

## UNUSED POTENTIAL: THE ROLE AND IMPORTANCE OF NON-GOVERNMENTAL ORGANIZATIONS IN PROTECTION AGAINST DISCRIMINATION IN BOSNIA AND HERZEGOVINA\*

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The Law on the Prohibition of Discrimination BiH, *inter alia*, allows non-governmental organisations (NGOs) in BiH to provide support to victims of discrimination by participating in judicial proceedings on behalf of plaintiff and, for the purpose of abstract protection of victims of discrimination, by filing a collective lawsuit. Although the antidiscrimination law has already been in force for three years, the number of proceedings instigated under this Law is very low, and the participation of NGOs in its implementation is practically negligible. The obstacles preventing NGOs in engaging more actively in anti-discrimination proceedings are partly the result of the legal provisions themselves, but are primarily the consequence of certain practical problems, such as: the lack of stimulating environment for the participation of NGOs in judicial proceedings, the lack of financial and human resources and the technical problem of the lack of records on instigated proceedings.

### KEY FINDINGS

DISCRIMINATION  
DISCRIMINATION



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### 1. INTRODUCTION

In the international and comparative field, one of the most important activities of non-governmental organizations (NGOs) that stands out in the area of combating discrimination is their role in proceedings for protection against discrimination.<sup>1</sup> Special significance to NGOs in this field in the European Union countries was accorded by Directives in the discrimination field<sup>2</sup>, which require, for the purpose of ensuring efficient protection against discrimination, that the states in their judicial systems allow non-governmental organizations to act on behalf of victims of discrimination or in support of these individuals in proceedings for protec-

tion against discrimination. The Law on the Prohibition of Discrimination BiH (LPDBiH)<sup>3</sup> accords non-governmental organisations two significant procedural roles, clearly taking into account the provisions of the said Directives. In line with these procedural roles, NGOs are given an opportunity to provide support to victims in proceedings for protection against discrimination by using the well-known mechanism of intervener or, for the purpose of abstract protection of victims of discrimination, to act independently through collective lawsuits. The LPDBiH affords a statutory right to “associations, bodies, institutions or other organizations” that have a “justified interest” in filing collective suits.<sup>4</sup> Collective lawsuit against

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<sup>1</sup> Ana Horvat, “Novi standardi hrvatskoga i europskoga antidiskriminacijskog zakonodavstva” [New Standards in Croatian and European Anti-discrimination Legislation], *Zbornik Pravnog fakulteta u Zagrebu* [Compendium of the Law School of Zagreb], No. 58, issue 6 (Zagreb: Faculty of Law of the University of Zagreb, 2008), p. 1487.

<sup>2</sup> Racial Equality Directive – “Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”, *Official Journal of the European Union*, L 180/2000, Article 7; and Employment Equality Framework Directive – “Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation”, *Official Journal of the European Union*, L 303/2000, Article 9.

<sup>3</sup> “Zakon o zabrani diskriminacije Bosne i Hercegovine” [The Law on the Prohibition of Discrimination BiH], *Official Gazette of Bosnia and Herzegovina*, 59/09.

<sup>4</sup> *Ibid*, Article 17.

## RECOMMENDATIONS

1. The legal mechanism of collective lawsuit should be improved by eliminating the need to prove the existence of a justified interest for filing a lawsuit, and the likelihood that the actions of the plaintiff violated the rights of a number of people be a subject of the evidentiary procedure and not, as the current provision sets forth, a subject of assessment of admissibility of the lawsuit.
2. Plaintiffs in the anti-discrimination proceedings should be exempt from paying the costs of the proceedings in advance.
3. Options for the participation of non-governmental institutions and other relevant actors in anti-discrimination proceedings should be expanded by introducing the mechanism of friend of the court - *amicus curiae*.
4. Non-governmental organizations as such, (and not just individuals within them) should be given a procedural opportunity to appear as representatives of victims of discrimination in judicial proceedings, but also to appear on their behalf even in individual cases, subject to the consent of the victim of discrimination.
5. The governmental sector in BiH should ensure minimum pre-requisites and provide basic elements of a stimulating environment for a more active involvement of NGOs in anti-discrimination judicial proceedings.
6. Relevant institutions in BiH should establish easily accessible records on judicial proceedings instigated under the LPDBiH.
7. Non-governmental organisations should intensify their activities on strengthening internal capacities for the participation in judicial proceedings for protection against discrimination, as well as on establishing substantive partnerships with other non-governmental organisations and with the Institution of Human Rights Ombudsman of BiH, in order to properly and efficiently use the procedural roles afforded to them by the LPDBiH.

