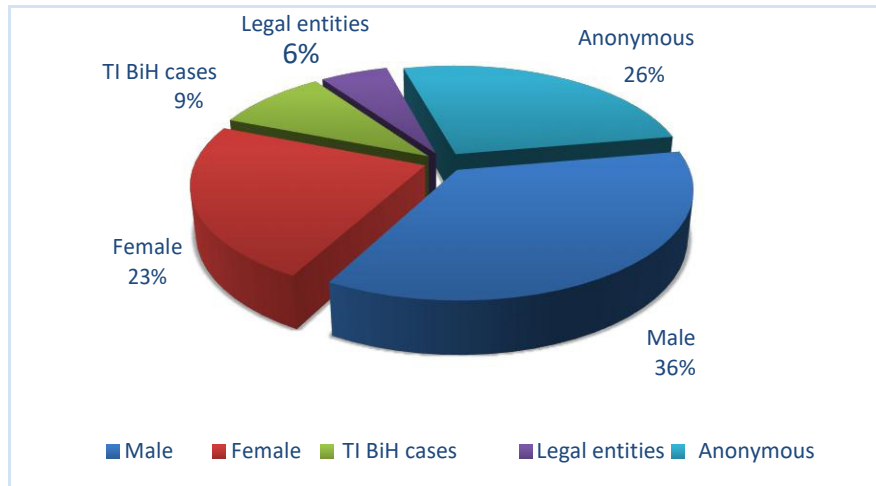


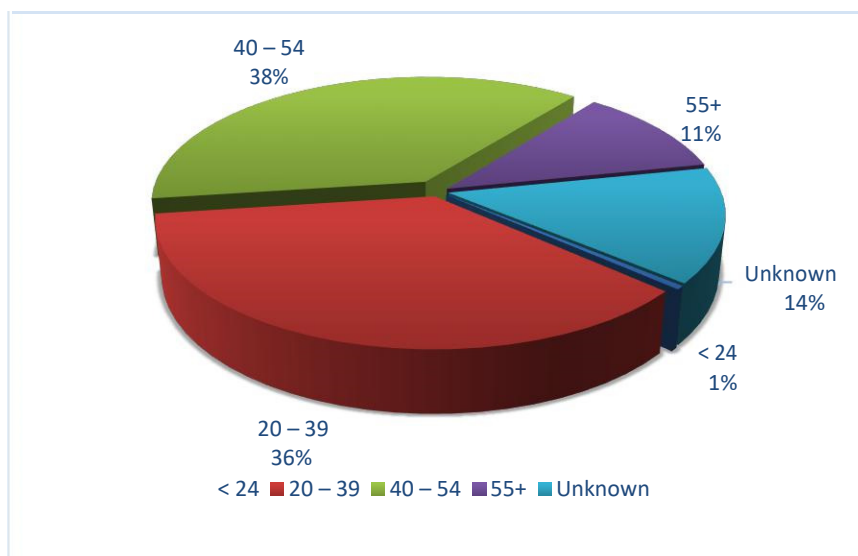
**Advocacy and Legal Advice Centre**  
Transparency International BiH

**STATISTICS AND NARRATIVE REVIEW**

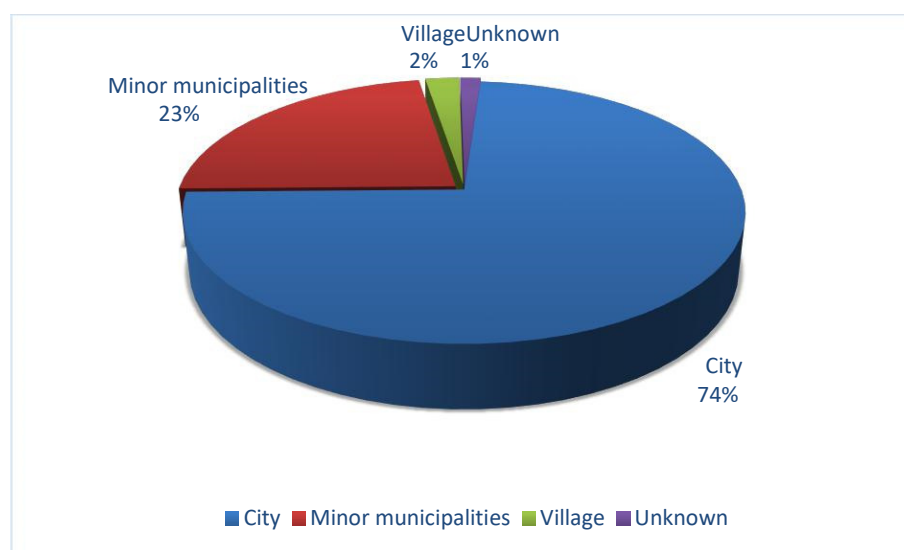
Gender of complainants	
Male	77
Female	50
TI BiH case	20
Legal entities	12
Anonymous	57
Total	216



