

Local EU strategy on the implementation of the EU Guidelines on Human Rights Defenders

- BOSNIA AND HERZEGOVINA –

INTRODUCTION

The support for human rights defenders is a key and long-established priority of the European Union's human rights policy in the context of its external relations. In support to this policy priority, in December 2008 the EU adopted a revised version of its 2004 Guidelines on Human Rights Defenders (HRDs) which provide practical tools for enhancing the EU actions in this field.

These guidelines include four operational objectives:

1. Appoint a local EU Liason Officer on HRDs
2. Organise annual meetings with the local HRDs
3. Develop a local strategy on HRDs
4. Issue periodical reports on the human rights situation in the country

Within this context the aim of this local strategy is to facilitate the implementation of the Guidelines in Bosnia and Herzegovina. This strategy is divided in two parts. The first part provides an overview of the legal and institutional framework on the protection of human rights and highlights the human rights situation in the country. The second part of the document identifies the future actions which need to be undertaken during the period 2010-2011 in order to implement the Guidelines.

A. BACKGROUND

Legal and institutional framework

From a legal point of view, the legislative framework for the protection of human rights and fundamental freedoms is broadly in place. Bosnia and Herzegovina (BiH) has ratified all the major UN and international human rights conventions, including the Optional Protocol to the Convention against Torture (OPCAT) in 2008. The principles of the European Convention of Human Rights (ECHR) are clearly entrenched in the Constitution of Bosnia and Herzegovina which also guarantees the supremacy of this convention over national legislation.

In spite of that, however, certain provisions of BiH Constitutional framework continue violating the ECHR. In December 2009 the European Court of Human Rights (ECtHR) ruled that the Constitution of BiH and its electoral legislation, with its provisions that only members of the country's three constituent peoples (Croats, Serbs and Bosniaks) can hold the highest political offices (i.e. Presidency and membership to the House of Peoples), violated the rights to free and fair elections and the prohibition of discrimination under the ECHR. Despite BiH is required to implement the ECtHR's ruling as a matter of urgency, no concrete steps have been taken so far to implement the decision. As a result individuals not belonging to the three constituent peoples, such as national minorities, were effectively excluded from participation and representation in these bodies in the October 2010 General Elections. The implementation's efforts of ECtHR's ruling by the BiH authorities remains poor.

Political and civil rights are clearly entrenched in the country's constitution which guarantees key principles of freedom of expression, freedom of religion and freedom of association. Furthermore, several laws provide for anti-discrimination provisions and equal treatment to all people. In 2009 BiH also adopted a comprehensive State anti-discrimination law which enhances the protection of human rights across the country and enhances the protection of human rights defenders by providing legal mechanisms against violations.

In 2010 the Entities' Ombudsman offices were merged, and a single State Ombudsman institution is functioning in the country. This body is the BiH focal point for HRDs in the country in its relations with the BiH Ministry for Human Rights and Refugees.

Moreover, crucial areas for further developments in this sector fall under the legal mandate and scope of activities of the Ombudsman, such as implementation and monitoring of the Anti discrimination law. In the Republika Srpska, the Office of the Ombudsman for Children is tasked to investigate complaints regarding children in foster care, adoption, and child protection systems.

Implementation

Despite the legal framework for the protection of human rights being in place, its implementation and enforcement remains uneven. In the past two years an increasing number of human rights violations have been reported. In particular the number of cases of physical violence and threats to journalists and editors has increased, and a number of ethnically motivated attacks on religious structures have been reported.

Human rights defenders and civil society organisations have also reported cases of intimidation and violence. The action taken by law enforcement and judicial authorities to investigate and prosecute these cases has often been insufficient. Very little has been done to ensure freedom of assembly and association for lesbian, gay, bisexual and transgender (LGBT) communities who continue to suffer ill-treatment and social discrimination. Domestic violence against women remains widespread and under-reported phenomenon while the rights of children and disabled people are often poorly implemented. The prison system and the police detention facilities remain affected by overcrowding and inadequate facilities. There still remain no proper facilities to address the needs of vulnerable groups such as women, juveniles and mentally ill inmates.