alleged discriminator is filed by an organisation which is not the victim of discrimination itself provided it “makes it plausible” that the plaintiff’s conduct violated the right of “a number of persons predominantly belonging to the group whose protection is sought by the lawsuit”.<sup>5</sup> Introduction of the mechanism of collective lawsuit for protection against discrimination is a novelty in the legal system of Bosnia and Herzegovina, which may serve as an excellent tool in the hands of non-governmental human rights organizations in combating institutional or structural discrimination in a variety of fields. As an important argument in favour of this assertion, it can be pointed out that the collective lawsuit as an abstract form of protection does not depend on the existence of a specific victim, allowing the organisation that files the lawsuit to focus on arguments attacking the discriminatory consequences that result either from the law itself, from its implementation, or simply from the practice and the conduct. These characteristics of collective lawsuits make it a particularly suitable means for conducting

the so-called “strategic litigation” – a litigation whose goal is to, through judicial action, lead to social changes, contribute to the interpretation of laws or simply to raise the public awareness regarding different forms of discrimination. With the aim of strengthening the procedural position of the plaintiff, the LPDBiH affords the right to non-governmental organisations<sup>6</sup> to intervene in the proceedings for the plaintiff. This right is given to the organisations “whose scope of activities includes protection from discrimination”, thus, in this case, they appear as a kind of “public interest interveners”.<sup>7</sup> In order to join the instigated litigation, non-governmental organisation must obtain the plaintiff’s consent and they must prove that their activities provide the protection from discrimination of persons whose rights are being decided upon in the proceedings. Non-governmental organisation proves that it meets this second requirement by submitting excerpts from their constituent or organisational documents. Through their participation in the role of plaintiff’s intervener, NGOs may take procedural measures for

<sup>5</sup> *Ibid.*

<sup>6</sup> The LPDBiH uses the following wording: “a body, organization, institution, association or other person whose scope of activities includes protection from discrimination of the person or group of persons whose rights are being decided upon in the proceedings”.

<sup>7</sup> See Alan Uzelac, “Postupak pred sudom” [The Proceedings before Court], in *Vodič uz Zakon o suzbijanju diskriminacije* [Guide Accompanying the Law on the Prohibition of Discrimination], ed. Tena Šimonović Einwalter (Zagreb: Office for Human Rights of the Government of the Republic of Croatia, 2009), p. 100; and Goran Nežirović, “Postupak za zaštitu od diskriminacije” [The Proceedings for Protection against Discrimination], in *Materijal pripremljen za obuku sudija i tužilaca o Zakonu o zabrani diskriminacije*, [Material prepared for judicial and prosecutorial training on the Law on the Prohibition of Discrimination], p. 22.

the plaintiff thus contributing to the success of the instigated proceedings.

However, despite the said procedural options, only one NGO (“Vaša prava”) has undertaken judicial proceedings for protection against discrimination under the LPDBiH, which provided the initial jurisprudence.<sup>8</sup> In an effort to explain the low level of engagement of the non-governmental sector in judicial proceedings for protection against discrimination, this Brief addresses the key legal and practical obstacles preventing NGOs from participating more actively in such form of combatting discrimination.

## 2. LEGISLATIVE SOLUTIONS: OBSTACLES AND POTENTIAL IMPROVEMENTS

### 2.1. Collective Lawsuit

The obligation of the plaintiff to prove the existence of a justified interest for filing the collective lawsuit set forth in the LPDBiH somewhat diminishes the procedural strength of the collective lawsuit. In addition, for the collective lawsuit to be admissible, the plaintiff must at least make it plausible that the defendant’s conduct was discriminative against a number of persons predominantly belonging to a certain group. The Croatian anti-discrimination law deals with the issue in the same manner,<sup>9</sup> while the anti-discrimination law in Serbia adopted a different approach. Namely, according to the Law on Gender Equality of the Republic of Serbia<sup>10</sup> non-governmental organisations are granted a statutory right in case of discrimination of a number of persons. The said Law, however, does not specifically oblige them to prove the existence of a legal interest in filing a lawsuit, nor are they obliged to make it plausible that at the time of filing the lawsuit the defendant’s conduct was discriminative against a number of people.<sup>11</sup> Also, the Law on Prohibition of Discrimination of Republic of Serbia<sup>12</sup> does not prescribe either that the “organisations whose scope of activities includes protection from discrimination”