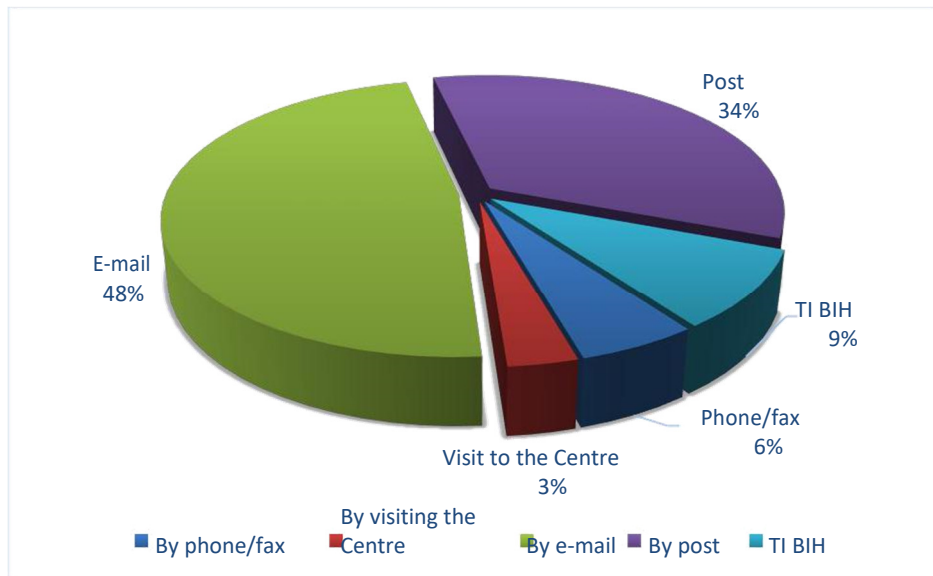
Age of complainants	
< 24	1
20 - 39	81
40 - 54	84
+ 55	25
Unknown	25
Total	216



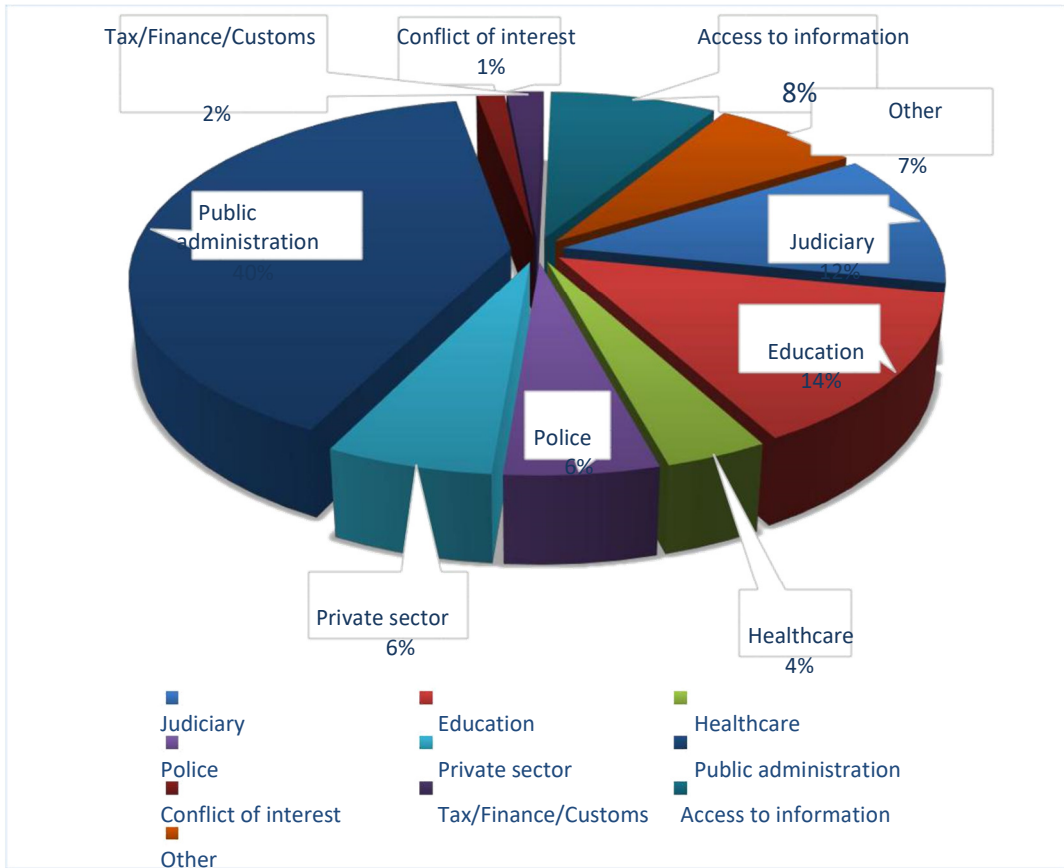
<b>Location of reports</b>	
City	<b>159</b>
Minor municipalities	<b>49</b>
Village	<b>5</b>
Unknown	<b>3</b>
<b>Total</b>	<b>216</b>



