of foreigners, individuals without citizenship, and persons without legal capacity, such as children or seriously disabled persons“<sup>7</sup>. Even the term „every person“ from Article 1 of the EC gives universal character to human rights and basic freedoms, therefore „every person“ also refers to the provision of

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<sup>7</sup> Donna Gomien, *Short Guide through the European Convention on Human Rights*, Council of Europe Publishing, 2005

human rights and basic freedoms to members of the armed forces of all member states of the Council of Europe and the EC signatories, including the state of Bosnia and Herzegovina.

In order to fully respond to the question of whether the European Convention on Protection of Human Rights and Freedoms applies to the employees of the BiH AF, we firstly have to emphasize that it totally depends on the level of ability of the state of BiH to provide human rights and freedoms from the EC and its protocols, to all persons under its jurisdiction, including, therefore, the BiH AF's employees. BiH's system of protection of human rights, which is, actually, an indicator of the EC's application in the state of BiH, is specific, since protective mechanisms have not been specified only in Annex 4 of the General Framework Agreement for Peace in BiH, but also in other Annexes to the Dayton Accords. The provision from Article 2(2) of the BiH Constitution, according to which human rights and freedoms from the EC shall be directly applied in BiH, and shall supersede every other law, certainly has specific significance. It primarily means that all local regulations, including the Constitution of BiH, as Annex 4 of the General Framework Agreement for Peace in BiH, must be reconciled with the provisions of the EC and its protocols.

Secondly, membership in the CoE and ratification of the EC foresee the obligation of the state of BiH to provide to all its citizens, including, therefore, the employees of the Armed Forces, the efficacious legal remedy in each case of violation of rights and freedoms protected by the EC and its protocols. Bosnia and Herzegovina has not yet met the requirement from Article 13 of the EC – efficacious legal remedy for every person under its jurisdiction. That primarily foresees the obligation of the state of BiH to establish a single judicial system in the entire state, and to establish, in compliance with the aforementioned, the Supreme Court of the State of BiH, which would provide for efficacious protection of rights and freedoms guaranteed by the EC and its protocols to all persons under the jurisdiction of the state of BiH. In its Report on Progress for 2008, the European Commission stated that one of „the main ongoing problems“ is the absence of the Supreme Court, which could reconcile the application of the Law between the four internal court jurisdictions: state level, FBiH, RS and Brcko District.<sup>8</sup>

A state that signs the EC must, first of all, meet the requirements prescribed by the CoE's Statute, which guarantees efficacious application of the EC and its protocols to all persons

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<sup>8</sup> *European Commission Report on BiH's Progress in 2008*, pg. 13

under its jurisdiction. Although at the time of the signing, BiH did not meet all foreseen requirements, among which are certainly the rule-of-law principle and protection of human rights, certain segments have remained in the form of the post-admission obligations, which Bosnia and Herzegovina undertook with the very signing of the Statute of Europe. In its last report, the European Commission's assessment stated that BiH had somewhat progressed in respect to improving the recognition of international legislation and human rights, however it also stated that more effort should be put into the application of human rights.<sup>9</sup>

On the basis of the analysis of the EC's application in BiH, in relation to all persons under its jurisdiction, including, certainly, the AF employees, it is necessary to conclude that BiH Constitution as Annex 4 to the Dayton Accords, contains numerous shortcomings expressed in discriminatory and segregational provisions. The State of BiH has not yet reconciled its regulations with the EC's provisions, therefore in the State of BiH, there are still discriminatory provisions according to which certain state positions, such as positions of the members of the BiH Presidency, House of Peoples of the BiH Parliamentary Assembly, or speaker and deputy speakers of both houses of the BiH Parliamentary Assembly, are reserved solely for the members of three „constituent peoples“, i.e. Bosniaks, Serbs and Croats. There are numerous segregation provisions in effect, which provide for ethnic discrimination in such manner that, for the sake of nomination into certain state bodies, citizens of BiH are divided into three separate groups, i.e. Serbs within Republika Srpska, and Bosniaks and Croats within the Federation of BiH. These very provisions mentioned above are in direct variance with Article 3 of the EC's Protocol 1, Article 14 of the European Convention, Copenhagen Principles, which are attached to Annex 3 of the General Framework Agreement for Peace in BiH, and Article 25 of the International Covenant on Civil and Political Rights.

We have already mentioned that Bosnia and Herzegovina accepted the European Convention on Human Rights as part of its own constitutional system. This fact is of crucial importance, in terms of ensuring that the conduct of the armed forces is done in such a manner so that it is in compliance with international law. In the case of peace operations or operations of a different nature, the Armed forces of Bosnia and Herzegovina, and the state as a whole are forbidden from using torture, inhuman treatment, and enslavement of many kind. What this thus implies, is that it is actually constitutionally forbidden to use any sort of torture tactics, or

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<sup>9</sup> *European Commission Report on BiH's Progress in 2008*, pg. 18

other inhuman methods of treatment towards prisoners, civilians and other individuals, who are, in whatever way, under the jurisdiction of the state of Bosnia and Herzegovina. We should also mention here the provision from Article 3, item 2 (a) of Annex 4- Constitution of Bosnia and Herzegovina, according to which „general principles of international law are constituent elements of the law of Bosnia and Herzegovina and its Entities“.

The Armed Forces of Bosnia and Herzegovina were established in 2005, and so far, there have not been any cases of inadequate treatment, such as brutality, violence and torture, registered. This does not mean that such cases shall not happen in the future, and therefore it is necessary to use appropriate regulations to legally define solutions for such situations.

### **1.1 Role of the Parliamentary Military Commissioner in BiH**

One of the modern approaches, used in the majority of European countries, to strengthening the parliamentary supervision over armed forces, and protection of human rights and basic freedoms of armed forces' members is the institution of military commissioner. The Law on BH Parliamentary Military Commissioner establishes the military commissioner institution with a goal to strengthen the rule of law, protect human rights and freedoms of military personnel and cadets in the Armed Forces of Bosnia and Herzegovina and BiH Ministry of Defence, as guaranteed by the BiH Constitution and international treaties attached to it.<sup>10</sup>

Competences of the military commissioner are as follows:

- a) Requesting from the BiH Defence Minister and Minister's subordinates the information and access to records. He/she may be denied this right only in the case of important secrecy reasons. Under such circumstances, the Minister shall decide on denial, in which case he/she is bound to explain the reasons for denial before the Joint Commission;
- b) On the basis of the instruction given in compliance with Article 3, item (1), item (a) of this law, and in case of requester's complaint, the military commissioner shall hear the requester, witnesses and experts;
- c) Giving an opportunity to an institution responsible for the case to resolve the issue;

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<sup>10</sup> Law on Parliamentary Military Commissioner of Bosnia and Herzegovina, passed on May 20, 2009, Article 1, item 2

- d) Forwarding the issue to bodies responsible for criminal or disciplinary procedures;
- e) Visiting units and commands of the Armed Forces of BiH, and organizational units of the BiH Defence Ministry at any time, without prior notice. This rights is an exclusive right of the military commissioner;
- f) Attending the sessions of the BiH Parliamentary Assembly or Joint Commission;
- g) Demanding the reports of the BiH Defence Minister, from within his/her field;
- h) In case of implementation of disciplinary procedure, he/she is to be provided an opportunity of attendance and approach to records related to the case (Article 4).

