

Strategy for improving gender equality in the judiciary of Bosnia and Herzegovina

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INTRODUCTION

In May and June 2018 a *Survey on gender equality in the judiciary* was carried out where judges, non-judicial staff, prosecutors, attorneys, notaries and court expert witnesses answered anonymously to questions regarding their view on gender equality in the judiciary. The analysis of that survey showed that the majority of the respondents who had been subjected to sexual harassment and/or gender-based harassment at the workplace or in connection with work, did not report the incident for fear of the consequences. Also, most respondents believed that gender equality awareness within the judiciary was mid-level and that it represents an important issue that requires proper focus, primarily through appropriate training. The survey results pointed at the need of a strategy to improve gender equality in the judiciary, based on which each judicial institution will pass appropriate implementation plans.

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) has now adopted this *Strategy for improving gender equality in the judiciary of Bosnia and Herzegovina* (The Strategy). Based on this Strategy each court and prosecutor's office (judicial institution) shall draft and deliver its own implementation plan with the aim to reach improved gender equality in the judiciary.

The first section of this Strategy explains why there is a need for a strategy to improve gender equality in the judiciary as well as the positive effects of such a strategy (*Section 1*). That section is followed by a section outlining the four strategic objectives identified by the HJPC and defining the roles and responsibilities of the HJPC and the judicial institutions when it comes to the implementation of this Strategy (*Section 2*). The method to be used to implement this Strategy, gender mainstreaming, is presented in the next section (*Section 3*). Using this method the judicial institutions shall aim to reach the four strategic objectives. In the following section a step-by step guide on how to proceed in the implementation phase is presented (*Section 4*) followed by a section with examples of gender mainstreaming activities that each judicial institution can use as inspiration while preparing their implementation plan (*Section 5*). These examples are not exhaustive. It is important that each judicial institution discuss and decides their own implementation plan and gender mainstreaming activities based on the identified needs of the judicial institution.

1. Why a strategy for improving gender equality in the judiciary?

Gender equality is when women and men have the same possibilities, rights and obligations in all aspects of life. Equality is when all human beings have the same possibilities, rights and obligations in all aspects of life irrespective of sex, ethnicity, religion, sexual preference, class etc. This means that gender equality is an important component in order to reach equality.

Equality is an underlying value of international law and all major human rights treaties contain a prohibition on discrimination on the basis of sex or gender. Guaranteeing access to justice, and in particular women's access to justice is one of the six priority themes of the Council of Europe's Gender Equality Strategy 2018–2023. Gender equality standards pertaining to equal access to justice are addressed in a variety of standards and grounded in several international conventions and legal instruments such as¹:

- The UN Security Council Resolution 1325.
- The Convention on the Elimination of all Forms of Discrimination against Women.
- The European Convention of Human Rights and Protocol no 12.
- The European Social Charter.
- The Convention on Action against Trafficking in Human Beings.
- The Council of Europe Convention on Preventing and combating violence against women and domestic violence.
- The EU Gender Equality Policy 2020–2025.

As a signatory of numerous international documents on human rights and freedoms Bosnia and Herzegovina is required to uphold the principle of gender equality and actively strive for its establishment as well as to ensure exercise of all human rights and fundamental freedoms for all, without discrimination on any grounds.

In addition to the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska, there is national legislation in place in this area, with particular focus on the law on prohibition of discrimination and the law on gender equality, which promote and protect gender equality, guarantee equal opportunities and equal treatment of all persons regardless of gender in public and private spheres of

¹ A brief overview of these is given in *Appendix 1*. This list is not exhaustive.

society, and regulate protection from discrimination on grounds of gender. However, the questions of equality and gender equality are at stake in almost all disciplines of the national law.

So why is there, when the relevant national legislation already is in place, a need for a strategy for improving gender equality in the judiciary?

The answer to that is that having relevant legislation in place is not enough. The application and implementation of the legislation as such can sometimes be an obstacle to achieving the aims of the legislator. Sometimes the persons applying the legislation are not even aware of the gender inequalities the actual application of the law can lead to.

Gender inequalities have direct costs for the society. In many cases, public policies have been based on the needs of the dominant group in society or on the needs of those who have traditionally been the decision-makers, mostly men. The women's rights movement, an increased presence of women in decision-making, strong commitments to women's human rights at all levels, and the development of gender-studies have all helped unveiling the fact that public policies often not take into account women's differing needs and situations. Evidently, decisions regarding public policies and services, which do not fully take into account the needs and situations of all final users, may lead to inappropriate solutions and an inadequate allocation of public funds.

There are many advantages for the judicial institutions to have a high level of gender equality, both within the organisation and when it comes to the reception and treatment of external parties. In terms of the internal work with improving gender equality, the judicial institution will be seen as a modern and attractive employer, thus being able to attract qualified persons to work and to stay as employed within the judicial institution. If external parties feel that they are guaranteed equal access to justice and that they receive "procedural justice", meaning that they experience that the way they are received and treated throughout the procedure is fair, this can in many cases be more important for the parties involved than the actual outcome of the procedure. This means that if a party feels that he or she has received procedural justice, the person is more inclined to respect and have high confidence in the judiciary and to follow the final outcome of the judicial proceedings.