prove the existence of legal interest for filing a lawsuit. The introduction of a similar provision in Bosnia and Herzegovina would clearly emphasize that the establishment of a plausible discrimination against a number of persons is subject of the evidentiary procedure, and not, as the current provision prescribes, a subject of assessment of admissibility of the lawsuit. With the elimination of the vague and arbitrary criterion of ‘justified interest’, the legal standing of non-governmental organizations in this context would be both unambiguous and more broadly and explicitly defined.

The LPDBiH does not impose restrictions as to the types of claims which non-governmental organisations may make in collective lawsuits. However, such an open legislative solution was not adopted in the comprehensive anti-discrimination laws in the neighbouring countries. Bearing in mind that collective lawsuit is a new mechanism in our law, the specification of claims that may be made in collective lawsuits would be a welcome amendment to the Law. This would clearly show that non-governmental organizations as persons with a legal standing have a broad range of claims at their disposal and it would remove dilemmas related to the question of whether the legal standing of non-governmental organizations to file a collective lawsuit includes making a claim for compensation of damages.

### 2.2. NGOs as a Third Party in a Proceedings

In terms of regulating the participation of third parties in proceedings, the LPDBiH, using the Croatian legislative solution as a model, allows NGOs to participate in proceedings only as an intervener on behalf of the plaintiff. In that regard, it is of interest that the legislator did not opt for the use of the mechanism of *amici curiae* – friend of the court (which already exists in proceedings before the Constitutional Court of BiH<sup>13</sup>) – as a form of providing



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<sup>8</sup> At the time of writing this Policy Brief, courts in Bosnia and Herzegovina had only passed three judgments pursuant to the LPDBiH: 1) Mostar Municipal Court, Judgment no. P 58 0 P 056658 09 P of 6 July 2010 (*E. B.* case, related to discrimination in education on grounds of disability); 2) Livno Municipal Court, Judgment no. 68 0 P 017561 of 7 October 2011 (*Katovic* case, related to discrimination on grounds of religion); and 3) Mostar Municipal Court, Judgment no. 58 PS 08563 11 Ps of 27 April 2012 (the “two schools under one roof” case).

<sup>9</sup> “Zakon o suzbijanju diskriminacije Republike Hrvatske” [Law on the Suppression of Discrimination of the Republic of Croatia], *Official Gazette of Republic of Croatia* 85/08, Article 24.

<sup>10</sup> “Zakon o ravnopravnosti polova Republike Srbije” [Law on Gender Equality of the Republic of Serbia], *Official Gazette of the Republic of Serbia* 104/2009, Article 43.

<sup>11</sup> Marijana Pajvančić, Nevena Petrušić and Senad Jašarević, *Komentar Zakona o ravnopravnosti polova* [Comments on the Law on Gender Equality], (Belgrade: Center of Modern Skills, 2010), p. 110.

<sup>12</sup> “Zakon o zabrani diskriminacije Republike Srbije” [Law on the Prohibition of Discrimination of the Republic of Serbia], *Official Gazette of the Republic of Serbia* 22/09, Article 46.

<sup>13</sup> Constitutional Court of Bosnia and Herzegovina, *Pravila Ustavnog suda Bosne i Hercegovine* [the Rules of the Constitutional Court of Bosnia and Herzegovina], (Sarajevo: Constitutional Court of Bosnia and Herzegovina, 2005), Article 47.

support to victims of discrimination. The term *amicus curiae* (friend of the court) denotes a person whose participation in proceedings is restricted to providing assistance to the court regarding factual and legal issues. The introduction of this mechanism could make it easier for many organizations to join the proceedings, because they would thus maintain the perception of neutrality which, in turn, might lend more force to their arguments. This way, non-governmental organizations would then be able to focus on the legal and theoretical issues without being burdened by relations between the parties in the proceedings. At the same time, such intervention would provide the court with an overview of international and comparative standards, as well as jurisprudence relevant to the case at hand<sup>14</sup>, which is of particular significance in the light of the recentness of the adoption of the comprehensive anti-discrimination framework in Bosnia and Herzegovina and the important novelties it introduces.