The military commissioner acts, and is competent to investigate specific issues upon instructions by the BiH Parliamentary Assembly and Joint Commission for Defence and Security BiH<sup>11</sup>, and to undertake activities on the basis of his/her own assessment, when in performing his/her duties, receives information from the BiH Parliamentary Assembly members, or when through consideration of complaints of military personnel and cadets, or otherwise, he/she notices circumstances, which indicate to violation of human rights and freedoms of cadets and military personnel.<sup>12</sup> Every military person or cadet in the Armed Forces of BiH is entitled to direct contact with the military commissioner, without mediation of official agencies, and to submission of complaint. A complainant shall be subject to no disciplinary procedure, nor discriminatory treatment due to the complaint he/she submitted (Article 8, item 1). When acting upon the submitted complaint, the military commissioner shall not disclose this information publicly if a complainant requests so, and if his/her complaint is not restricted by legal provisions (Article 8, item 3). The BiH Defence Ministry and BiH Armed Forces are bound to provide to all military personnel and cadets access to information on competences of the military commissioner. This obligation includes also the

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<sup>11</sup> BiH Joint Commission for Defence and Security (established on the basis of the decision of HR Paddy Ashdown, which extends the mandate for the defence reform, February 3, 2004) considers and follows the implementation of security and defence policy of Bosnia and Herzegovina; follows the work and considers the reports of the Standing Committee for Military Issues, BiH Defence Ministry and other executive bodies dealing with issues of security and defence, and reports to the Parliamentary Assembly of BiH, with special reference to reports, short-term and long-term plans related to the structure of BiH Armed Forces, personnel policy and recruitment, salaries and allowances, education and training of the members of the BiH Armed Forces, professional conduct and ethical standards for civilians and military personnel, equipping of troops, military industry operation, procurement of resources, import and export of weapons and military equipment, material assistance and contracts with foreign companies which provide services to defence institutions on commercial basis, combat readiness, military exercises and operations, including meeting international obligations and performance of international peace support operations; considers laws and amendments to laws under the Commission's competence; considers and submits positions and recommendations, alterations and amendments to the proposed defence budget; considers reports on defence budget execution and reports on audit of institutions from the field of BiH security and defence policy; and considers other issues related to BiH security; <http://www.parlament.ba/komisija/1/0/32.html> from May 19, 2009.

<sup>12</sup> Law on Parliamentary Military Commissioner, Article 3, items a) and b).

information on the procedure of complaint submission as a form of protection of complainants against any disciplinary measures or discrimination due to their submission (Article 8, item 4).

One of crucial elements in relation to the establishment of the institution of military commissioner is certainly his/her cooperation with other institutions, such as BiH Defence Ministry, Inspectorate General of the BiH Defence Ministry, Armed Forces of BiH and particularly with the Institution of Ombudsman for Human Rights in BiH. The aforementioned institutions are bound to inform the military commissioner on the procedures initiated upon his/her request or a request of another body, and on the outcome of the procedure. On the other side, court and administrative bodies are bound to inform the military commissioner on the beginning of the procedure, indictment and outcome of the procedure initiated upon his/her proposal. Institution of Ombudsman for Human Rights in BiH may, with the approval of a complainant, transfer the subject of complaint to the military commissioner for further action. The military commissioner is bound to inform the Institution of Ombudsman for Human Rights in BiH on conducting the procedure, and its outcome (Article 7).

At the end of this part of the research, it is evident that BiH basically exercises human rights and freedoms of members of Armed Forces to the extent and in a way appropriate to the nature of its social function. However, regarding Article 13 of European Convention on Human Rights, that is, the obligation to ensure effective legal remedy, there are still huge difficulties regarding the actual exercise of this right for all citizens of Bosnia and Herzegovina and members of Armed Forces. In fact, in case of Bosnia and Herzegovina the state failed to guarantee the right to effective legal remedy because there is still no modern judiciary system with a supreme court at its top. If the state failed to meet this requirement to ensure effective legal remedy, then, of course, it is unrealistic to expect it can be done only for members of Armed Forces of Bosnia and Herzegovina. In the same way, it is also impossible to ensure equality of electoral right for members of Armed Forces if, for that matter, there are still some quite evident discriminatory and segregation provisions in the Constitution of Bosnia and Herzegovina and the Election Law of Bosnia and Herzegovina based on this Constitution. Regarding military courts, here we can conclude that BiH does not have military judiciary and there are no proposals for its introduction.



## II RESTRICTION OF HUMAN RIGHTS

The European Convention on Protection of Human Rights foresees four forms of restriction of human rights, such as exceptions, specific restrictions, derogation and reserves. Taking into account the subject of this research, a special emphasis is put on specific restrictions, i.e. restrictions which may be executed only when such restrictions are in compliance with the law, in the interest of democratic society, and when there is a clearly defined goal for such restrictions.

### 2.1 Specific restrictions

Specific restrictions are a permanent option for the state to restrict human rights and basic freedoms, which may be executed if there are conditions foreseen by the European Convention on Protection of Human Rights and Basic Freedoms. There are three conditions: a) that restrictions are prescribed by the law, or in compliance with the law; b) that those restrictions are in the interest of a democratic society; c) that there exists a defined, clearly expressed legitimate goal for them. Taking into account that the European Convention is directly applicable, and that it supersedes every other law in Bosnia and Herzegovina, the prescribed categories, or legitimate goals foreseen by the European Convention are a) national security; b) public safety; c) country's economic welfare; d) prevention of crime and disorder; e) health protection; f) protection of morale; g) protection of rights and freedoms of others; h) public order; i) prevention of dissemination of confidential information, and the interest of preservation of authority and impartiality of judiciary.<sup>13</sup>

Expression „restriction prescribed by law“ or „in compliance with the law“ represents an obligation of the state to make laws accessible and precise. In the Sunday Times case, the Court of Human Rights determined that „the law must be accessible in the appropriate manner: citizens must be given an opportunity to have an indication adequate to circumstances of legal rules applicable to a given case. Secondly, a norm may not be considered „law“ if it is not sufficiently precisely formulated in order to make it possible for a citizen to regulate his/her conduct...“

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<sup>13</sup> Articles 8 (Right to Privacy), 9 (Freedom of thought, conscience and religion), 10 (Freedom of expression) and 11 (Freedom to meet and gather) of the European Convention on Protection of Human Rights and Basic Freedoms

Jurisprudence of the Human Rights Court has shown that, in relation to the interpretation of specific restrictions, the Court emphasizes a need for certain level of discretion in national legislation. The Court also emphasizes that the national authorities are competent to interpret and apply national law, and that there must exist a certain level of flexibility in such interpretation, since it is almost impossible to achieve absolute precision of the law.<sup>14</sup>

After the Court of Human Rights concludes that the measures undertaken are in compliance with the law, it is also necessary to consider whether such measures or procedures are truly „necessary in a democratic society“. Such consideration certainly dictates the establishment of a balance between the interests of an individual and the interest of a state or society. In its ruling in the Handyside<sup>15</sup> case, the Court of Human Rights put an expression „democratic society“ in the context of pluralism, tolerance, open spirit, and freedom of expression. Each restriction imposed on the basis of this criterion must firstly be legitimate, and secondly, it must be proportional to the legitimate goal it intends to achieve.

Legitimate goals listed in Articles 8-11 of the European Convention are not identical, and are applied, to a lesser or higher degree, depending on the right of freedom concerned. The right to privacy may be restricted on the basis of national security, public safety, economic welfare of a country, disorder or crime, protection of health and morale, and protection of rights and freedoms of others.

Freedom of thought, conscience and religion may be restricted only on the basis of public safety, protection of health and morale, protection of rights and freedoms of others, and protection of public order, a criterion characteristic only of this article.

Freedom of expression has the broadest scope of restrictions, and measures which the state may undertake, and which are mentioned in all other aforementioned articles, are based on national security, public safety, prevention of disorder or crimes, and protection of health and morale. This article also contains additional legitimate goals based on which freedom of expression may be restricted, such as protection of reputation or rights of others, territorial integrity, prevention of dissemination of confidential information, and restriction in the interest of preservation of authority and impartiality of judiciary.

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<sup>14</sup> Goodwin case from 1966

<sup>15</sup> Handyside case from 1976

And, finally, freedom to meet and gather may be restricted on the basis of national security, public safety, prevention of disorder or crime, protection of health and morale, and protection of rights and freedoms of others. Article 11 of the European Convention prescribes also that „this Article does not ban introduction of legal restrictions for the rights enjoyed by the members of armed forces, police or state administration“, which means that the prescribed provision provides an additional opportunity to the state to restrict freedom to meet and gather only for the said categories.