Fairness, impartiality, incorruptibility, access to state agencies with a clear division of the state agencies' responsibilities and a well-functioning system and safe environment are of crucial importance for ensuring procedural justice. If there is a high confidence in the judiciary this will have many positive effects. If, for example, victims of gender based violence trust the

justice system, they will be more inclined to report the crimes they have been subject to. If there is no such trust, the violation might not be reported and the system will not provide preventive and reactive measures as regards the perpetrators. The public prosecution offices and courts are vital parts of the judiciary and are as such to a large extent responsible for upholding this trust and for ensuring the proper implementation of the international and national legislation.

Work towards improved gender equality inside the organisation as well as ensuring gender equality to external parties go “hand in hand”. If the persons working in the judicial institutions are not aware of these questions or if they do not have trust in their employer’s interest and capacity to ensure gender equality within the organisation, one cannot expect that the same persons should be able to ensure gender equality when it comes to reception and treatment of external parties.

In light of the above and the judicial institutions’ crucial role in safeguarding human rights and fundamental freedoms, their mission to continually contribute to the upholding of the rule of law, to enable equal access to justice and ensuring equality of all citizens before the law, the HJPC has decided to adopt this Strategy for improving gender equality in the judiciary.

2. The Strategic objectives for improved gender equality in the judiciary

The HJPC is hereby identifying the following strategic objectives.

1. Managers together with staff in the judicial institutions place high priority on increasing the knowledge and level of awareness about gender, gender norms, gender mainstreaming, gender equality and equal access to justice.
2. Managers together with staff ensure that all work processes within the judicial institutions bear in mind that gender equality and equal access to justice is one of the overall goals of the working processes.
3. Managers together with staff ensure that all parties who come in contact with the judicial institutions are treated and given equal access to justice regardless of gender.

4. Parties, witnesses, professional actors and others who come in contact with the judicial institutions verbally, in writing or via social media notice and feel that the judicial institutions are organisations based on gender equality. Both men and women have high confidence in the judiciary.

The role of the High Judicial and Prosecutorial Council

The HJPC has the overall responsibility to coordinate, assist and guide the judicial institutions with their work with implementing this Strategy, with the ultimate goal of enabling equal access to justice and equality of all citizens before the law, through ensuring an independent, unbiased, professional, efficient and transparent judiciary.

In that regard, the HJPC shall provide expertise in the process of preparation of implementation plans to the judicial institutions and approve the implementation plans prepared by the judicial institutions. In the process of their approval, the HJPC will check, among other things, whether the implementation plans are in line with the set strategic objectives. After approving the implementation plans of the judicial institutions, the HJPC shall regularly monitor the status of their application.

Based on the judicial institutions' reporting to the HJPC concerning the development of implementation plans and their application, the HJPC will include a section on the state of gender equality in the judiciary in the HJPC Annual Report.

The role of each judicial institution

The managers of the judicial institutions have the overall responsibility to implement this Strategy. They shall regularly inform the HJPC on all activities carried out in order to implement this Strategy. The activities and the results are to be reported to the HJPC along with the annual report of the judicial institution. The managers will ensure that all staff on all levels, both men and women, are involved in this work.

3. The method for implementing the Strategy – Gender mainstreaming

In order to implement this Strategy the method to be used is gender mainstreaming. This means that each judicial institution is going to take this into account when drafting their own implementation plan. In this section the concept of gender mainstreaming is presented.

Gender mainstreaming is an approach to policy-making that takes into account both women's and men's interests and concerns. The concept of gender mainstreaming was first introduced in 1985 at the Nairobi World Conference on Women. It was established as a strategy in international gender equality policy through the Beijing Platform for Action, adopted at the 1995 Fourth United Nations World Conference on Women in Beijing, and subsequently adopted as a tool to promote gender equality at all levels.

In 1998 the Council of Europe defined gender mainstreaming as²:

The (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policymaking.

It must be kept in mind that women and men have different needs and living conditions and circumstances, including unequal access to and control of power, resources, human rights and institutions, including the justice system. The aim of gender mainstreaming is to take into account these differences when designing, implementing and evaluating policies, projects and work, so that they benefit both men and women and do not increase inequality but enhance gender equality. Gender mainstreaming is therefore a tool for achieving gender equality.

When properly addressed and implemented, gender mainstreaming is a transformative approach with a great potential for social change. It is a long-term strategy. Every step counts towards this change of approach, but it will require some time until it is fully and automatically integrated into policy-making.

For the judicial institutions this means that they are going to integrate a gender equality perspective at all stages and levels of policies, projects and work – both internally and when it comes to external contacts.

4. A step-by-step guide on how to proceed in the implementation phase

The work with gender mainstreaming, as well as other quality work, is an ongoing work that is done in cycles. Regular assessment and follow up activities are crucial for maintaining a high level of awareness on questions regarding gender equality among all staff working in the judicial institutions.

² Council of Europe portal, Gender equality, www.coe.int

In order to gender mainstream the judiciary the so called PDCA quality wheel (Plan – Do – Check – Act) can serve as a guide for the different phases in the procedure³:

PLAN – DO – CHECK – ACT

PLAN

In the initial phase there is a need to plan the process of gender mainstreaming and to make an inventory of available resources as well as to set the goals and the limits of the project as well as a realistic deadline. It is also important to identify possible risks which can hamper or slow the work with obtaining successful gender mainstreaming. Possible risks can be lack of support or interest from managers of the judicial institution, lack of knowledge and awareness of gender equality questions, resistance to change and lack of resources.