The victims of discrimination often decide against seeking judicial protection, both from fear of additional discrimination and because of the uncertainty with regards to the outcome of the proceedings. This is why any well-regulated anti-discrimination system allows non-governmental organisations to represent victims of discrimination in judicial proceedings or to act on behalf of the victim in a different capacity. However, LPDBiH has not introduced this option.

The analysis of legislation from other countries reveals that NGOs as such are mainly authorised to act on behalf of victims of discrimination in judicial proceedings. For example, according to the solution adopted in Montenegro, NGOs dealing with the protection of human rights may file a lawsuit for protection against discrimination on behalf of a discriminated person subject to the person's prior consent.<sup>15</sup> In Serbia, according to the relevant provisions of the LPD, non-governmental organizations dealing with human rights protection, subject to prior written consent by a dis-

criminated person, may file a lawsuit on their own behalf.<sup>16</sup> The said solutions enable filing lawsuits against discrimination even in those cases when the victim is reluctant to appear in the proceedings as a party, thus facilitating the implementation of laws on prohibition of discrimination. Therefore, the lack of a similar solution in the LPDBiH may be deemed as a significant oversight of the legislator.

### 3. PRACTICAL OBSTACLES

#### 3.1. Information on Cases, Human and Financial Resources

The involvement of non-governmental organisations in public interest litigation, such as litigation for the protection against discrimination, brings many challenges, which are not typical only for transitional societies, such as Bosnia and Herzegovina. However, these challenges in the BiH context are in many ways greater than in other countries with a more developed civil society.

It is primarily because of the long-time perception created during the single-party system according to which the public interest equals the state interest<sup>17</sup> that the civil society itself is still getting used to the fact that it represents a lever in safe-guarding public interest through the so-called judicial activism.<sup>18</sup> Another factor preventing NGOs in engaging more actively in legal proceedings for protection against discrimination is the limited human and financial resources in the diverse non-governmental sector in Bosnia and Herzegovina. Namely, the perception that legal activism is an activity for which significant financial means are needed is widespread. It is true that judicial protection in anti-discrimination cases may represent an activity which demands significant resources and a long-term and intense engagement of human resources, especially in the cases of structural discrimination, whose proving, as a rule, implies gathering and processing statistical data, undertaking complex procedures of documenting facts or instigating several similar civil proceedings. In addition, the procedural

<sup>14</sup> Margarita Ilieva, "Uloga NVO-a u primeni Zakona protiv diskriminacije: Iskustvo iz Bugarske" [The Role of NGOs in the Implementation of Anti-discrimination Law: Experience from Bulgaria]. In *Sprovođenje Zakona protiv diskriminacije: izazov za Kosovo* [Implementation of Anti-discrimination Law: A Challenge for Kosovo], (Priština: OSCE Mission in Kosovo, 2007), page 16.

<sup>15</sup> "Zakon o zabrani diskriminacije Republike Crne Gore" [The Law on Prohibition of Discrimination of the Republic of Montenegro], *Official Gazette of Montenegro* 46/2019, Article 30.

<sup>16</sup> Every type of claims that can be made by the discriminated person him/herself can also be made in this lawsuit, apart from damages claim. "The Law on Prohibition of Discrimination of Republic of Serbia", Article 46.

<sup>17</sup> See James A. Goldston "Public Interest Litigation in Central and Eastern Europe: Roots, Prospects and Challenges", *Human Rights Quarterly* 28 (2006), p. 492.

<sup>18</sup> *Ibid.* and Goran Žeravčić, *Analiza institucionalne suradnje između vladinog i nevladinog sektora u BiH* [Analysis of Institutional Cooperation between the Governmental and Non-governmental Sectors in BiH] (Sarajevo: Kronauer Consulting, 2008), p. 45-46.



rule according to which each party is obliged to pay its expenses in advance,<sup>19</sup> such as court fees, the cost of expert witnesses or the cost of witnesses do not represent a particularly stimulating factor in achieving a more significant legal activism of NGOs in the field of combating discrimination.

