



2018

# ANNUAL REPORT 2018

**Advocacy and Legal Advice Centre (ALAC)  
Transparency International in BiH**



## SUMMARY:

**Advocacy and Legal Advice Centre of Transparency International in Bosnia and Herzegovina (TI BiH)** has been operational for more than 15 years as a centre that provides legal assistance to citizens faced with corruption in their immediate environment. The Centre provides practical advice and guidance to individuals who report corruption, prepares all kinds of submissions (appeals, complaints, requests, etc.), and initiated cases on behalf of TI BiH which it investigates on its own. In this way TI BiH monitors how public bodies that are required to act upon citizens' reports act on various forms of irregularities, with the ultimate aim of using legal and advocacy resources to create an environment in which access to justice and public services is readily available.

In 2018 citizens called the toll-free hotline for reporting corruption **0800 55555** a total of **1334** times and TI BiH acted in **210** new cases. TI BiH filed **seven** criminal charges against official and other persons on suspicion that they had committed criminal offences related to corruption, and filed as many as **15** lawsuits against various institutions for refusal to grant access to public information. At the same time, TI BiH won more than ten judgements in administrative disputes which had been initiated in previous years for violations of the Free Access to Information Law. TI BiH sent more than **400** letters to competent institutions acting in a number of cases, and provided citizens with legal advice in more than **140** replies.

When statistical and other trends are viewed in comparison with previous years, certain similarities and differences become apparent:

- citizens are most likely to report corruption and/or irregularities in the work of the three sectors: **public administration, judiciary and education;**
- as in previous years, citizens were most likely to file complaints on suspicion of irregularities in recruitment procedures (lack of transparency in procedures, clientelist-based employment, etc.), but also there has been an increase in the number of cases involving allegations of illegal spending of public funds, as well as complaints about unprofessional conduct of civil servants;
- particularly worrying is the fact that complaints about the **justice sector** and the **police** stand out in their seriousness in terms of violations of fundamental human rights, as well as the fact that the individuals who filed the reports/complaints believe that there are no effective mechanisms in place to control the work of judicial officeholders and police officers;
- the average individual who reports corruption is young or middle-aged (20-39 years). Also, there is an increasing number of anonymous reports, which may indicate citizens' growing distrust in the possibility that their complaints will be resolved. Furthermore, there is a growing number of reports submitted by whistleblowers<sup>1</sup> who report circumstances in their immediate work environment.

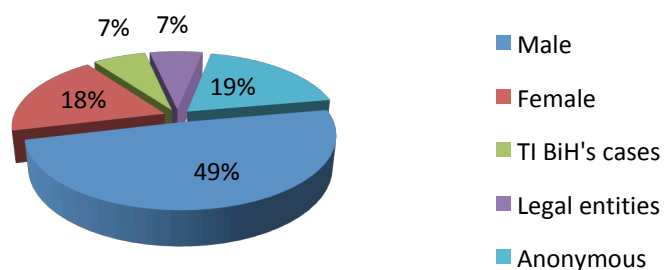
---

<sup>1</sup> TI BiH recognises whistleblowers according to the internationally accepted definition proposed by TI as the global movement, rather than on the basis of definitions found in applicable legislation. TI's definition: <https://www.transparency.org/glossary/term/whistleblowing>

# STATISTICAL INDICATORS

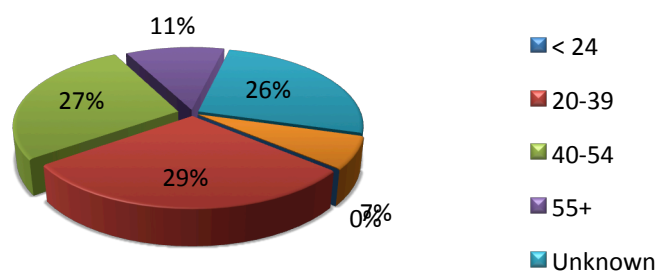
Persons who reported corruption, by sex	
Male	103 (49%)
Female	39 (18%)
TI BiH's own cases	14 (7%)
Legal entities	14 (7%)
Anonymous	40 (19%)
Total	210