Several activities have already been undertaken to improve gender equality in the judiciary. Some examples of what has already been done are listed in *Appendix 2*. At the planning stage the judicial institutions can take these previous activities into account when planning the work.

A starting point can be to evaluate the level of awareness and knowledge when it comes to questions related to gender equality within the institution, e.g. by conducting self-assessment surveys. This can be followed by discussions among the staff. The results of the survey will help to decide what gender mainstreaming activities the judicial institution will do. This way each judicial institution will also have their own results which then can be kept as a comparison if the same survey is done at a later stage in order to measure the results at each institution after having completed activities to improve gender equality.

It is important to note that the level of awareness, knowledge, and identified risks such as for example resistance from staff members and groups of staff members may, and probably will, differ between the judicial institutions. This is why it is not possible at this stage to instruct each judicial institution on what gender mainstreaming activities the judicial institutions shall do. How to achieve the goals and how they should be monitored must be discussed and decided within the judicial institution itself.

³ Edwards Deming's PDCA wheel. PDCA, sometimes called PDSA, the "Deming Wheel," or "Deming Cycle," was developed by renowned management consultant Dr William Edwards Deming in the 1950s. PDCA/PDSA is an iterative, four-stage approach for continually improving processes, products or services, and for resolving problems. It involves systematically testing possible solutions, assessing the results, and implementing the ones that are shown to work.

In this phase it is suggested that the following steps are undertaken

1. The managers of the judicial institution make an inventory of available resources.
2. The managers decide and set the internal goals and the limits for the work to be done as well as a deadline.
3. The staff are informed about the Strategy and that the judicial institution has been instructed to deliver an implementation plan and to implement this Strategy.
4. A working group is formed who get the mission to do a pre-study, analyze and discuss concerns and needs of the beneficiaries, i.e. the personnel in the judicial institution and the external parties that come in contact with the judicial institution.

This work can be done in different ways, a good start can be to draft and have all staff to do a self-assessment survey and then they discuss the results which then can form the base for the future work.

5. The working group presents the results of the pre-study to the managers of the judicial institution.
6. The results of the pre-study are presented for all staff.
7. The managers together with the staff decide what gender mainstreaming activities should be undertaken.
8. Based on the decisions taken the implementation plan is drafted by the working group. The implementation plan is going to point out what gender mainstreaming activities shall be done, by who, how it is going to be reported and when.
9. The implementation plan is adopted by the judicial institution.

DO

After the planning phase it is time for working groups to start working with the decided gender mainstreaming activities as outlined in the implementation plan. Gender mainstreaming is a process that needs dedicated time and commitment of all staff on all levels including both men and women. The work has to be done from within the organisation itself in order for the management and staff to feel ownership of the process. It is very important that the managers actively support and take part in the work that is being done in this phase.

In this phase it is suggested that the following steps are undertaken

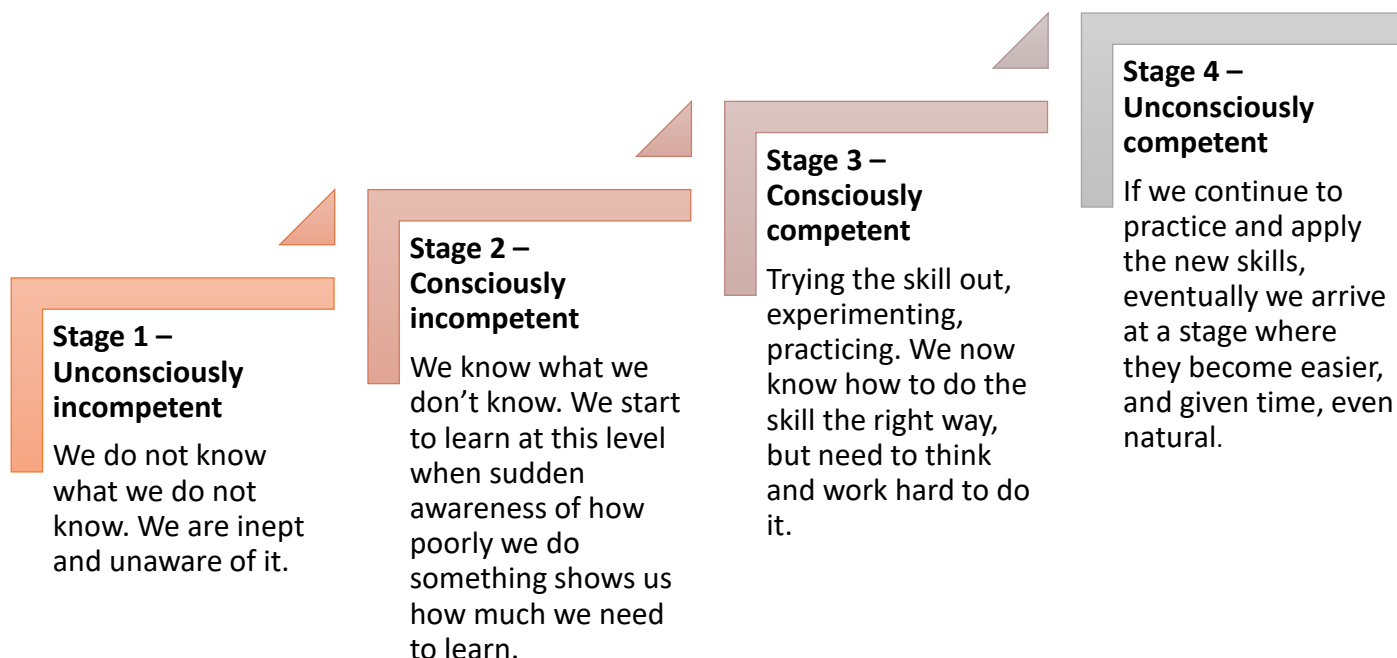
1. Form working groups based on the implementation plan.
2. The working groups get instructions on what to do and when to report the results.