Finally, there are also technical obstacles that are preventing NGOs from using the procedural roles granted to them by the LPDBiH. Namely, the lack of records on instigated proceedings for protection against discrimination prevents non-governmental organisations to timely identify all current civil proceedings in the field of discrimination and to, based on all relevant factors, decide on their engagement in them.

### 3.2 Potential Solutions

The recognition of the importance of procedural roles of NGOs in public interest proceedings, such as anti-discrimination proceedings, is no guarantee that NGOs will participate in a significant number of proceedings with the aim of protecting public interest. In addition to recognition of their procedural position, additional activities should be undertaken, especially in transitional societies, with the goal of changing the perception according to which the protection of public interest primarily belongs to the state structures.

One way of overcoming this perception is the participation in the activities related to creating a stimulating environment for development of civil society. Building the capacities of non-governmental organizations in order to increase their engagement in public interest activities, such as participation in anti-discrimination proceedings is one such activity. For example, in neighbouring Croatia, a well-organized structure composed of three parts was established with the goal of supporting efficient development of civil society and strengthening its capacities: Office for Cooperation with NGOs, Council for Development of Civil Society and National Foundation for Civil Society. These bodies, which comprise representatives of the

governmental and non-governmental sectors, have undertaken numerous activities aimed at creating an environment conducive to development of civil society. By offering information related to the allocation of EU pre-accession funds such as IPA, resources have been provided for funding activities related to strengthening the role and capacities of non-governmental organizations in the field of antidiscrimination, including improvement of the process of punishing discriminatory actions through judicial proceedings.<sup>20</sup>

Positive experience from the region suggests that creating a framework for institutional cooperation between the governmental and non-governmental sectors has the potential to contribute to development of civil society and thus to its improved engagement in public interest activities, including combating discrimination. However, the general framework and state institutionalization of cooperation and support to non-governmental organizations may create a suitable environment, but that in itself will not bring urgent and necessary measures for greater engagement of NGOs in combating discrimination. Therefore, establishing a separate foundation modelled on Croatia's National Foundation for Civil Society may play an important role in providing financial support to non-governmental organizations that seek to become involved in activities aimed at preventing discrimination through judicial proceedings. Cooperation between different non-governmental organisations stands out as one of the ways for overcoming limited human and financial resources. Thus, non-governmental organizations that mostly perform work related to the law and provision of legal aid can appear directly before courts, whereas organizations working on documentation and collection of data can gather and process statistical data or carry out other research needed for successful application of procedural roles.<sup>21</sup> In this regard, as positive examples in Bosnia and Herzegovina, we might point out the activities of the "Open Society Fund Bosnia and Herzegovina"<sup>22</sup>

<sup>19</sup> "Zakon o parničkom postupku Republike Srpske" [Civil Procedure Code of Republika Srpska], *Official Gazette of Republika Srpska* 58/03, 85/03, 74/05, 63/07, 49/09, Article 384, and "Zakon o parničnom postupku Federacije BiH [Civil Procedure Code of the Federation BiH], *Official Gazette of the Federation of BiH* 53/03, 73/05 and 119/06, Article 384.

<sup>20</sup> For more information see: Office for Cooperation with NGOs of the Government of Republic of Croatia, "IPA 2008," <http://www.uzuvrh.hr/stranica.aspx?pageID=156> (accessed on October 24, 2012).

<sup>21</sup> In the Czech Republic, for example, non-governmental organizations did precisely this in judicial proceedings for the protection of Roma rights. See European Roma Rights Center, Humanitarian Law Center and Minority Rights Center, *Priručnik za advokate o zastupanju Roma – žrtava diskriminacije* [Handbook for Attorneyson Representation of Roma Victims of Discrimination], (Budapest: European Roma Rights Center; Belgrade: Humanitarian Law Center, Minority Rights Centre, 2005) p. 113. Also compare European Roma Rights Centre, Interights and Migration Policy Group, *Strategic Litigation of Race Discrimination in Europe: from Principles to Practice* (Budapest: European Roma Rights Centre; London: Interights; Brussels: Migration Policy Group, 2004), p. 62.

<sup>22</sup> For more information, see Open Society Fund B&H Anti-Discrimination Program <http://www.diskriminacija.ba/> (accessed on October 23, 2012).