The state of Bosnia and Herzegovina also may proclaim null and void certain human rights and freedoms in the state of emergency, such as „the situation of war or other public threats to the survival of the nation“.<sup>16</sup> Derogation of human rights, by rule, has a limited character and lasts as long as the threat, which caused the introduction of the said measures. However, certain human rights and freedoms are not subject to derogation even if there is a situation of war or other public threat. The following articles of the European Convention on Protection of Human Rights and Basic Freedoms are in this category: Article 2(1) – right to life, Article 3 – freedom from torture and other inhuman or humiliating procedures or punishments, Article 4(1) – slavery and forced labour ban, Article 7 – punishment solely on the basis of the law, Protocol 6(3) – ban of death penalty, and Protocol 7(4) - ban of the second-time trial of persons already convicted for the same offense , or released in relation to the same offense. (*non bis in idem*).

Article 10 of the Defence Law states that „the Parliamentary Assembly of Bosnia and Herzegovina has jurisdiction to declare the situation of war upon the request of the Presidency in case of a direct attack on Bosnia and Herzegovina or its part, and to declare the state of emergency upon the request of the Presidency when there is a threat to the existence of Bosnia and Herzegovina, threat of attack on Bosnia and Herzegovina or any of its parts, or a direct war threat“. Article 12 of the Defence Law specifies that „the Presidency makes its decisions by consensus, and that it has jurisdiction to: a) demand from the Parliamentary Assembly to declare the situation of war; b) demand from the Parliamentary Assembly to declare the state of emergency“. Chapter IV „Declaration of War or State of Emergency“ (Articles 40-43) and Chapter V „Natural and Other Disasters and Accidents“ (Articles 44-45) regulate the issue of demanding the declaration of war, declaration of war or state of

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<sup>16</sup> Article 15 of the European Convention on Protection of Human Rights and Basic Freedoms

emergency, consideration deadlines, engagement of armed forces in cases of natural or other disasters and accidents.

Similar provisions on introducing the state of emergency are specified in the Constitution of the Federation of Bosnia and Herzegovina (Article 9) and the Constitution of Republika Srpska (Article 70), which is, certainly, a paradox, since there are no such provisions in the Constitution of the state to which those entities belong.<sup>17</sup>

Since Bosnia and Herzegovina faces the beginning of the process of constitutional change, which is a requirement for the accession of Bosnia and Herzegovina into the European Union, it is necessary to adequately regulate the issue of the functioning of the state of Bosnia and Herzegovina in conditions of the state of emergency, and especially restrictions of basic human rights and freedoms. All European countries have, constitutionally, clearly determined which state body may declare the state of emergency. In that light, Bosnia and Herzegovina may, and must be no exception. Constitutional provisions which are being prepared must, absolutely clearly, specify which body shall have legislative and executive powers in circumstances of internal or external threat to the survival of the Bosnian-Herzegovinian nation, in compliance with the provisions of Article 15 of the European Convention on Protection of Human Rights.<sup>18</sup>

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<sup>17</sup> In Article 70 (National Assembly) of the Constitution of Republika Srpska, item 3 has been replaced with Amendment CVII which reads: „National Assembly, in compliance with the Constitution and law, declares : the state of emergency for the Republika or part of the Republika in case of a threat to safety caused by natural disasters (floods, earthquakes, epidemics), violation of human rights and freedoms and normal functioning of the constitutional bodies of the Republika. Provisions of item 3 of this Article do not refer to the use of the military and other measures under the jurisdiction of the BiH institutions.“ The Federation of Bosnia and Herzegovina, as an entity of the state of Bosnia and Herzegovina, is authorized to pass the provisions with legal power, in case of a threat to the country according to Article 9 of the Constitution: „The Federation Government is authorized to pass the provisions with legal power in case of a threat to the country when the Federation Parliament is unable to do it. Each provision shall have the power of law and may not derogate the rights and freedoms determined by this Constitution. Each provision shall cease to be valid upon the expiry of the 30th day from its publication at the latest; it shall cease to be valid immediately upon abolition by the Parliament, or at the end of the 10th day from its publication, if the Federation Parliament is in session at the time of the publication of the provision. The provision published while the Federation uses the armed forces in compliance with this Constitution shall remain effective till the fifth day of the following session of the Federation Parliament, when its effectiveness shall cease, except if it does not get confirmed; in any case, it shall not be effective longer than six months. When the deadline expires, the provision's effectiveness may not be renewed, the provision may not be passed again, nor can it be partly changed without the decision of the Federation Parliament and its approval.“

<sup>18</sup> Lada Sadiković, „Restrictions of Human Rights in „Human Rights in Bosnia and Herzegovina 2008“; Sarajevo University Centre for Human Rights), pg. 57

## **2.2 National Normative Framework**

Article 5 of the BiH Defence Law reads:

„Armed Forces may not be used for political purposes or activities of political parties.“

Article 48 of the BiH Defence Law (Political and Public Action) reads:

„(1) Members of the Armed Forces, including generals, are neutral in relation to political issues, and shall not engage in any kind of activity within political parties, or be elected or nominated to an office.

(2) This Article does not prevent the members of the Armed Forces from registering to vote, and from voting, or running for an office in compliance with the provisions of the BiH Election Law („Official Gazette BiH no 23/01, 7/02, 9/02, 20/02, 25/02, 4/04 and 20/04).“

Article 26 of the Law on Service in the BiH Armed Forces reads:

„Professional military persons are not allowed to get involved in trade union or politics.“

Article 27 of the Law on Service in the BiH Armed Forces regulates „public actions“ as follows:

„ (1) Military persons are not allowed public actions related to the situation and relationships in the Armed Forces without written approval of the Defence Minister.

(2) Item (1) of this Article does not apply to military persons when they are asked to give a statement to a Parliamentary commission or in the court.

(3) Military person from item (2) of this Article observes the provisions of the BiH Law on Protection of Secret Data (Official Gazette BiH no. 54/05).

Membership in associations is regulated by Article 89 of the Law on Service in the BiH Armed Forces:

(1) Professional military person serving in the Armed Forces may get involved in the activities of associations and non-governmental organizations only if those activities are in compliance with this Law.

(2) Professional military person may become a member of foreign professional associations or international organizations only upon the Defence Minister's approval.“

## **2.3 Analysis of Legal Regulations**

Since BiH Armed Forces are a „professional military force organized and controlled by Bosnia and Herzegovina“<sup>19</sup>, employees of the AF are subject to certain restrictions, prescribed by the BiH Defence Law and Law on Service in BiH Armed Forces.

### **2.3.1 BiH Defence Law<sup>20</sup>**

Employees of the BiH Armed Forces are not allowed any political engagement: „Armed Forces may not be used for political purposes, or activities of political parties.“<sup>21</sup> Political and public action of the BiH AF employees is also regulated in Article 48 of the BiH Defence Law, which reads that: „members of the Armed Forces, including generals, are neutral in relation to political issues and shall not engage in any kind of activity within political parties, or be elected or nominated to public office.“<sup>22</sup>

However, „this article does not prevent the members of the Armed Forces to register to vote, and to vote, or to run for an office in compliance with the provisions of the BiH Election Law.“<sup>23</sup> A member of the reserve personnel, who is elected or appointed to a public office, is not bound to resign if he/she is involved in regular training, however he/she may not act from the position of partisan affiliation while in the Armed Forces.<sup>24</sup>

### **2.3.2 Law on Service in BiH Armed Forces<sup>25</sup>**

Law on Service in BiH Armed Forces regulates, among other things, the service in the BiH Armed Forces, composition of armed forces, employment, rights and obligations of persons serving in Armed Forces, their status during service, standards of conduct, and other status issues related to persons serving in the Armed Forces.<sup>26</sup> This Law also regulates the rights and duties of persons serving in the Armed Forces.