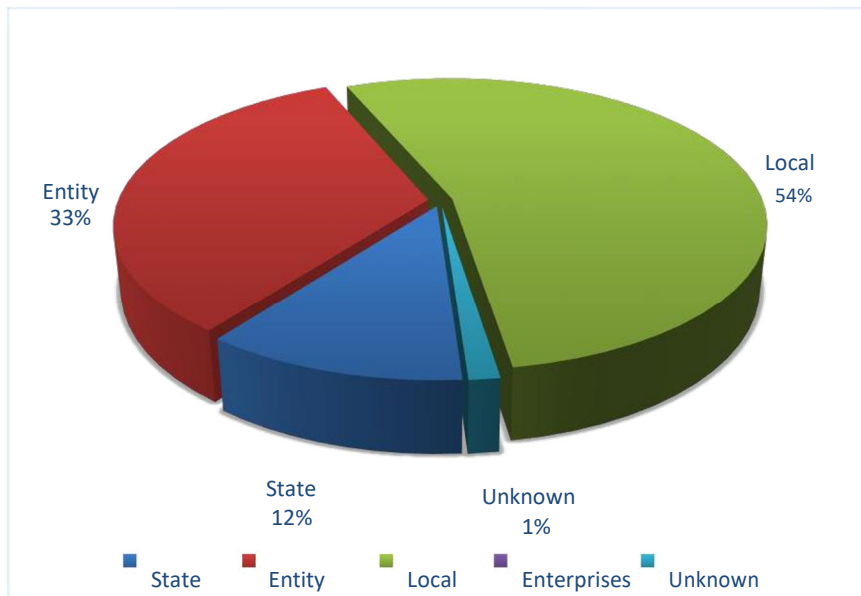
<b>Method of collecting citizens' reports</b>	
By phone /fax	<b>12</b>
By visiting the Centre	<b>7</b>
By e-mail or at prijavikorupciju.org (centar@ti-bih.org)	<b>103</b>
By post	<b>74</b>
TI BIH	<b>20</b>
<b>Total</b>	<b>216</b>



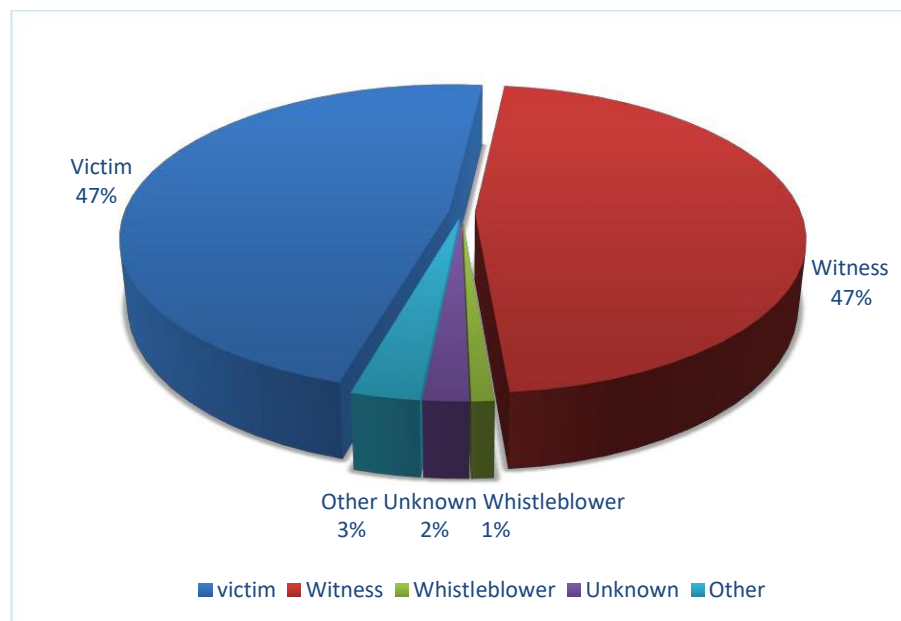
Reports in sectors	
Judiciary	26
Education	30
Healthcare	8
Police	12
Private sector	13
Public administration	86
Conflict of interest	3
Tax/finance/customs	4
Access to information	18
Other	16
<b>Total</b>	<b>216</b>