(within which this Policy Brief and the Report it is based on were produced), as well as the recent establishment of a network of civil society organisations called the Equality Forum<sup>23</sup>.

In addition to that, the establishment of systemic cooperation between NGOs and legal clinics created at law schools or student organizations with a similar profile can serve as a mechanism for overcoming the limited human resources. This way, students are able to carry out the necessary research, thus giving experienced jurists from the organization more time to better prepare the cases.<sup>24</sup>

With regards to minimising financial barriers, some anti-discrimination laws contain provisions according to which the plaintiff in anti-discrimination cases is exempt from advance payment of the costs of proceedings and that these costs must be paid for by the court.<sup>25</sup> It can be assumed that the introduction of a similar provision to the laws in Bosnia and Herzegovina would contribute to a better implementation of the LPDBiH and to a more active engagement of non-governmental organisations in proceedings for the protection against discrimination, especially with regards to filing collective lawsuits. On the other hand, the procedural roles which should not be too much of a financial burden for an organisation should be recognised and used. Namely, as opposed to the participation as a party in the proceedings, the participation in the role of an intervener should not incur significant financial costs. In that case, non-governmental organisations may directly intervene in proceedings using their current findings and skills, not needing to engage a lawyer or employ a person that meets the requirements for the representation.

#### 4. ADDITIONAL MECHANISMS FOR A MORE EFFECTIVE ENGAGEMENT OF NGOs IN ANTI-DISCRIMINATION PROCEEDINGS

For a successful anti-discrimination lawsuit, especially the one of strategic significance,

it is especially important to develop a media strategy and, in some cases, to create wider coalitions. Development of appropriate media strategy lends greater significance of the instigated lawsuit, and contributes to initiating public debate and raising public awareness regarding discrimination cases.

Another useful tactics that organizations of civil society employ in strengthening their procedural role in anti-discrimination proceedings is cooperation with ombudsman institutions. These institutions are able to provide civil society organizations with necessary statistical data or they can, through their own activities, establish the relevant facts in an individual case or become involved in proceedings as interveners and thus lend support to the non-governmental organization, whether it is appearing in the proceeding as the plaintiff or acting as support to the victim of discrimination. Experience from other countries confirms this. Reports from Lithuania, for example, indicate that the ombudsman's intervention in the capacity of a third party had crucial impact on the successful outcome in the first case of racial discrimination brought before Lithuanian courts.<sup>26</sup>

An important means for successful anti-discrimination proceedings is the so-called "situation testing". In situation testing, volunteers are used as testers (voluntary testers of discrimination) in the field, who, using the method of observation, establish whether discriminatory acts exist. "One or more persons may be found" in the role of testers who personally or directly engage in a situation in order to check the existence of discrimination".<sup>27</sup> Situation testing is an important way for making it plausible that discrimination occurred<sup>28</sup> thus shifting the burden of proof to the defendant. Procedural rules in Bosnia and Herzegovina do not contain a provision which prohibits the use of situation testing. However, the introduction of explicit provisions on the permissibility of the use of situation testing in proceedings for the protection against discrimination or granting legal standing to the voluntary tester of

<sup>23</sup> For more information, see The Helsinki Committee for Human Rights in Bosnia and Herzegovina, <http://www.bh-hchr.org/> (accessed October 23, 2012).

<sup>24</sup> James A. Goldston "Public Interest Litigation in Central and Eastern Europe: Roots, Prospects and Challenges", *Human Rights Quarterly* 28 (2006), p. 526.

<sup>25</sup> For example, The Law on Gender Equality of the Republic of Serbia contains such a provision in Article 48.

<sup>26</sup> See Jolanta Samuolyte, "Applying situation testing successfully to prove discrimination based on ethnicity", in *The Role of NGOs and Trade Unions in Combating Discrimination*, ed. Richard Polacek (Luxembourg: Publications Office of the European Union, 2009).

<sup>27</sup> Vladimir V. Vodinelic, "Građansko pravna zaštita od diskriminacije" [Civil Law Protection against Discrimination], *Hereticus: časopis za preispitivanje prošlosti* [Hereticus: Magazine for Re-examination of the Past] vol. VI, No. 3 - 4 (2008), p. 41.