3. Every working group has an initial meeting brainstorming on how to carry out the decided gender mainstreaming activity.
4. The activity is carried out.
5. The results of the activity are analyzed by the working group.
6. The results are presented and discussed within the judicial institution. Depending on the activity that was undertaken the discussions can take place in smaller working groups or in plenary.

CHECK

In this phase monitoring of the gender mainstreaming activities and the results of these should be undertaken. To be able to perform the “Check” and “Act” parts the gender mainstreaming activities must have been in operation for some time. Psychologist Thomas Gordon’s “Competence ladder” illustrated below, describes the process of competence development and awareness and is a valuable tool in understanding the stages an individual is at in their learning process and how to adjust coaching or instructions.

THE COMPETENCE LADDER



When starting the work with gender mainstreaming one can assume that the entire organisation is at stage 1, indicating that it is an organisation which unconsciously has no expertise when it comes to gender equality. People are often just not aware at all that gender equality can be

something to think about in the every-day running of a judicial institution. The aim should be that when the implementation activities have been completed another stage can be reached on the competence ladder. Even though it might be difficult to achieve and actually measure, monitor and record the achievements, the organisation should always strive to reach stage 4 of the “Competence ladder”. It cannot be excluded that as soon as work with gender mainstreaming activities start and the competencies of each staff member raises, the results of surveys that have been done and that are being done again might, at least in an initial phase, become less positive than previously. This can be explained since the more the persons in the organisation learn, the more they are able to question the matters concerned. The overall goal should, in the long run, be that the organisation should not even have to reflect upon the gender perspectives since they are integrated in all work processes and that they are a natural part in the internal and external work of the judicial institution.

In this phase it is suggested that the following steps are undertaken

1. New surveys or other activities to measure if the organisation has reached another stage on the “competence ladder” is carried out.
2. Based on the results it is decided what action should be undertaken to follow up on the results and outcome of each activity.

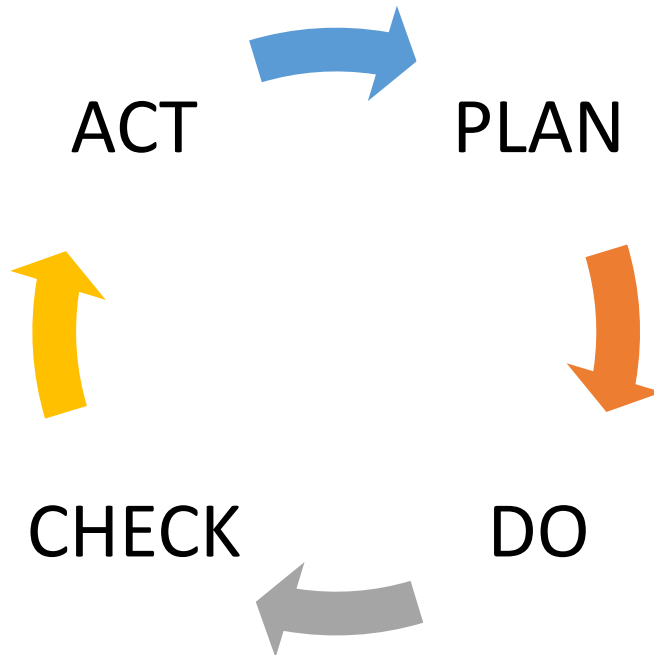
ACT

It is important that the results and outcome of the activities undertaken are properly followed up and that necessary changes, for example in changes in work procedures are decided, implemented and followed up. In this phase the organisation must also discuss and decide how to continue the work from where the judicial institution is now and what direction new gender mainstreaming activities should take to stay at the stage already obtained and perhaps aim to reach another stage on the “competence ladder”.

In this phase it is suggested that the following steps are undertaken

1. Managers, working groups and/or individual staff members get the task to make necessary follow up activities and introduce decided changes in work procedures.
2. The managers of the judicial institution report on activities and the outcomes thereof to the HJPC.

3. After the completion of this phase, the work continues towards improving gender equality in the judiciary, starting again at the PLAN phase.



5. Examples of gender mainstreaming activities

In this section examples of gender mainstreaming activities are listed. The examples are not exhaustive and it is important that each judicial institution decide on their own implementation plans and gender mainstreaming activities based on the identified needs and risk analysis of the judicial institution.

The gender mainstreaming activities are to be undertaken with the focus on the four strategic objectives decided by the HJPC.

In the following sub-sections examples of activities are listed for each of the four strategic objectives. Some activities are overlapping and are relevant for more than one strategic objective.