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<sup>19</sup> Article 2(1) BiH Defence Law

<sup>20</sup> Official Gazette BiH no. 88/05

<sup>21</sup> Article 5 BiH Defence Law

<sup>22</sup> Article 48(1) BiH Defence Law

<sup>23</sup> Article 48(2) BiH Defence Law

<sup>24</sup> Article 48(3) BiH Defence Law

<sup>25</sup> Official Gazette BiH no. 88/05, 53/07

<sup>26</sup> Article 1. Law on Service in the BiH Armed Forces, no. 227/05 as of October 5, 2005

Professional military personnel are not allowed engagement in trade unions or political engagement.<sup>27</sup> Military personnel are also not allowed any public action in relation to the situation and relationships in the Armed Forces without the written approval by the Defence Minister.<sup>28</sup> Public action ban does not apply to military personnel when they are asked to give a statement to parliamentary commission or in the court. Military personnel from the previous item of this Article observe the provisions of the Law on Protection of Secret Data of Bosnia and Herzegovina.<sup>29</sup>

Professional military personnel serving in the Armed Forces may get involved in the activities of associations and non-governmental organization only if those activities are in compliance with this Law.<sup>30</sup> Professional military personnel may become members of a foreign professional association or international organization only with the approval of the Defence Minister.<sup>31</sup>

“Nezavisne novine” reports that former non-commissioned officers of the BiH entity armies claimed that in the BiH Armed Forces (AF), they were forced to sign, under pressure, the contract for a lower rank, the rank of a soldier, and that they did not have the right to complain to the BiH Defence Ministry. They claim that there was discrimination during the selection of people who were kept at the non-commissioned officer's rank, and that only the people who attended trainings and educational courses kept the rank of non-commissioned officers. The Defence Ministry confirmed that 518 persons attained the rank of soldier, instead of the rank of non-commissioned officer. „The number of non-commissioned officers who were taken over from the entity armies, was larger than the formation needs of the BiH AF. That was the reason that more than 500 attained the rank of soldier. The Defence Ministry explains that each person who thought that the process was not implemented in compliance with the law, had a chance to contact the Inspectorate General of the BiH Defence Ministry, EUFOR Commander, and Sarajevo-based NATO HQ Commander.<sup>32</sup>

“Dnevni avaz” also reports that 2750 military personnel will be jobless in Bosnia and Herzegovina. „All professional military persons whose contracts expire in the first half of

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<sup>27</sup> Article 26. Law on Service in the BiH Armed Forces

<sup>28</sup> Article 27(1) Law on Service in the BiH Armed Forces

<sup>29</sup> Article 27(2) i(3) Law on Service in the BiH Armed Forces

<sup>30</sup> Article 89(1) Law on Service in the BiH Armed Forces

<sup>31</sup> Article 89(2) Law on Service in the BiH Armed Forces

<sup>32</sup> Daily newspaper ‘Nezavisne novine’, May 11, 2005, pg. 7

2010, and which, due to legal restrictions related to age, shall not be renewed, will be fired from the Armed Forces.“ Minister Selmo Cikotic says that „he is not able to provide the precise information at this moment, emphasizing that he will try to keep the maximum number of people, and to second some of them in the Armed Forces and Defence Ministry, while others will have to leave these institutions.“ The Armed Forces have unfavourable age structure of officers, non-commissioned officers, and especially soldiers. In the end of 2008, there were 9907 persons in the BiH AF, of whom 1999 officers, 3063 non-commissioned officers, 4120 soldiers, and 635 civilians. Average age of the generals is 47, of officers 38, of non-commissioned officers 33, and of civilians 42 years.<sup>33</sup>

Regarding state of emergency also mentioned in this Chapter, it can be concluded that it is necessary to precisely define a body that can announce the state of emergency in Bosnia and Herzegovina at the state level, and exercise legal and executive powers in situations of war or some other events imposing serious threat to the survival of BiH nation.

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<sup>33</sup> Daily newspaper ‘Dnevni avaz’, June 6, 2009, pg. 7



### **III FORMATION OF TRADE UNIONS AND INDEPENDENT WORKERS' ASSOCIATIONS**

#### **3.1 International normative framework**

##### Article 20 of the Universal Declaration of Human Rights

- „1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.“

##### Article 22 of the International Covenant on Civil and Political Rights

- „ 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.“

##### Article 8 of the International Covenant on Economic, Social and Cultural Rights

- „1. The States Parties to the present Covenant undertake to ensure:
  - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
  - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### Article 11 of the European Convention for the Protection of Human Rights

„1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.“

## 3.2 National normative framework

Article 26 of the Law on Service in the BiH Armed Forces says:

„Professional members of the armed forces are not permitted to join trade unions and political organisations“.

## 3.3 Analysis of legal regulations

Freedom of associating with others means also the right to form and join trade unions for the protection of one’s interests. Therefore, the European Court of Human Rights in Strasbourg emphasized that “the right to form and join trade unions” in article 11 of the European Convention is an aspect of broader right to freedom and assembly.<sup>34</sup>

At this point one certainly needs to pose the question of whether and to what extent is it possible to ensure the primary function of „the protection of sovereignty and territorial integrity of the state“ and the respect of the right of members of the armed forces to freedom of assembly and association.

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<sup>34</sup> Sigurdur A. Sigurjonsson against Iceland from 1993.

Freedom of assembly is one of the fundamental human rights and is clearly standardised in all relevant documents on human rights. The Universal Declaration of Human Rights states in article 20 that „everyone has the right to freedom of peaceful assembly and association (item 1) and that no one may be compelled to belong to an association (item 2)“. The International Covenant on Economic, Social and Cultural Rights sets similar standards to „the right to freedom of association with others, including the right to form and join trade unions for the protection of one’s rights.“ (article 22 item 1).

The International Covenant on Economic, Social and Cultural Rights also guarantees the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests (article 8 item 1). And finally the European Convention for the Protection of Human Rights emphasizes in article 11 item 1 that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

On the other hand, the rights of the members of the armed forces are clearly restricted by the following provisions: Article 22 item 1 of the International Covenant on Civil and Political Rights clearly emphasizes that „this article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right“; article 8 item 2 of the International Covenant on Economic, Social and Cultural Rights also states that „this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State“; article 11 item 2 of the European Convention for the Protection of Human Rights emphasizes that „this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.“

Joining trade unions and independent workers’ associations in Bosnia and Herzegovina is regulated primarily at state level by article II item 3(i) of the Constitution of Bosnia and Herzegovina but also by article 1(9) Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina. These articles protect the right to freedom of peaceful assembly and association with others, which certainly includes the right to join trade unions and independent workers’ associations.

However, the international and regional documents agree that the right to freedom of association can be restricted to the members of the armed forces, the police and the state administration prescribed by the law i.e. in accordance with the law when it is necessary in a democratic society and if such actions are justified by one of the legitimate goals. According to article 2 item 2 of the Constitution of Bosnia and Herzegovina the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols are directly implemented in Bosnia and Herzegovina as a priority right above any other. As a result, the members of the armed forces can also be restricted to exercise the right to freedom of association only if such restriction is stipulated by the law. Article 11(2) of the European Convention allows a possibility of restriction of rights to freedom of assembly and association, which means that the state can, within its national legislation, impose certain restrictions on the exercise of the rights to association by members of the armed forces.

As stated in article 1 of the Defence Law of Bosnia and Herzegovina, the armed forces of Bosnia and Herzegovina represent a professional armed force organised and controlled by Bosnia and Herzegovina in order to protect the sovereignty and territorial integrity, political independence and international subjectivity and reputation of Bosnia and Herzegovina as well as to offer support to civil authorities. Due to the reason behind their primary function i.e. the protection of sovereignty and territorial integrity, it is necessary to protect the independence and neutrality of the armed forces.