<sup>28</sup> European Roma Rights Center, Humanitarian Law Center and Minority Rights Center, *Handbook for Attorneys on Representation of Roma Victims of Discrimination*, p. 47.

discrimination to file a lawsuit for the protection against discrimination, as provided for in LPD of Republic of Serbia,<sup>29</sup> would represent a good and useful solution for Bosnia and Herzegovina. This way the range of possible activities of NGOs in combating discrimination would additionally be expanded and strengthened.

## 5. CONCLUSIONS AND RECOMMENDATIONS

Amending the existing anti-discrimination legal framework in Bosnia and Herzegovina<sup>30</sup> with comprehensive anti-discrimination provisions certainly represents an encouraging progress in the field of protection against discrimination. By recognising the importance of their procedural role, non-governmental organisations are given a new opportunity to make the prohibition of discrimination applied more effectively through judicial proceedings. Certain shortcomings that can be found with regards to the adopted laws on the status of NGOs in anti-discrimination proceedings do not lessen their importance in any way. Still, certain improvements of the current legal provisions and activities on removing practical obstacles which prevent NGOs from a more active engagement in judicial proceedings must certainly be done.

In this regard, the following recommendations arise from the above analysis:

### Recommendations for the Legislative Improvement

- 1) The norms regulating collective lawsuit needs to be enhanced through the amendment to the provisions which oblige plaintiffs to prove the existence of justified interest and to prove the likelihood that the conduct of the defendant violated the right of a number of persons as a requirement for the admissibility of a lawsuit.
- 2) It is necessary to clearly determine which claims may be made in a collective lawsuit.
- 3) Plaintiffs in proceedings for protection against discrimination should be exempt from the obligation of covering the costs of the proceedings in advance.
- 4) The option of providing support to victims of discrimination must be expanded through the introduction of the mechanism of *amicus curiae*.

5) Non-governmental organisations as such must be allowed to represent victims of discrimination, and must be accorded the statutory right to act on their own behalf also in individual cases, subject to obtaining consent from the victim of discrimination.

6) The use of situation testing must be clearly and explicitly allowed as a method of proof in proceedings for protection against discrimination.

### Recommendations for the State – How to Motivate NGOs

- 1) The governmental sector should take the necessary steps to create a stimulating environment for more efficient and active involvement of NGOs in anti-discrimination proceedings. These activities could include creating mechanisms to support the development of civil society, such as setting up a foundation providing support to organizations of civil society in anti-discrimination proceedings.
- 2) Relevant institutions in Bosnia and Herzegovina (primarily the High Judicial and Prosecutorial Council BiH, the Ministry of Human Rights and Refugees and the Institution of the Human Rights Ombudsman of BiH) should create easily accessible records on judicial proceedings instigated under the LPDBiH.

### Recommendations for NGOs

- 1) Non-governmental organizations should pay particular attention to the on-going training of their staff with regards to regulations prohibiting discrimination so that more and more organizations can responsibly take on the role of intervener in individual anti-discrimination lawsuits and strengthen their capacities for filing collective lawsuits.
- 2) Efforts should continue in creating coalitions and networks of non-governmental organizations for combating discrimination, which will enable synergy, division of roles and maximizing the effects of NGO engagement in anti-discrimination proceedings.
- 3) Lobbying should be undertaken for the purpose of creating a legal and institutional framework for the development of civil society, including the establishment of a foundation that will support civil society organizations in anti-discrimination proceedings.



### Open Society Fund B&H Anti-Discrimination Program

The policy brief is produced in the framework of the Open Society Fund B&H Anti-Discrimination Program, which brings together partner organizations across B&H divided into four teams committed to key activities in the field of combating discrimination: monitoring, documentation and reporting, strategic litigation, policy analysis, and advocacy. For more information on the Open Society Fund B&H Anti-Discrimination Program, please visit the website [www.diskriminacija.ba](http://www.diskriminacija.ba).

<sup>29</sup> “The Law on Prohibition of Discrimination of Republic of Serbia”, Article 46, paragraph 3.

<sup>30</sup> This includes the “Constitution of Bosnia and Herzegovina”, “Law on Gender Equality in Bosnia and Herzegovina” and provisions on the prohibition of discrimination in the labour field prescribed by the existing labour laws in Bosnia and Herzegovina.

## SOURCES

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