<b>Reports at the jurisdiction level</b>	
State	25
Entity	71
Local	116
Enterprises	4
Unknown	
<b>Total</b>	<b>216</b>



Connection of complainant to the case	
Victim	99
Witness	95
Whistleblower	2
Unknown	4
Other	13
<b>Total</b>	<b>216</b>



<b>Number of calls to the toll-free line: 0800 55555</b>	<b>1069</b>
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# REPORTS IN SECTORS

## **JUDICIAL INSTITUTIONS (26 cases in 2016 or 12%)**

### COURTS (14 cases in 2016)

In 2014 TI BiH received **14** cases referring to the complaints against the work of certain judges of the basic/municipal and cantonal/district courts. As in previous years, the reports were mostly related to the duration of proceedings before the court, failure of courts to act upon the request of a party or discontent of the parties with the court's decision. TI BiH advised parties on the manner in which they could invoke legal remedy, explained the way the cases are resolved and how parties can address the court and urge the action. The parties were also explained that the Office of the Disciplinary Counsel, responsible for initiating disciplinary proceedings against the judges, is the only organ allowed to decide on the parties' complaints in which they express their doubts about the impartial and professional work of judges.

### PROSECUTOR'S OFFICES ( 12 cases in 2016)

In 2016 TI BiH had **12** cases related to the work of Prosecutor's Offices and individually specified prosecutors. Citizens filed the complaints mostly because they were not satisfied with the way the Prosecutor's Offices acted upon their reports or with the decisions of the Prosecutor's Offices on not conducting the investigation. TI BiH addressed the relevant Prosecutor's Offices and submitted around twenty requests for access to information on acting in cases in which the parties expressed their interest. In one of those cases the report was filed anonymously by the group of administrative inspectors against the alleged selective treatment of prosecutors of the Cantonal Prosecutor's Office of Tuzla Canton and the occurrence of investigation obstruction. The report was forwarded to the Office of the Disciplinary Counsel (ODS) for further treatment.

TI BiH filed a complaint against the work of the Chief Prosecutor of BiH Prosecutor's Office, Goran Salihovic, insisting that ODS must examine all media claims on the alleged improper influence on the work of the Chief Prosecutor, as well as the information that he made several investigations in cases related to the organized crime to be closed. Possible disciplinary violations of the Chief Prosecutor refer to the violation of the principle of impartiality, benefiting from the undue influence on the prosecutors' decisions and actions, abusing the position of prosecutor to obtain unjustified benefits for themselves or others and causing damage to the reputation of prosecutorial function. ODS first decided to initiate the investigation in this case, and then it initiated the disciplinary proceeding against the Chief Prosecutor who was later relieved of duty by the decision of the First Instance Disciplinary Panel.

Also, TI BiH has previously sued the Prosecutor's Office of BiH for violating the Law on Free Access to Information of BiH, i.e. for failing to submit the copies of the cases related to the criminal offenses against the official duty which resulted in convictions, that would have been used as examples of successfully processed corruption cases for the need of publishing the study „The best practices in revealing and processing corruption“. The Court of BiH ruled in favour of TI BiH and pointed out in its statement of grounds that the refusal of BiH Prosecutor's Office to provide the requested information was against the Law on Free Access to Information, which clearly defines that every information controlled by public organs is public good.

## EDUCATION (30 cases in 2016 or 12%)

It is evident that the number of cases and reports in the education sector has increased compared to the last year. There were **30** cases in 2016 referring to different types of irregularities and reports in pre-school institutions (it is 16 more than in 2015), elementary and high schools, and faculties. **Reports mostly refer specifically to the irregularities in the procedure of employing teachers in elementary and high schools**, including both procedural irregularities and substantial circumstances, such as suspicion of nepotism and cronyism in the employment procedure, but also difficult access to information on the competition material. In most of such cases TI BiH wrote the complaints for the dissatisfied candidates, advised them about the means of legal protection or provided them with its legal assistance in initiating the administrative dispute.