Rights and obligations of the members of the BiH Armed Forces are regulated by the Law on Service in the Armed Forces of Bosnia and Herzegovina. Article 26 of the Law on Service in the Armed Forces of Bosnia and Herzegovina strictly imposes restriction on the freedom of association by professional military staff, including the right to form and to join trade unions and political organisations. One certainly needs to pose the question of whether the military staff in service in the armed forces is really an employee in the ordinary sense of the word, i.e. under employment contract, who assumed certain commitments towards their employer in order to realise their rights and obligations in accordance with the law? The fact that armed forces operate nowadays under completely different circumstances calls at any rate for a re-evaluation of restriction on the exercise of the right to freedom of association based on two grounds as follows:

- nature of the task which the armed forces nowadays perform, whereby they take part more and more in peace keeping operations as part of multinational forces and less and less in conventional conflicts; and
- increasing professionalism of the armed forces, which refers to the need of readiness of armed forces to efficiently take part in the labour market in order to attract highly qualified staff.<sup>35</sup>

At this point it is also necessary to mention EUROMIL – European Organisation of Military Associations which was founded in 1972. EUROMIL is an umbrella organisation of 32 military associations and trade unions in Europe. EUROMIL's member associations promote the social and professional interests of about 500.000 Europeans in 24 countries. EUROMIL is the main Europe-wide forum for the cooperation and exchange of experiences among professional military associations.<sup>36</sup> Long term experience of EUROMIL has shown that those countries that have granted full association rights for their soldiers have not experienced any loss of military efficiency or discipline. On the contrary, the experience has shown that entering into a permanent dialogue with soldiers' associations on their social and work conditions (such as the issues of salary and employment conditions) has helped to tie the servicemen and -women closer to the military organisation and increased moral and loyalty among the troops. A recommendation in this respect was also given by the Parliamentary Assembly of the Council of Europe in 2002 (1572). Since Bosnia and Herzegovina is not a member of EUROMIL, we think that it would be useful for the country to join the membership of EUROMIL and to utilize all the possibilities and privileges offered by this organization.

However, civilians also belong to the BiH Armed Forces, as such their rights and obligations are regulated by the Law on Civil-Service Employment in BiH Institutions and the Law on Labour in BiH Institutions. Article 15(h) of the Law on Civil-Service allows the employees to form or join, but not to be compelled to belong, trade union or professional association in accordance with the law. Article 15(i) also allows a possibility to exercise the right to strike, provided that it is exercised in conformity with the law.

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<sup>35</sup> Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, OSCE/ODIHR 2008, p. 66-67

<sup>36</sup> [http://www.euromil.org/index.php?option=com\\_content&task=category&sectionid=3&id=13&Itemid=39](http://www.euromil.org/index.php?option=com_content&task=category&sectionid=3&id=13&Itemid=39) from 2 September 2009

At the end of this chapter, we should reconsider the possibility to enable members of the Armed Forces of BiH to form unions and therefore to take in consideration to Amend the Article 26 of the Law on Service in the Armed Forces of Bosnia and Herzegovina that strictly imposes restriction on the freedom of association by professional military staff, including the right to form and to join trade unions and political organisations. However, it would not be appropriate to grant them with a right to strike, at least having in mind the present complex political and social situation in Bosnia and Herzegovina. According to above mentioned legislative amendments it could be possible to initiate the steps of having Bosnia and Herzegovina as a member of EUROMIL, as it has already been pointed out in the research.

Regarding the political engagement, it is still necessary to keep the ban on political engagement of members of AF BiH on the national level. At the same time, there might be consideration to enable the political engagement at the local community level, bearing in mind experiences of certain developed democratic countries in Europe. In order for such a development to take place, it should be necessary to amend the Election Law of BiH<sup>37</sup>, specifically Article 1.8 that strictly imposes restriction for professional military staff which may stand as candidates for public elected office only if they resign from their position or abide by the law regulating their status.

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<sup>37</sup> [http://www.izbori.ba/documents/ENG/Law/BH\\_Election\\_Law.pdf](http://www.izbori.ba/documents/ENG/Law/BH_Election_Law.pdf)

## **IV GENDER AND DISCRIMINATION**

### **4.1 National legislation**

Article 28 of the Law on Service in the Armed Forces of Bosnia and Herzegovina states the following:

„(1) Professional military staff and persons who want to be admitted in the Armed Forces are treated with full respect of the principle of transparency, righteousness and equal opportunities. Discrimination based on gender, race, skin colour, language, religious beliefs, political or other opinions, ethnic or social origin, relation to national minorities, material or any other status – discrimination of any of the kind will not be tolerated.

(2) Minister of Defence ensures the compliance of the Armed Forces under the provisions from item (1) of this article.“

### **4.2 Analysis of legal regulations**

On 31 October 2000 the United Nations Security Council adopted the Resolution 1325<sup>38</sup> which urges Member States „to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict“ (item 1). The UN Resolution 1325 clearly recognizes through its 18 adopted goals that „an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security“. According to the UN Resolution 1325 the state of Bosnia and Herzegovina is obliged to increase the representation of women at all decision-making levels in regard to conflict and post-conflict recovery.

The UN Resolution 1820 was adopted by the Security Council on 19 June 2008. The Resolution reaffirms the important role that women have in the prevention and resolution of conflicts as well as in peace building. It also stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, as well as the need to increase their role in decision-making with regard to conflict prevention and resolution. The UN Resolution 1820 foresees the implementation of

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<sup>38</sup> UN Resolution adopted by the Security Council at its 4213<sup>th</sup> meeting on 31 October 2000

16 specific action steps in order to achieve the goals specified in the Resolution, some of which are:

- To enforce appropriate military disciplinary measures;
- To uphold the principle of command responsibility;
- To train troops on the categorical prohibition of all forms of sexual violence against civilians;
- To take into account past actions of rape and other forms of sexual violence;
- To contribute to armed and security forces human capacity;
- To consider steps they could take, in consultation with the Secretary-General, to heighten awareness and the responsiveness of their personnel participating in United Nations peacekeeping operations to protect civilians, including women and children;
- The Secretary-General needs to submit a report to the Council by 30 June 2009 on the implementation of the Resolution 1820, utilizing the information from the Member States.

The Charter of Fundamental Rights of the European Union 2000 specifically stresses the prevention of discrimination and the responsibility to ensure equal opportunities for men and women at all levels. 2006 the European Union adopted the EU Gender Roadmap for equality between women and men, in which the European Union has committed itself to the implementation of six priority areas in the period 2006-2010. The priority areas are listed as follows:

- achieving equal economic independence for women and men;
- enhancing reconciliation of work, private and family life;
- promoting equal participation of women and men in decision-making;
- eradicating gender-based violence and trafficking;
- eliminating gender stereotypes in society;
- promoting of gender equality outside the EU.<sup>39</sup>

Council of Ministers of Bosnia and Herzegovina adopted the Gender Action Plan for Bosnia and Herzegovina<sup>40</sup> (2006-2010) with a goal to increase the level of gender equality in all areas of public and private life. The Gender Action Plan is composed of the following chapters:

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<sup>39</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0092:EN:NOT> from 20 May 2009



- I European Integration in the Light of Gender Equality;
- II Co-operation and capacity building;
- III Macroeconomic and development strategies;
- IV Gender sensitive budgets;
- V Political life and decision making;
- VI Employment and labour market;
- VII Social inclusion;
- VIII Gender sensitive media;
- IX Lifelong education;
- X Health, prevention and protection;
- XI Family violence, sexual harassment, harassment and human trafficking;
- XII The role of men;
- XIII Reconciliation of professional and private life;
- XIV Sustainable environment;
- XV Information and communication technologies.

Chapter V of the BiH Gender Action Plan titled „Political life and decision making“ defines the primary goal as „achieving equal representation of women and men in the creation of policies and decision-making in government structures and decision-making on all levels of governing in BiH“<sup>41</sup>. In the explanation it says that it is „of essential importance for the BiH society as a whole to ensure equal representation and power distribution between women and men in the political and public life, and that the issue of equality between women and men in Bosnia and Herzegovina must become a part of each progressive policy, at all levels and in all fields“<sup>42</sup>. Ministry of Defence of Bosnia and Herzegovina is one of the responsible parties for the implementation of items 13, 14, and 15 of the Gender Action Plan of Bosnia and Herzegovina.