Strategic objective 1

Managers together with staff in the judicial institutions place high priority on increasing the knowledge and level of awareness about gender, gender norms, gender main-streaming, gender equality and equal access to justice.

Training for all staff in the judicial institutions

All staff must get appropriate training and feel that they are involved in the implementation work. One way to do this can be to start the work with gender mainstreaming by inviting external speakers, consultants and professionals from non-governmental or international organisations who will make presentations on selected topics. Seminars and training sessions and/or workshops can be followed by discussions in smaller working groups. Below are some examples of themes and questions that can be discussed.

General questions

- What can be done to improve gender equality in the judicial institution – internally and towards external parties?
- What are the different professions/organisations'/authorities' roles in detecting, preventing, judging and taking care of perpetrators and victims regarding cases involving gender based violence.
- How is the internal jargon within the court? Do we have different levels of tolerance with regard to how we express ourselves?
- How to react on master suppression techniques⁴?
- How can hierarchical structures prevent us from discussing internally if inappropriate jargon and practices develop at the workplace?
- Are men and women valued differently within the organisation? How? Why?
- How is the division of work tasks allocated between men and women?
- What activities can the judicial institutions do in order to raise awareness on gender equality issues?

⁴ The master suppression techniques is a framework articulated in 1945 by the Norwegian psychologist and philosopher Ingjald Nissen. Master suppression techniques are defined as strategies of social manipulation by which a dominant group maintains such a position in a (established or unexposed) hierarchy. These techniques are often discussed being a technique used in the workplace by men against women. There is much information material and films on these on the web which can be used in these discussions.

Analysis of safety and security

- What policies, procedures and equipment is in place for ensuring the security and safety of staff and external parties visiting the court?
- What do we need as professionals and what do the external parties need in order for a safe and secure work process?
- What security measures are in place at the judicial institutions?
- Are there special rooms for the victim so that he/she does not have to meet the suspected perpetrator and/or witnesses before entering the courtroom? Possibility not to have to sit in the same courtroom during the hearings?
- What other security aspects are there to ensure a safe environment in court?
- In gender based violence cases as in any other case the judge is responsible for the order in the courtroom. How are we to carry out this function in relation to the other professionals in the courtroom?
- How to react on master suppression techniques and subtle threats used between the parties during the proceedings?
- Availability or need of psychological debriefing for the staff when and/or after having worked with a “psychologically difficult” case, for example case involving much physical and/or psychological violence, child abuse cases, torture cases, etc?
- Are the security guards properly trained and do they have the tools needed to be able to assist and protect persons coming to the premises?
- Availability of both male and female security guards?
- Identify safety and security gaps and discuss how these can be fixed.
- In what way can the answers to the above questions affect us?
- In what way can the answers to the above questions affect the external parties coming to you?

The role of community and culture

- Are girls and boys treated differently at home/in school/in public? How? Is this good or bad?
- Do we/society/school/family have different expectations on boys and girls? Is this good or bad?
- What roles does the community and culture impose on female and male members of the community?

- Are male victims treated differently than female victims?
- Are male perpetrators treated differently than female perpetrators?
- How can gender based violence be affected by violence and corruption (economic corruption, corruption among friends, corruption in business and possible corruption in the legal system?)

Relations to and the role of media

- What media policy is in place with the judicial institution?
- How does the judicial institution present and communicate the work with cases that are getting much attention by the public/by media?
- Is there a common use of explanatory press releases, at the same time ensuring the personal and private integrity of the persons involved in the proceedings?
- How does media report on court cases? Is the language used in media gender neutral? What can the judicial institution do in order to contribute to ensuring correct and gender-neutral reporting?
- Does the judicial institution have any policy on how to communicate in social media?
- How to communicate the work of the judicial institution in regards of improving the gender equality in the judiciary to the public?

Analyzing questions regarding gender equality from the employer's perspective

There are clear structural differences between men and women on the labour market. In order to give men and women employed within the judicial institutions equal opportunities in terms of career and salary development active gender equality work needs to be done within each judicial institution. Discuss and analyze the following.

- Are female-dominated professions paid equally as male-dominated professions?
- How many men and women are there at the managerial level in the organisation? If there is a majority of men or women; discuss what can be done in order to have equal representation of men and women.
- How to encourage women who would make good managers to apply for managerial positions and put them forward for such roles?
- Is the workload distributed evenly between men and women in the workplace?
- Can the judicial institution ensure that both men and women have the equal possibility to care for their children? Is it possible to combine parenthood and employment? What improvements are needed?

Strategic objective 2

Managers together with staff ensure that all work processes within the judicial institutions bear in mind that gender equality and equal access to justice is one of the overall goals of the working processes.

Surveys with questions regarding gender equality and equal access to justice

Internal and external surveys should regularly be done and analyzed. The results should be followed up and proper action should be taken.

Quality work to ensure that the work processes are gender neutral

Based on findings from other activities working groups ensure that identified problem areas are addressed and that the work-process bear in mind gender equality and ensure equal access to justice.

Strategic objective 3

Managers together with staff ensure that all parties who come in contact with the judicial institutions are treated and given equal access to justice regardless of gender.