It is interesting to mention that specifically the number of complaints against the employment irregularities in elementary and high schools of Sarajevo Canton has increased. In one case TI BiH has filed a complaint to the Ombudsman for Human Rights, on the basis of the allegations made by a party which later proved correct, as the principle of the elementary school „Hasan Kikic“ acted opposite to the consent provided by the Ministry of Education, Science and Youth and concluded the employment agreement with the chosen candidate for indefinite period although the competition propositions and the consent of the Ministry prescribed the employment agreement concluded on definite period of time. Principal of this school did not specify the duration of the agreement in the first agreement, but after the inspection performed by the Labour Inspectorate, he altered the agreement, as he explained, in accordance with the provisions of the Labour Act and made it an agreement for indefinite time. In this way, contrary to the rules of Public Competition and the consent provided by the Ministry, he gave the employment agreement to the chosen candidate for an indefinite period of time, having ignored at the same time the competition procedure that prescribed the conclusion of the agreement for six months. Upon the complaint filed by TI BiH, the Ministry proposed to the Government of Sarajevo Canton, as the founder, to relieve of duty members of the School Board of the elementary school „Hasan Kikic“ for failing to initiate the procedure of relieving of duty the school principle.

One of the cases was related to the appointment of the assistant professor for the scientific field of dermatovenerology at the Faculty of Medicine in Banja Luka. After TI BiH had analyzed the report of the Competition Commission it was found that certain irregularities occurred during the election procedure, i.e. that the chosen candidate did not have minimum three years of teaching experience after the last appointment to the previous academic rank, pursuant to Article 81 of the Law on Higher Education and Article 142 of the Statute of the University of Banja Luka. The Commission has also made a mistake in the selection of another candidate, since it indicated in its report that the candidate had not been appointed to academic ranks previously, but it did not apply Article 93 of the Law which prescribes that a candidate who applies for the appointment to academic ranks and who had no previous teaching experience in higher education institutions is obliged to give a lecture, from the educational matter specific for the scientific field the candidate applies for, before the commission formed by the Council of the organizational unit. Upon the request filed by TI BiH to have it examined, the Education Inspectorate revoked the disputable competition and ordered elimination of irregularities in the process of appointing the assistant professor at the Faculty of Medicine in Banja Luka. However, the Faculty of Medicine then filed a complaint to the Ministry of Education and Culture of RS, which has been approved. Additionally TI BiH helped the discontented candidate in this case by preparing an appeal on behalf of the candidate against the decision of the Faculty of Medicine, as well as the lawsuit after the appeal was rejected.

In the past year TI BiH was working together with the Institution of the Ombudsman for Human Rights on the preparation of the Initiative to amend the **Law on Pre-School Education of Tuzla Canton** since the controversial provisions of this Law allow all persons who graduated from the Faculty of Social Science to implement pre-school education programs, and thus enables the unqualified personnel to be employed in pre-school institutions at the positions which require highly specialized expertise. The



Initiative was prepared on the basis of the lawsuit wrote by TI BiH after it received the report of dissatisfied pre-school teacher from Zivinice who was not given the employment since the advantage during competition was given to a professor of Bosnian language, which is allowed under the current legal solution. The Initiative for amending the controversial Law insists on harmonizing the provisions with the Framework Law on Pre-School Education, which have been the arguments of TI BiH the whole time, since the Framework Law is properly based on the principle of merit defining strictly the holders of specific professions (pre-school teachers, school counselors, speech therapists...) who may be considered expert personnel in pre-school institutions and not taking into account persons who graduated from some Faculty of Social Science, as it is stipulated by the Law of Tuzla Canton. The Initiative has been submitted to the Assembly of Tuzla Canton and the Ministry of Education, Science, Culture and Sport of Tuzla Canton.

#### **HEALTHCARE SYSTEM (8 cases in 2016 or 4%)**

In 2016 there were fewer reports in the healthcare sector compared to 2015. Most reports referred to the patients' complaints about healthcare services, for example too long waiting lists.

In one case, upon the report of the party, TI BiH found that the Acting Director of Health Centre „Dr Dusan Marceta“ in East Drvar was appointed to the position of Acting Director although he had just graduated from the Faculty at that time and had no license to perform professional activities. As the Ministry of Health and Social Welfare of RS is in charge of the legality of work and acts of healthcare institutions in accordance with the Health Care Act, TI BiH informed the Ministry about this case.

In a case reported by the group of patients suffering from HIV/AIDS, who complained that they are not guaranteed the confidentiality of personal data, and the fact that medical staff revealed the information about them in public, TI BiH addressed the Agency for Protection of Personal Data which then passed the decision ordering the University-Clinical Center of RS in Banja Luka to prescribe organizational measures for protection of personal data of patients diagnosed with HIV/AIDS, and to add them to the existing technical measures by adopting the Plan of Security of Personal Data.