Items 13 and 14 of the chapter V of the BiH Gender Action Plan emphasizes the need to „continue the activities of promotion and awareness-raising about the UN Security Council Resolution 1325 – Women, Peace and Safety“ as well as to „continue the activities of promotion and awareness-raising among public office holders in the ministries about the UN

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<sup>40</sup> 14 December 2006, session no. 129

<sup>41</sup> Gender Action Plan for Bosnia and Herzegovina (GAP), September 2007, p. 45

<sup>42</sup> Ibidem, GAP, p. 45

Security Council Resolution 1325 – Women, Peace and Safety“. Besides the Agency for Gender Equality of Bosnia and Herzegovina, the Gender Centre of the Federation of Bosnia and Herzegovina, the Gender Centre of Republika Srpska, parliamentary assemblies on the state and entity levels, the Ministry of Defence of Bosnia and Herzegovina also play an important role in carrying out these activities. This segment of action is planned to be carried out in a continued time period and in co-operation with the international and non-governmental organizations as well as with the media.

Item 15 of the Gender Action Plan foresees „to prepare a brochure on the role of women in peace-building and peaceful conflict resolution, non-violent conflict resolution and reduction of human rights abuse in conflict situations“. In addition to the Ministry of Defence of Bosnia and Herzegovina the Agency for Gender Equality of Bosnia and Herzegovina, the Ministry for Security of Bosnia and Herzegovina, the Gender Centre of the Federation of Bosnia and Herzegovina, the Gender Centre of Republika Srpska and the entity ministries of justice also play a responsible role in the implementation of the these activities. The time plan for the implementation of the set goal is two years, starting from the year of the adoption of the Gender Action Plan<sup>43</sup>.

Law on Gender Equality in BiH governs, promotes and protects gender equality and guarantees equal opportunities for all in both public and private domain, and prohibits direct and indirect discrimination on the grounds of gender<sup>44</sup>. Article 9 of the Law titled „Public life“ states the following:

„The state and local authority bodies, corporate management bodies, political parties and other non-profit organizations shall ensure and promote equal gender representation in management and the decision-making process.

To achieve the ends set forth in item 1 of this article, the relevant authorities shall draw up special programmes and plans to improve gender representation in the bodies of governance at all levels. These programmes and plans shall include measures designed to improve the representation of sexes.

In order to ensure equal gender representation, the percentage of participation of the sexes in government bodies at all levels, including the judiciary, legislature and executive, as well as all other public services, committees, boards, and bodies representing the state at the international levels, shall as a rule reflect equal gender representation“.

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<sup>43</sup> Gender Action Plan for Bosnia and Herzegovina, p. 51

<sup>44</sup> Law on Gender Equality in Bosnia and Herzegovina adopted on 21 May 2003 (Official Gazette of Bosnia and Herzegovina no. 16/03), article 1

In compliance with article 21 of the Law on Gender Equality in BiH the State takes the following responsibilities:

„The relevant authorities at all levels shall undertake all appropriate and necessary steps to enforce the provisions set forth in this Law by area, including but not restricted to:

- the adoption of planned measures designed to achieve gender equality in all fields and at all levels of governance;
- the enactment of new or the amendment of existing legislation to bring it into conformity with the provisions of this Law;
- ensuring the protection by the civil and criminal courts in all cases of breaches of the provisions of this Law;
- ensuring that statistical data is gender disaggregated in all commercial entities, private and state corporations, state and public organizations and institutions, and that such data is accessible to the general public“.

Article 28 of the Law on Service in the Armed Forces titled „equal opportunities” states the following:

„(1) Professional military staff and persons who want to be admitted in the Armed Forces are treated with full respect of the principle of transparency, righteousness and equal opportunities. Discrimination based on gender, race, skin colour, language, religious beliefs, political or other opinions, ethnic or social origin, relation to national minorities, material or any other status – discrimination of any kind will not be tolerated.

(2) Minister of Defence ensures the compliance of the Armed Forces under the provisions from item (1) of this article.“

Bosnia and Herzegovina has around 10.000 members of the Armed Forces, out of which 430 or 4.54% are women. Qualification structure of the female members of the BiH Armed Forces is as follows: university education – 63; advanced specialist education (two years of vocational-school education at the university level) – 31; secondary school education – 235; highly skilled worker (secondary school level) – 24; skilled worker (secondary school level) – 59; semi-skilled worker (secondary school level) – 11 and elementary school education – 7.

The structure of military personal ranks of the female members of the BiH Armed Forces is as follows<sup>45</sup>:

Brigadier General	1
Colonel	4
Major	10
Captain	21
1st Lieutenant	11
2nd Lieutenant	11
First Sergeant	5
Sergeant Major	9
Master Sergeant	27
Sergeant First Class	42
Sergeant	40
Corporal	65
Private First Class	34
Private	15
Civilian	135

Female members of the Armed Forces graduated mainly from civilian schools, whereas they completed their military education through various individual and institutional trainings. Female members of the Armed Forces are represented in all branches and services of the army, such as: sanitary, infantry, commissary, information and communication, finances, technical and administration service, logistics etc. Female members of the Armed Forces also took part in the peace-support missions in Ethiopia, Eritrea and Iraq (there are currently 49 members of the Armed Forces in the Iraqi Mission out of which 3 are women). In addition to promotion of relations with the coalition partners, according to the Bulletin of the Ministry of Defence of BiH, a concrete progress is visible and demonstrated in BiH by the participation of our unit as a part of the Coalition Forces in the Iraqi Mission in which, as already mentioned, participate women as well. This progress is directly related with the process of implementation of the reform in the area of defence, as well as with the creation of better

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<sup>45</sup> Ministry of Defence and Armed Forces of Bosnia and Herzegovina, Bulletin, 15 November 2008, p. 38

preconditions and the strengthening of credibility within BiH efforts to join the Euro-Atlantic Integrations (EU/NATO).<sup>46</sup>

Women in Bosnia and Herzegovina show an increasing interest for the professional military service in the Armed Forces of Bosnia and Herzegovina. Admission procedure for the new generation of soldiers, conducted by a public tender, included 319 candidates out of 3000 applicants. 313 candidates successfully completed the training, out of which 21 are women.<sup>47</sup>

Besides these official data, the Agency for Gender Equality also published the data about the representation of women in the Armed Forces of Bosnia and Herzegovina, which only slightly differ from the above figures:

- Representation of women in the BiH Armed Forces according to military ranks in figures:
- Commissioned Officer (from the rank of 2nd Lieutenant up to the rank of Brigadier General) - 51
- Noncommissioned Officer - 200
- Civilians - 220
- TOTAL - 471
- Representation of women - 4,5%

Number of women in the Ministry of Defence of Bosnia and Herzegovina:

Men - 182

Women – 93 or 34%

Professional military staff - 66

Participation of female members of the Armed Forces of Bosnia and Herzegovina in the UN peace keeping missions:

- UN unit - Ethiopia-Eritrea -/1,
- Units for destruction of IED – Iraq
- 292/4 (8 rotations with 37 members each) 1,35% women,
- Security unit – Iraq - 45/3 or 6,25 % women.