Analysis of the national legal framework and the implementation of the legislation

The national legal framework continuously needs to be analyzed and reviewed to ensure that the legislation is in line with the international legal framework, standards and evolving international case-law. The judicial institutions are not in charge of delivering or amending laws. However, it is the judicial institutions who are in charge of interpreting and applying the existing legislation and the judicial institutions are therefore in the position to identify legislative or implementation gaps. Practices and procedures might need to be reworked in order to ensure an implementation that ensures gender equality and equal access to justice. Legal practitioners can also, when identifying gaps in the legislation, notify and make the HJPC aware of the need of legislative amendments. The HJPC can thereafter file the identified necessary motions for amendments in the legislation. Some examples for further analysis and discussion are listed below.

- Are there any legal provisions which are explicitly discriminatory or “gender insensitive” that does not take into account women’s social position and gaps in legislation concerning issues that disproportionately affect women?

- Are there any problematic interpretation and application of the law which discriminates against women or hampers women's access to justice?
- Are there any ineffective or problematic legal procedure such as the lack of gender sensitive procedures in the legislation?
- Are there problems with gender stereotyping and bias by justice actors in the legislation itself or in the application of the legislation? This could be discovered through analyzing national case law on selected areas.
- Are there functioning accountability mechanisms?
- What information is given to the public on legal rights and legal procedures and how is the information given? Is it accessible to all groups in society?
- Is there a functioning system of legal aid for persons who do not have the economic means to pay for legal representation and legal fees?
- How does the judicial institution contribute to ensure that victims of gender based violence report the crimes that they are victims of, and how does the justice chain take care of those reports?
- How is the legislation equipped in order to prevent, detect, investigate, prosecute and judge in cases involving gender based violence?
- Are the judicial institutions applying the law in the way it is supposed to or is there a lack of implementation?
- Is there legislation in place to keep the name of for example a rape victim secret for the public?
- What is required under the law for a conviction in gender based violence cases? Can a victim's account of the events be enough, if it is deemed credible? If not, what more is required?
- What is the value of a statement from a witness who wasn't there at the time of the violation, but has talked to the victim afterwards? Is this evidence allowed and how is it valued?

“Gender walk” in the users’ footsteps

The judicial institution can look into how the public usually travels to come to the court or prosecutor's office by doing a “gender walk” to look into how inclusive and safe the physical environment is where the prosecutor's office or court is located.

- How can people travel to the prosecutor's office and the court?

- Is it safe in the immediate surroundings? If not, can the municipality be engaged in the process in order to make the surrounding safer for people who are coming to the judicial institution?
- Is there a possibility to sit in a separate room before the meeting/proceeding?
- Access to witness support?
- Security guards?
- Access for persons coming with children?
- Discuss how the layout of the premises and the surroundings can affect persons who have to come to the judicial institution?

Strategic objective 4

Parties, witnesses, professional actors and others who come in contact with the judicial institutions verbally, in writing or via social media notice and feel that the judicial institutions are organisations based on gender equality. Both men and women have high confidence in the judiciary.

Analysis of how the judicial institutions act in cases involving gender based violence

- How often does a person who contacts the police to report about gender based violence withdraw the information given later on in the process (when the case is with the prosecutor or in court)?
- Is it possible for the prosecutor to continue with the case even if the victim no longer wants to participate in the process?
- Are there prosecutors that are specially trained in working with gender based violence cases?
- An external professional or university student can be assigned to listen to court hearings with focus on listening and watching how judges and prosecutors as well as other professional actors act in the courtroom when it comes to addressing men and women in an equal way.

Analysis of judgements

An external professional party can be assigned to study investigations and judgements involving for example gender-based violence, family law cases and migration cases in order to draft a report on questions that the court or prosecutor's office has highlighted. Examples of questions to look into are listed below.

- Are men and women treated and judged in the same way? The same outcome in similar cases? The same penalty in criminal cases for men and women if convicted for the same crime?
- How are questions related to the best interest of the child solved and discussed in the judgements (for example in family law cases, migration law cases, criminal cases)?
- Are asylum seekers asked the same questions and given the same amount of protection irrespective of whether they are men or women?
- Is the language used in the judgements gender neutral?
- How is the language in sexual assault cases? For example, do we say/write “the perpetrator kissed her” or do we say/write “the perpetrator put his tongue in the victim’s mouth”. What is the difference? How should we say/write? Any other examples?

CONCLUDING REMARKS

This Strategy for improving gender equality in the judiciary of Bosnia And Herzegovina is a general strategic policy document. The Strategy gives instruction to the judicial institutions to draft and deliver its own implementation plans based on this Strategy followed by implementing activities. The method to be used by the judicial institutions when implementing this Strategy is gender mainstreaming with the aim to reach the four strategic objectives outlined in this Strategy. The Strategy also gives guidance on how to reach results by implementing activities in the judicial institutions. The step-by-step guide on how to proceed in the implementation phase can serve as a framework for how the work could be done. Nevertheless, each judicial institution must, depending on the identified needs, decide what gender mainstreaming activities they will do. Active support of the managers of the judicial institutions are crucial throughout the work to implement this Strategy. Equally important is that staff on all levels, including both men and women, are involved and engaged in the working processes. The HJPC will coordinate, assist and guide the judicial institutions with the aim to improve the gender equality in the judiciary and ensuring equal access to justice and equality of all citizens before the law. Improved gender equality in the judiciary requires that gender mainstreaming is included in all work-processes in the judicial institutions and it requires endurance and patience. It is therefore essential that the work with gender mainstreaming is continuous, encouraged, reported and monitored over time.