#### **POLICE (12 cases in 2016 or 6%)**

**12** cases were related to the work of police, and the number of these cases has doubled compared to the last year. Most reports filed by the citizens referred to the unfair and unprofessional acts of police officers, so TI BiH helped the complainants in preparing the complaints against police organs. One case was about the legal status of a police officer, i.e. his rights in the disciplinary proceeding, while in the other case the party complained against biased and insufficiently developed competition criteria for selection of police officers in the Republic of Srpska, specifically against the fact that the length of time spent at the Employment Bureau is not taken into consideration. TI BiH has found that the current regulation for selection of police officers does not prescribe the obligation of the Selection Commission to take it into consideration, nor to consider the social status of candidate. Namely, the regulation governing the selection of police officers in the Republic of Srpska is not objective enough, nor uniform, and the method of evaluating candidates is determined individually by each Selection Commission.

#### **PRIVATE SECTOR (13 cases in 2016 or 6%)**

The number of cases related to private sector has significantly increased in this year, from 4 to **13**, and most reports referred to the protection of labour rights. The employees mostly complained about mobbing, overtime, moonlight, circumstances indicating illegal dismissal from work or they sought the advice regarding the protection of their rights and the way of exercising the same. In all these cases TI BiH advised the employees on how to protect their rights effectively, and what their rights are under the applicable regulations.

## **PUBLIC ADMINISTRATION ( 86 cases in 2016 or 40% )**

The sector with the largest number of reports, **86** of them, in 2016 was the public administration sector. This group of reports includes all complaints against BiH institutions at all levels of government, state, entity, local, as well as the complaints against the public enterprises and institutions. Mostly complaints were related to various irregularities in the employment procedure, so the citizens who addressed TI BiH, just like it used to be in the previous years, knew in advance who was going to be appointed to the position although the competition procedure was still on, which proved to be true in the end. Complaints about procedures mostly referred to objections regarding the manner in which the employment procedure was conducted, the lack of transparency and difficult access to information about the employment procedure, including the abuse of discretionary powers of the managers. In one case a dissatisfied candidate for the position of a civil servant at the level of the Republic of Srpska emphasized that the verbal proficiency check during the initial interview is conducted just formally, meaning that it is feigning and not representing the actual knowledge check. In previous years TI BiH also received reports with similar content, from different government levels.

A case related to the Decision of the Government of Herzegovina-Neretva Canton on approving the spent funds to the Ministry of Education, Science and Culture from the position transfer for helping the media companies is worth mentioning. In fact, the Government approved the financial assistance to several media companies, although, as TI BiH determined investigating about this case, the public call for allocation of funds had not been announced at all, due to the lack of time as the relevant Ministry emphasized in its reply. **Without clear and previously defined, and publicly announced criteria, that would allow equal access of all media to public funds, the chosen media companies were allocated financial resources provided by the cantonal Government in the amount of BAM 220.000** in a highly non-transparent procedure. One media company (portal bljesak.info) decided to donate the allocated money to charity since they did not want to be a part of such support which so well shows the attitude of the government bodies towards the media.

In one case, upon the anonymous report of the citizens who also filed a criminal report to the District Prosecutor's Office, it was determined that the Republic Administration for Geodetic and Property Affairs had been issuing certificates of working experience to the persons engaged on the basis of the service contract, and thus allowed those persons to use the obtained certificates to apply for public vacancies proving so the relevant working experience although the working experience should not include the engagement provided on the basis of service contract. Working experience includes only experience gained on the basis of the employment agreement, and this is the opinion of the Civil Service Agency, the Ministry of Labour and Veterans and the Ministry of Public Administration and Local Self-Government, expressed upon the request of TI BiH.

In 2016 TI BiH filed a request to the Administrative Inspectorate for inspection of the illegal employment of Sanja Radojicic, former Assistant Minister of Finance of the Republic of Srpska, with Elektroprenos, which has been the subject of frequent complaints in the previous years. First TI BiH acted upon an anonymous report and requested information if this person was employed in Elektroprenos and based on which legal framework, after which it was confirmed that the former Assistant Minister was employed there, on the basis of the Agreement of Takeover/Allocation of Employees signed by the Minister of Finance of the Republic of Srpska and the General Manager of Elektroprenos. Elektroprenos submitted to TI BiH the Agreement based on which Sanja Radojicic was employed, but it was obvious from the Agreement itself that it was signed contrary to the Law on Employment in Institutions of BiH. The Law prescribes the possibility of employee takeover only between the institutions of Bosnia and Herzegovina, its bodies and other legal entities, and it cannot be concluded with the entity Ministry from which Radojicic had been taken over. The Administrative Inspectorate confirmed the argumentation provided by TI BiH and ordered Elektroprenos to eliminate all irregularities regarding this employment within 15 days. It is interesting that the HR department of Elektroprenos during the inspection conducted by the Administrative Inspectorate replied to the allegations of TI BiH by saying that „they specifically

indicate that Radojicic was appointed to the position of General Manager Counselor and that her tasks were related to the mandate of the General Manager“.