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<sup>46</sup> Ministry of Defence and Armed Forces of BiH, Bulletin, 15 November 2008, p. 31

<sup>47</sup> Ibid, Bulletin, p. 38

UN Peace-keeping Missions in Liberia, Cyprus, Sudan, Haiti, East Timor:

- 101 BiH police officers participated in UN peace-keeping missions from 2000 – 2008, out of which 13 or 12,87 % were women.
- 19 police officers are currently deployed (3 women i.e. 15,79%; Liberia 0%; Sudan 33,33% and Cyprus 50,00% of contingent representation).<sup>48</sup>

It should be emphasized that the percentage of female participation in the BiH Armed Forces almost coincides with the percentage of female participation in other social activities. Namely, inequality of gender is also present at the labour market in BiH. In this respect a research on the Gender Gap in Personal Income in BiH was conducted. The aim of the research was “to define the arguments and data based on which the future and harmonisation of the current social and economic policies towards gender equality in this field could be developed in Bosnia and Herzegovina”.<sup>49</sup> According to the research, the gender gap in personal income reflects the difference between an average monthly income of a male and female employee (employed men and women), this is presented as the percentage of a monthly income of a male employee (employed men). Monthly gross income refers to compensation, most often in cash, which is paid to the employees for a full time job and which needs to be calculated in a gross amount.<sup>50</sup>

Considerable differences with regards to income, between men and women in Bosnia and Herzegovina, were also registered according to the type of work. According to the type of work, women in health and social care, processing industry and trade sector make out the majority of differences in net income in BiH. Net income differences in public administration and defence sector as well as in the obligatory social security amounts to 68,55 %. Further analysis shows that women in the trade sector and processing industry, who have the same level of education and perform the same working results for the same number of hours as men, have considerably lower net income. Women with secondary school education in duration of four or five years are discriminated against in several industry branches. Difference between net income of women and men according to the level of education and type of work by 40 working hours a week in public administration and defence sector as well

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<sup>48</sup> Agency for Gender Equality, 20 November 2008

<sup>49</sup> Gender Gap in Personal Income in BiH, written by the group of authors: Samra Filipović-Hadžiabdić, Fahrudin Memić, Lejla Somun-Krupalija i Ana Abdelbasit, 2008, p. 7

<sup>50</sup> Ibid, Gender Gap in Personal Income in BiH, p. 8

as in the obligatory social security amounts to 21% for persons with secondary school education in duration of 4-5 years and 15% for persons with university education.<sup>51</sup>

Regarding gender discrimination, it is obvious that the situation in BiH is not quite different from the situation in other European countries. This means that there was no evidence showing any form of discrimination in this area.

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<sup>51</sup> Ibid, Gender Gap in Personal Income in BiH, p. 18

## **V RELIGIOUS RIGHTS OF INDIVIDUALS**

### **5.1 International standard framework**

#### Article 18 of the Universal Declaration of Human Rights

„Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.“

#### Article 18 of the International Covenant on Civil and Political Rights

„1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. „

#### Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

„1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.“



## 5.2 National normative framework

Article 29 of the Law on Service in the Armed Forces regulates religious activities and freedoms:

- „(1) Military staff has the right to freedom of religion in order to manifest one’s religion in accordance with unique practices of each of the religious beliefs.
- (2) Organizing religious activities and manifesting religion according to the item (1) of this article are based on the principle of individual freedoms to manifest one's religion or beliefs in worship and observance by the members of the Armed Forces.
- (3) Organizing religious activities in the Armed Forces is primarily based on the objective military needs.
- (4) Ministry of Defence of Bosnia and Herzegovina, in cooperation with the lawfully recognized churches and religious communities, regulates the way of organizing and functioning of religious activities in the Armed Forces and ensures the freedom to manifest one’s religion or belief, in compliance with the item (1) of this article.“

## 5.3 Analysis of legal regulations

The Regulation on the Organization and the Functioning of Religious Service in the Ministry of Defence and the Armed Forces prescribes the way of organizing and functioning of all religious activities within the Ministry of Defence and the Armed Forces. These Regulations prescribe the religious service as a part of the structure of the Ministry of Defence and the Armed Forces, in order to organise and ensure all religious activities in the Ministry of Defence and the Armed Forces. In accordance to that, the Minister of Defence of BiH signed agreements with Vrhbosanska Archbishopric<sup>52</sup>, Orthodox Church<sup>53</sup> and Islamic Community

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<sup>52</sup> The Office of the Catholic Pastor has become an integral part of the religious services at the Ministry of Defence and the Armed Forces of BiH based on the Agreement on Establishment, Systematization and Method of Work of the Catholic Pastorship, concluded on 11 September 11 2007, between the Council of Ministers of BiH and the Vrhbosanska Archbishopric.

The activities of the Office of the Catholic Pastor pertain to organization of messes and other liturgies for Catholic believers who are employed at the Ministry of Defence and the Armed Forces of BiH, soldiers, junior officers, officers and civilian personnel in the Armed Forces of BiH; spiritual preparations for the Christmas and Easter, pilgrimages, spiritual exercises, organization of lectures, conferences and round tables, provision and distribution of Catholic publications, publishing and preparation of news for the Catholic Press Agency of the Bishops' Conference of BiH on religious events organized by the Offices of the Catholic Pastorship at the MoD BiH and AF BiH. Through its activities, the Catholic Pastorship at the Ministry of Defence and the Armed Forces of BiH has become a branch in the overall pastoral life of the Catholic Church in the region. <http://www.mod.gov.ba/bs/text.asp?id=53> from 18 May 2009

<sup>53</sup> Office of the Orthodox Pastor – The Office of the Orthodox Pastor, as part of the single religious services at the Ministry of Defence and the Armed Forces of BiH, is involved in organization and ensuring of the overall religious life of the Orthodox believers at the Ministry of Defence and the Armed Forces of BiH, such as: care on religious needs, preparation and conducting of religious rites, provision of spiritual assistance in case of death,

in BiH<sup>54</sup>, which regulate the issue of establishing, organizing and functioning of religious services in the Ministry of Defence and the Armed Forces of BiH.<sup>55</sup>

Furthermore, Article 5 item 3 of the Regulations leaves a possibility to form organizational units of other religious communities when the number of religious believers, who are members of the BiH Armed Forces and who belong to at least one of the registered churches and religious communities, exceeds 2% out of the total number of members of the BiH Armed Forces, and when the registered church or religious community submits a request to the Ministry of Defence to form such an organizational unit.

In accordance with the mentioned functioning of the religious services of the Armed Forces of Bosnia and Herzegovina, the members of the religious service in the Ministry of Defence of Bosnia and Herzegovina took part at the International Military Chief of Chaplains Conference in Cape Town in South Africa. That was the first such International Conference of military chief of chaplains, muftis and imams from over hundred countries from all over the world. The theme of the conference was “The Role of the Chaplain in Reconciliation and Healing in Post-Conflict Reconstruction”.<sup>56</sup> Eight pilgrim-trips are planned and approved for the members of the Armed Forces only in the year of 2009.<sup>57</sup>

Regarding the right to religion of members of AF BiH, there is no evidence showing any breach of this freedom, regardless of the fact that BiH is an extremely multi-religious country.

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serious injuries, plight, and other circumstances requiring personal assistance for believers. In addition to the above, the Office of the Orthodox Pastor is also involved in spiritual preparations for military priests, organization and holding of various lectures, seminars and theological forums. <http://www.mod.gov.ba/files/file/bilten/vojska%20bilten%20BOS.pdf> from 18 May 2009

<sup>54</sup> Office of the Military Mufti – Pursuant to the Agreement on Establishment of the Military Mufti Office as an integral part of the single religious services at the MoD and AF BiH, signed on 11 September 2007, the Office of the Military Mufti continues caring for the Muslims within the defence system of BiH. The military Mufti Office has been structures based on the army structure, and due to the specific quality of the task and the scope of activity, it does not include the *majlis*. All military imams in the Armed Forces of BiH are linked to the Head Imam of the Armed Forces, who is linked to the Military Mufti. Integrated into all defence spheres, established in line with the modern army standards for religious services, the Military Mufti Office is prepared for the new challenges in a multi-religion and multinational environment and is an indispensable entity within the defence system of BiH. <http://www.mod.gov.ba/files/file/bilten/vojska%20bilten%20BOS.pdf> from 18 May 2009

<sup>55</sup> Ministry of Defence and the Armed Forces of Bosnia and Herzegovina, Bulletin, 15 November 2008, p. 37

<sup>56</sup> International Military Chief of Chaplains Conference, Bulletin of the Ministry of Defence and the Armed Forces of Bosnia and Herzegovina, no. 1 – April 2009, p. 4

<sup>57</sup> „Slobodna Bosna“, 28 May 2009, p. 32-33 „Thus, the orthodox religious believers have a possibility for five pilgrim-trips, the catholic three, whereas the financial means for the pilgrim-trips of Muslims are not provided. The truth is, however, that the employees of the Ministry of Defence of BiH and the members of the Armed Forces of the Muslim religion travel each year to hajj (pilgrimage to Mecca), but those costs are allegedly covered by the Saudi Arabia over the Rijaset Islamske zajednice u BiH (the Islamic Community in BiH)“.