APPENDIX 1 – Some of the international legal framework

The UN Security Council Resolution 1325

The UN Security Council adopted resolution (S/RES/1325) on women and peace and security on 31 October 2000. The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. It also calls on parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. The resolution provides a number of important operational mandates, with implications for Member States and the entities of the United Nations system.

The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of all forms of Discrimination against women (CEDAW) was adopted in 1979 by the UN General Assembly.⁵ It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*”.

By accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, including

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate legislation prohibiting discrimination against women,
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination, and

⁵ Bosnia and Herzegovina has acceded to the CEDAW on September 1, 1993, in succession from FR Yugoslavia.

- to ensure elimination of all acts of discrimination against women by persons, organisations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to and equal opportunities in political and public life, including the right to vote and to stand for election as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures so that women can enjoy all their human rights and fundamental freedoms. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

The UN Committee on the Elimination of Discrimination against women has articulated six interrelated elements of access to justice that are considered key for a justice system that is responsive to gender⁶. These are

- justiciability,
- availability,
- accessibility,
- good quality,
- accountability, and
- the provision of remedies for victims.

In terms of violence against women it means that states must implement a range of measures, including

- amending domestic law to ensure that acts of violence against women are properly defined as crimes,
- ensuring appropriate procedures for investigations and prosecutions, and
- ensuring access to effective remedies and reparation.

The European Convention of Human Rights and Protocol no 12

Even if the European Convention of Human Rights (ECHR) is a gender-neutral document the European Court of Human Rights has established jurisprudence on women's rights, including

⁶ See General Recommendation No 33 of the UN Committee on the Elimination of Discrimination Against Women issued July 23, 2015, CEDAW/C/GC/33.

jurisprudence on violence against women. The court has also established several important principles of women's equal access to justice.⁷

The Protocol no 12 to the ECHR includes a general prohibition of discrimination on any ground, e.g. sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The European Social Charter

The European Social Charter (ESC) is a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the ECHR, which refers to civil and political rights. It guarantees a broad range of everyday human rights related to employment, housing, health, education, social protection and welfare. The ESC has specific emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants. It requires that enjoyment of the rights is guaranteed without discrimination. The ESC also serves as a point of reference in European Union law. Most of the social rights in the EU Charter of Fundamental Rights are based on the relevant articles of the ESC. The ESC can therefore be seen as the Social Constitution of Europe. The European Committee of Social Rights (ECSR) monitors the extent to which member states comply with the ESC through a reporting system and a procedure of collective complaints.

The Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on May 3, 2005. The Convention entered into force on February 1, 2008.⁸ The Convention on Action against trafficking in Human Beings covers preventing and combating trafficking in women, men and children, for the purpose of sexual, labour or other types of exploitation, as well as a protecting victims and prosecuting traffickers. It includes a non-discrimination provision and the obligation for state parties to promote gender equality and use gender mainstreaming in the development, implementation and assessment of measures to implement the convention. An independent monitoring mechanism assesses how states are putting these provisions of the convention into practice. The independent Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

⁷ Bosnia and Herzegovina is a member of the Council of Europe and the ECHR entered into force in Bosnia and Herzegovina on July 12, 2002.

⁸ Bosnia and Herzegovina signed the Convention on Action against Trafficking in Human Beings in January 2006 and it was ratified in January 2008.

The Council of Europe Convention on preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul convention) is a comprehensive treaty that addresses human rights, gender equality and criminal law.⁹ The Istanbul convention sets forth the minimum standards that state parties are required to implement to effectively address violence against women. The Istanbul convention is based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It is the obligation of each state to fully address it in all forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators.

According to the Istanbul convention the state

- has a responsibility to prevent all forms violence against women, protect those who experience it and prosecute perpetrators¹⁰,
- must promote equality between women and men and prevent violence against women by encouraging mutual respect or non-violent conflict resolution and questioning gender stereotypes, including through teaching materials in schools¹¹,
- must investigate allegations of violence and prosecute perpetrators,
- must protect and support those who experience violence, for example by removing perpetrators from the house to make sure the person affected stays safe and by offering sufficient and accessible shelters,
- must ensure that victims can claim compensation from the offender and must award adequate compensation itself if it cannot be covered from other sources,
- must ensure a coordinated approach among all relevant agencies, civil society organizations and other stakeholders to support those who experience violence and protect them from further violence,

⁹ Bosnia and Herzegovina signed and ratified the Istanbul convention in the year 2013 and it entered into force 01/08/2014.

¹⁰ Men who experience violence are not excluded. The provisions in the convention on domestic violence can be applied also to men and boys.

¹¹ No specific education model is imposed by the Istanbul convention in order to teach gender equality and fighting stereotypes. States are free to take into account different possibilities when choosing the most appropriate teaching material and approach.

- ensure that police and justice system professionals are trained on victim's rights and how to prevent further harm, so that they are able to respond to calls for assistance and manage dangerous situations, and
- make sure that those who experience violence have information and access to support services, such as 24/7 helplines, rape crisis centers, counselling and shelters.

The Istanbul convention also acknowledges that civil society plays an important role in providing essential services to those who experience violence, raising awareness and helping to change attitudes to create a culture of zero tolerance.