#### **CONFLICT OF INTEREST (3 cases in 2016 or 1%)**

In 2016 TI BiH received 3 reports referring to the potential conflict of interest, two of which were at the level of the Republic of Srpska and one at the level of FBiH. Initiated by TI BiH, and upon an anonymous report of the citizens of Srbac, the Republic Commission for Determining Conflict of Interest in the government bodies of the Republic of Srpska invited Mladen Dragoslav, member of the Assembly of Srbac municipality who was also the manager of public enterprise „Vodovod“ a.d. Srbac, to take necessary action to resolve the conflict of interest, since pursuant to Article 5 of the Law on Prevention of Conflict of Interest in the government bodies of the Republic of Srpska the same person cannot hold the position of the assembly member and manager of public enterprise established by the municipality. Mladen Dragoslav took some action on resolving the conflict of interest and finally resigned from the position of manager of „Vodovod“.

#### **ACCESS TO INFORMATION (18 cases in 2016 or 8%)**

In 2016 there were 18 reports concerning the access to information or irregularities related to the implementation of the Law on Free Access to Information. Irregularities reported by citizens and other civil society organizations are the same as in the previous years, and they are mostly related to the fact that they are not allowed free access to information under the explanation that it is the protection of personal data or official secret, but also due to the so-called administrative silence. In all these cases TI BiH requested information on behalf of itself, and then after receiving the requested, forwarded it to the party, or it assisted parties in the legal protection compiling their complaints or lawsuits. By requesting information of public importance TI BiH always insisted on correct and consistent implementation of the Law on Free Access to Information which stipulates that the access to information is a rule, and that exceptions are possible only after public interest test and in limited situations. Legal advice has been given to other organizations, journalists, civil servants, activists...

In 2016 TI BiH won **13** cases in administrative disputes, initiated by TI BiH in the previous years. All disputes were initiated for the incorrect implementation of the Law on Free Access to Information which was reflected in rejection of access to information at the sole discretion of institutions, without referring to the legally prescribed exceptions and performance of public interest test.

##### Institutions against which TI BiH won case:

1. BH Telekom
2. Ministry of Education and Culture of RS
3. Appellate Chamber of the Council of Minister of BiH
4. Banking Agency of RS (Case: Bobar Bank)
5. Banking Agency of RS (Case: Bobar Bank)
6. Ministry of Public Administration and Local Self-Government of RS
7. Banking Agency of RS (Case: Banka Srpske)
8. Prosecutor's Office of BiH
9. Public enterprise Komunalac Orasje
10. Drina Hydro Power Plant
11. Gas Promet
12. Vodovod and Kanalizacija Vlasenica
13. Public utility enterprise Rad Istocno Sarajevo

It is also important to mention that in 2016 TI BiH also won 3 lawsuits for the failure of submitting the data on banking sector in the Republic of Srpska which has been under the increased public scrutiny ever since Bobar Bank had been closed. Banka Srpske is the second bank that was deprived of working

license in the past two years, although the Banking Agency has never explained its work in public, or specified why the control and prevention mechanisms were not used.

In 2016 TI BiH lost the case against the following institutions:

1. Prosecutor's Office of BiH, whereby the Court of BiH made a judgment on the basis of which the lawsuit was rejected, and soon after that judgment refusing the request for review of judicial decision, with the explanation that the Prosecutor's Office of BiH may, but is not obliged to inform the public and interested parties on specific cases upon which it takes action. Such decision made TI BiH launch an Appeal before the Constitutional Court of BiH, since, even if we assume that the access to information is limited in some cases, this right can be limited only in legally prescribed way, by using prescribed legal mechanisms, and not on the basis of the sole discretion of the Court, without stating legal reasons for designating some information as an exception and without conducting public interest test.
2. Ministry of Finance of RS, when the Supreme Court rejected the request for extraordinary review of the decision, and held the opinion that the conclusion of the lower-instance court was correct and that TI BiH had no right to request from the lower-instance courts to adopt the decision that would completely replace the act of the defendant. TI BiH reminds us of the fact that the right of access to court must be guaranteed efficiently and not only formally, and that an individual has the right to demand of court to completely decide on his request. TI BiH believes that its constitutional rights has been violated and ignored by the decisions of lower-instance courts so it appealed to the Constitutional Court of BiH.
3. Ministries of Housing Policy of Canton Sarajevo, for the decision of the court that the Ministry of Housing Policy of CS is not obliged to submit to TI BiH copies of the service contracts which TI BiH requested from the Ministry referring to the Law on Free Access to Information, explaining it by the fact that service contracts were concluded with natural persons and contained personal data. TI BiH believes that the implementation of the substantive law was ignored in the judgment brought by the Cantonal Court in Sarajevo, so it filed a Request for extraordinary review of court decision.
4. Parliamentary Assembly of BiH, whereby TI BiH filed the Request for extraordinary review of court decision to the Appellate Chamber of Court of BiH, holding that the judgment of the Court of BiH tolerates violation of the Law on Free Access to Information, and Article 10 of the European Convention on Human Rights and Freedoms.
5. Komunalac AD Brod, for understanding of the District Court in Doboj that the Prosecutor as a civil association is not legal or physical entity, nor it is actively legitimized for conducting administrative procedure and administrative dispute, which is unusual and discriminating understanding, and which is why the organization initiated proceeding for extraordinary review of court decision.
6. Railways of RS, where the District Court in Doboj rejected the lawsuit against the administrative silence as groundless, without taking into consideration its legality or whether the formal conditions for filing the lawsuit had been met, or if the „silence“ is final from the perspective of the administrative proceeding, which is why TI BiH submitted a request for extraordinary review of court decision.

In 2016 TI BiH filed 58 lawsuits due to the violation of the Law on Free Access to Information, 47 of which were submitted as a result of a research on the implementation of the Law on Free Access to Information.

### TAX-FINANCE-CUSTOMS (4 cases in 2016 or 2%)

Four reports were related to the banking sector, and the citizens mostly requested information on how to protect their rights as the users of financial services provided by the banks in bankruptcy. It is important to mention here that TI BiH won three administrative disputes against the Banking Agency of RS for failing to provide information on measures and activities undertaken by the Agency in regard to the closed banks with the initiated bankruptcy proceeding („Bobar Bank“ and „Banka Srpske“).

### OTHER (16 cases in 2016 or 7%)

The number of reports and complaints of citizens in the category other has been increased, but no matter how different the reports were all the citizens were legally advised or directed to relevant institutions. Complaints concerned the protection of consumer rights, property rights or rights related to the pension and disability insurance, including several reports/requests for the legal aid of other organizations.

### STATISTICS

In 2016 there were **508** letters sent to relevant institutions and **141** legal advice provided to the parties.

During 2016, TI BiH conducted a **Research on the Implementation of the Law on Free Access to Information in the Work of Public Enterprises**, which involved **371** enterprises in BiH, of which 190 enterprises in the Republic of Srpska and 181 in the Federation of Bosnia and Herzegovina, which had to provide copies of public procurement contracts concluded in 2015, copies of Rulebooks on internal organization and classification of jobs and the list of all full-time employees. The results show the following:

- Only 39.4% of the total number of enterprises encompassed with this research in RS, and 27.6% in FBiH, provided its reply to TI BiH within the prescribed deadline. The total of 246 public enterprises, or 66.3% of the overall number of the involved enterprises, did not submit its reply within the legally prescribed deadline of 15 days.
- In 36.6% the procedure took longer than a month, not taking into consideration procedures upon submitted legal remedies, while the Law provides that the deadline of 15 days can be extended only in certain situations.
- Number of filed urgencies (237) and lawsuits due to the „administrative silence“ (136), as well as the information that 53 enterprises decided not to act upon the request at all, shows the worrying lack of transparency in the work of public enterprises.

The most common reasons provided by the public enterprises for failing to submit the requested information were the following:

- The opinion of the public organ that the requested information is too extensive;
- Some organs declared that they are not public organs according to the Law on Free Access to Information of RS;
- Confirmed exemption in regard to the confidential commercial interests (usually trade secret of the contractual authorities);

- Confirmed exemption regarding the protection of privacy (personal data and reference to the Law on Protection of Personal Data);
- Allegations that the information has been posted on the website;
- Allowing only personal insight into the requested information, with no possibility of submitting the information to the address of the applicant;
- The attitude of the public enterprise that the requested information is not of public interest (without conducting public interest test).