## CONCLUSIONS

The research on human rights in the BiH Armed Forces convincingly shows that it is necessary to implement constitutional reforms in order to make BiH a functional, democratic and legal state. The research has shown once again that it is difficult to talk about the protection of human rights in a general way but also within the armed forces, if there is no strong state which is able to really protect the human rights written in the European Convention for the Protection of Human Rights and Fundamental Freedoms. One of the preconditions for a strengthened democratic state is promotion of the rule of law principle which plays a very important role for a successful performance and democratic control of the BiH Armed Forces, as well as the protection of those human rights and fundamental freedoms which belong to the members of the BiH Armed Forces.

The Constitutional reform certainly needs to, among others, define the role of the BiH Armed Forces in the most clear and modern way. This is especially important when bearing in mind that BiH is on the doorstep to entering the European Union and NATO. A democratic state and the protection of human rights are necessary conditions for BiH to join these integrations. For this very reason our research on human rights within the BiH Armed Forces presents an effort to stress the need of urgent reform of the BiH Constitution and of building a state which will be fully functional, self-sustainable and able to, inter alia, protect human rights of the members of BiH Armed Forces, with respect to the unique characteristics of this organization.

Regardless of the ongoing Constitutional reforms, it is necessary to take a whole range of measures which as a whole are complementary with the efforts to organize the BiH Armed Forces in accordance with the Constitution and to ensure an efficient civil control of the respect of human rights of the members of BiH Armed Forces by the BiH Parliamentary Assembly. In this respect we would like to emphasize the following:

- Amend the Article 26 of the Law on Service in the Armed Forces of Bosnia and Herzegovina that strictly imposes restriction on the freedom of association by professional military staff, including the right to form and to join trade unions and political organisations;
- Necessary organised training on respect of human rights and fundamental freedoms of the members of BiH Armed Forces;

- Necessary education of all officials in the BiH State Institutions (legislative, judiciary and executive) on human rights;
- Precise legal formulation of restrictions to certain human rights and fundamental freedoms;
- Formulate standards to restrictions of human rights and fundamental freedoms in the state of emergency, direct war threat or war, in compliance with the Constitution and law;
- Draft an annual report on the situation of human rights in the BiH Armed Forces, based on which one can follow up closely the situation of human rights in a transparent way and accessible to the public;
- Establish a network of non-governmental organizations which deal with military issues and especially with the protection of human rights of the members of the Armed Forces;
- Print special brochures and manuals on human rights and fundamental freedoms which would be distributed to the members of the BiH Armed Forces;
- Establish a quality co-operation between the Ministry of Defence and the organizations for protection of rights of the members of the BiH Armed Forces;
- Ensure equal gender representation by creating policies and decision-making at the government levels and decision-making at all levels of organizing governance in BiH (follow the example presented in chapter V of the BiH Gender Action Plan), and especially at those levels which involve the Ministry of Defence of BiH;
- Continue and advance the activities of promotion and awareness-raising about the UN Security Council Resolution 1325 – „Women, Peace and Safety“;
- Continue and advance the activities of promotion and awareness-raising among public office holders in the ministries about the UN Security Council Resolution 1325 – „Women, Peace and Safety“;
- Publish a brochure on the role of women in peace-building and peaceful conflict resolution, non-violent conflict resolution and reduction of human rights abuse in conflict situations.

## **BIBLIOGRAPHY**

### **Books:**

- Doona Gomien, “*Kratki vodič kroz Evropsku konvenciju o ljudskim pravima*” Council of Europe Publishing, 2005.
- Semra Filipović-Hadžiabdić, Fahrudin Memić, Lejla Somun-Krupalija i Anaa Abdelbasit, “Gender jaz u bosanskohercegovačkom društvu”, 2008.
- “Handbook on Human Rights and Fundamental freedoms of Armed Forces Personnel”, OSCE/ODIHR 2008.
- Ilona Kiš, “Zaštita prava regruta u vrijeme mira : Problemi i perspective u istočno i evropskim i centralnoazijskim zemljama“, “*Zaštita ljudskih prava u vojsci i policiji*“ priredio Miroslav Hadžić, Centar za civilno-vojne odnose, Beograd 2003.
- Marko Sassoli „*Metodološki referentan vodič za obuku vojnog sudstva*“, COLPI/OSI, Budimpešta, 2001.
- Lada Sadiković, “Ograničenja ljudskih prava“ u “Ljudska prava u Bosni i Hercegovini 2008.“, Centar za ljudska prava Univerziteta u Sarajevu.

### **Constitutions, Laws, Resolutions and International documents, :**

- Annex 4 of the General Agreement for Peace in Bosnia and Herzegovina, The Constitution of Bosnia and Herzegovina
- Constitution of the Federation of Bosnia and Herzegovina
- Constitution of the Republic of Srpska
- Defence Law of Bosnia and Herzegovina, number 226/05 of 5 October 2005
- Law on the Service in the Armed Forces of Bosnia and Herzegovina, item number 227/05, 5 October 2005.
- Gender Action Plan of Bosnia and Herzegovina, September 2007
- Gender Equality Law of Bosnia and Herzegovina, adopted 21 May 2003 (Official Gazette of Bosnia and Herzegovina number 16/03)
- Rulebook on the Organization and Functioning of the Religious Services within the Ministry of Defence and Armed Forces
- European Commission Report on Progress in Bosnia and Herzegovina for 2008.
- UN Resolution 1820, adapted 19 June 2008.
- UN Resolution 1325, adapted 31 October 31 2000.
- The Charter of Fundamental Rights of the European Union signed in 2000.
- EU Gender Roadmap
- Code of Conduct on Politico- Military Aspects of Security, adopted at the 91<sup>st</sup> Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994 (see FSC/Journal No. 94).
- European Convention on Human Rights and Fundamental Freedoms signed on November 4 1950, and ratified on July 12 2002, along with its protocols.
- International Convention on Civil and Political Rights, 16 December 1966.
- International Convention on Economic, Social and Cultural Rights 1966.
- The Universal Declaration of Human Rights, adopted by the UN General Assembly Resolution 217 (III) on 10 December 1948.
- Statute of the Council of Europe 3 August 1948

### **Cases from the European Court for Human Rights in Strasbourg :**

- The Goodwin case 1966
- Handyside Case 1976
- Sigurdur A. Sigurjonsson versus Island 1993

### **Internet and News Papers :**

[http://www.oscebih.org/security\\_cooperation/bos/?d=4](http://www.oscebih.org/security_cooperation/bos/?d=4)

<http://www.parlament.ba/komisija/1/0/32.html>

[http://www.euromil.org/index.php?option=com\\_content&task=category&sectionid=3&id=13&Itemid=39](http://www.euromil.org/index.php?option=com_content&task=category&sectionid=3&id=13&Itemid=39)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0092:EN:NOT>

<http://www.mod.gov.ba/bs/text.asp?id=53>

<http://www.mod.gov.ba/files/file/bilten/vojska%20bilten%20BOS.pdf>

[http://www.izbori.ba/documents/ENG/Law/BH\\_Election\\_Law.pdf](http://www.izbori.ba/documents/ENG/Law/BH_Election_Law.pdf)

Nezavisne novine, 11. maj 2005.

Dnevni avaz, 6. juni 2009.

Slobodna Bosna, 28. 05. 2009.