The Istanbul convention has a two-pillar monitoring mechanism to assess the implementation of the convention, the Independent Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) and the Committee of the Parties.

The EU Gender Equality policy 2020–2025

Bosnia and Herzegovina is not yet a member of the EU, however in striving to become an EU-member the EU Gender Equality policy 2020-2025 is also a document to take into consideration.

This equality policy delivers the Commission's commitment to achieving a Union of Equality. The Strategy presents policy objectives and actions to make significant progress by 2025 towards a gender-equal Europe. The goal is a Union where women and men, girls and boys, in all their diversity, are free to pursue their chosen path in life, have equal opportunities to thrive, and can equally participate in and lead the European society.

The key objectives in the policy are:

- ending gender-based violence,
- challenging gender stereotypes,
- closing gender gaps in the labour market,
- achieving equal participation across different sectors of the economy,
- addressing the gender pay and pension gaps,
- closing the gender care gap, and
- achieving gender balance in decision-making and in politics.

The Strategy pursues a dual approach of gender mainstreaming combined with targeted actions, and intersectionality is a horizontal principle for its implementation. While the Strategy focuses on actions within the EU, it is coherent with the EU's external policy on gender equality and women's empowerment.

APPENDIX 2 – Some of the previous work on improving gender equality in the judiciary

Several activities have already been undertaken in order to gender mainstream, to increase awareness and to heighten the focus on gender equality and equal access to justice. Here, some examples of this work are presented.

Guidelines for the prevention of sexual and gender based harassment

In the year 2015 the HJPC adopted Guidelines for the prevention of sexual and gender based harassment in judicial institutions in Bosnia and Herzegovina (the Guideline). Monitoring of the application of the Guideline is carried out by analyzing the annual reports of the judicial institutions. The reports contain information on the application of the internal response procedure and the availability of orientation, training and awareness raising programs which judicial institutions shall submit to the HJPC annually. Each judicial institution is to make sure that appointed advisors carry out, from time to time, trainings for their staff concerning the Guideline. The HJPC makes sure that the advisors go through appropriate trainings on their role as advisors.

Survey on gender equality in the judiciary of Bosnia and Herzegovina

Between May and June 2018, a survey was carried out on gender equality in the judiciary. Judges, non-judicial staff, prosecutors, attorneys, notaries and court expert witnesses anonymously completed an online questionnaire. The survey was anonymous primarily in order to obtain as truthful and open as possible responses.

The questionnaires served to research the views of the judiciary on the following.

- The relationship of the court concerning court procedures and parties.
- Equal salaries and opportunities for promotion.
- Various gender-related prejudices.
- Personal experiences (gender-related prejudice, sexual or gender related harassment).
- Quality of life.
- General views on the questionnaire topics.

The survey was completed by 969 respondents, i.e. 10 per cent of the BiH judiciary¹².

¹² Survey participation breakdown – 31 per cent judges, 9 per cent non-judicial staff, 36 per cent prosecutors, 4 per cent attorneys, 19 per cent notaries and 0,4 per cent court expert witnesses.

The analysis of the survey showed that the majority of the respondents who were subjected to sexual harassment and/or gender-based harassment at the workplace or in connection with work, did not report the incident for fear of the consequences. Also, most respondents believed that gender equality awareness within the judiciary was mid-level and that it represents an important issue that requires proper focus, primarily through appropriate training.

The survey results pointed at the need to create a strategy to improve gender equality in the judiciary, based on which each judicial institution will pass appropriate implementation/action plans.

Training for HJPC Secretariat staff and trainings organised by the HJPC

In June 2018 training was organized for the HJPC Secretariat staff regarding the introduction of gender mainstreaming in work processes, *Introducing the principle of gender equality in judicial institutions (gender mainstreaming)*. The training addressed the following.

- Definition of gender mainstreaming.
- What gender mainstreaming means in the work of an organisation/institution.
- Practical examples.
- The effects of gender stereotypes in a work environment.
- Specific institutional practices, aimed at overcoming gender discrimination.

The HJPC has organised and will continue organising appropriate trainings for judges and prosecutors as well as its own staff on various gender-related topics.

In November 2018, within the framework of the international *campaign 16 days of activism against gender based violence*, when opening the Council session, the president of the HJPC gave a press statement stressing that violence against women represents a violation of fundamental human rights, that the HJPC supports the work against all forms of gender based violence that occur on a daily basis including domestic violence, rape and sexual harassment, condemning the violation of fundamental human rights as recognised with the Constitution and the law.

Moreover, in 2019 the HJPC, in cooperation with professional associations of judges and prosecutors, organized a roundtable on processing gender-based violence cases, at which good and bad practices, in the context of courts and prosecutor's offices, were presented. The participants of the roundtable reached 11 conclusions, aimed at overcoming identified challenges in processing such cases.

TAIEX workshop on Gender-based violence and equal access to justice

In March 2019 a TAIEX Multi-country workshop on *Gender violence and equal access to justice* was held in Sarajevo. International experts were invited and participated and presented best practices from their jurisdictions in addressing gender-based violence and ensuring equal access to justice. Specific focus was on cases of violence against women. At the workshop representatives of the judiciary of Bosnia and Herzegovina, the EU-delegation, the Swedish embassy and relevant institutions of the executive branch and the relevant civil society organisations participated. Delegates from other countries in the region were also represented.