The role of Civil Society

Civil Society Organisations (CSOs) in BiH remain weak although they should play an important role in the protection of human rights and promotion of democratic values. Most HRDs in BiH are organised in the some kind of official or nonofficial CSOs. It is estimated that there are around 12.000 CSOs registered at different level of ministries or courts. The legal framework for operation and development of Civil Society in BiH is broadly in place both at State and entity level and a number of documents have been approved to regulate further the cooperation between Civil Society and the BiH authorities.

However, the effective implementation of these provisions remains deficient. CSOs are very often excluded from the political dialogue with the governmental sector. Budgetary allocation (from state, entity and municipal budgets) to this sector is limited and non-transparent, and only 0.02% of the total financing given to the CSOs are devoted to NGOs dealing with Human Rights¹. The majority of CSOs are donor-dependent, oriented mainly towards international organisations and institutions (Embassies, EU Delegation, USAID).

B. ACTIONS

Actions undertaken

As one of the largest donors, the EU Delegation in BiH has allocated approximately 4 million Euro for the period 2008-2011 to CSOs in order to facilitate the partnership between the civil society sector and municipal governments and to strengthen its role as an efficient and proactive actor in the decision-making process. Furthermore, each year around 1.2 million Euro has been allocated to BiH through the European Instrument for Democracy and Human Rights (EIDHR), a specific programme which aims at supporting the role of civil society and its activities in the promotion of human rights and democracy. Apart from the budget allocated specifically for each individual country, a part of the EIDHR programme finances actions aimed at providing direct support and protection to HRDs in BiH as well as to reinforce their short and long term actions.

In line with the Guidelines, a EU liaison officer was appointed and a meeting with the local HRDs was organised under the auspices of the Spanish Presidency in May 2010. In addition two Human Rights contact points (in the political and operational sections) have been appointed among the staff of the European Union Delegation in BiH.

The EU Delegation representatives actively participates to monthly meetings of the BiH NGO Council consisting of around 100 national and international CSOs as well as the observers (OSCE, USAID, EU Delegation, different government institutions and ministries). The meetings are held in the EU Delegation premises.

¹ Kronauer Consulting (2008) "Analysis of Institutional Cooperation between Governmental and Non-Governmental Sector in BiH" [Available on Line] <http://www.europa.ba/files/docs/publications/en/analiza-en.pdf>

Actions to be implemented in 2010-2011

The role of the EU Delegation and the EU Member States is to continue to promote human rights as EU fundamental values, to support HRDs and to lobby the authorities for the improvement of their status. In that respect, the EU Delegation and the Member States' Embassies in BiH shall:

1. Continue to maintain contact with human rights defenders, including by receiving them in their Missions, visiting their places of work and exchanging concrete information on human rights issues. In this context, annual meetings with the HRDs will be carried out. The next one will take place in early 2011.
2. Raise awareness among the HRDs on their rights and legal protection mechanisms foreseen in the Anti-Discrimination Law and as well as on the importance of submitting shadow reports to the various UN bodies.
3. Provide visible recognition and adequate financial support to human rights defenders.
4. Support efforts to ensure the effective implementation of Human Rights legislation and promote equal rights and possibilities for men and women and gender mainstreaming.
5. Continue dialogue and cooperation with the relevant international organisations (such as the OSCE, UN specialised agencies and the Council of Europe) in promoting respect for human rights defenders in Bosnia and Herzegovina.
6. Maintain an active dialogue with the BiH authorities on human rights issues, the implementation of relevant national and international legislation on human rights. This includes the important role of HRDs and the need to allocate adequate financial means from the relevant budgets.
7. Continue supporting the Ombudsman office through regular contacts and participation to the activities they organise.

8. Continue political dialogue to promote the full implementation of the ECHR's ruling and support the BiH authorities to modernise its law enforcement structures (including the justice and penitentiary systems) through various programmes and projects.
9. Review on a regular basis the situation of human rights violations in the country, including the collection of available statistical data.

Adopted by the EU Heads of Missions

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