Persons who reported corruption, by sex



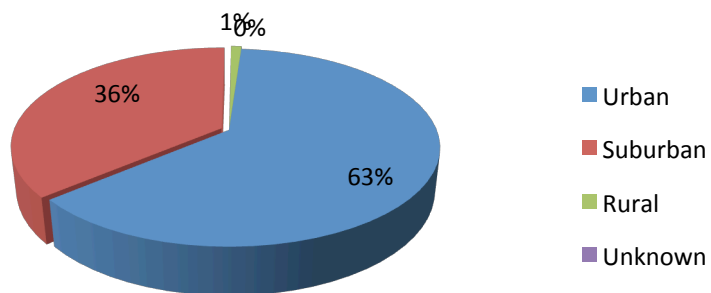
Persons who reported corruption, by age	
<24	0
20-39	61 (29%)
40-54	57 (27%)
+55	24 (11%)
Unknown	54 (26%)
TI BiH	14 (7%)
Total	210

Persons who reported corruption, by age



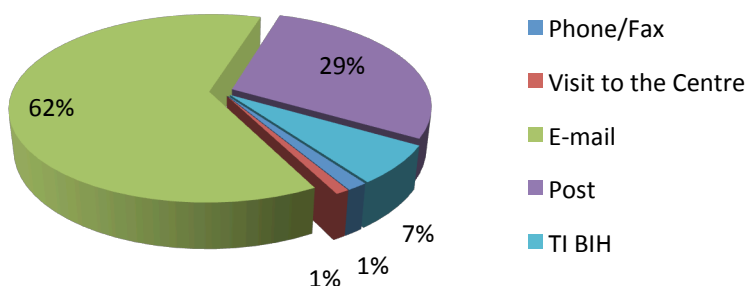
Persons who reported corruption, by type of settlement	
Urban	133 (63%)
Suburban	77 (36%)
Rural	2 (1%)
Unknown	0
Total	210

**Persons who reported corruption, by type of settlement**

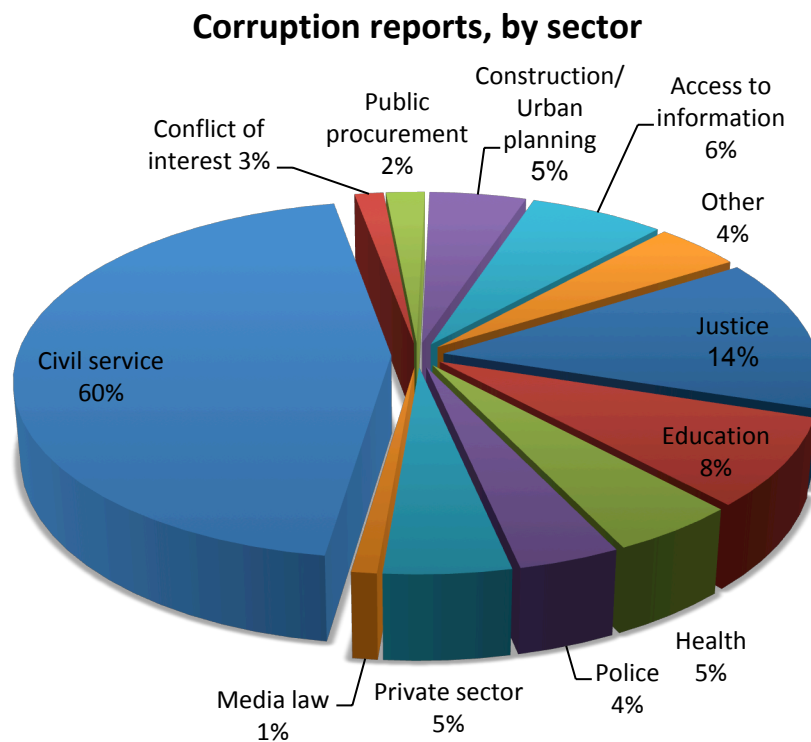


Corruption reports, by method of receipt	
Phone/Fax	3 (1%)
Personal visit to the Centre	2 (1%)
E-mail (centar@ti-bih.org)	131 (62%)
Post	60 (29%)
TI BiH's own cases	14 (7%)
Total	210

**Corruption reports, by method of receipt**

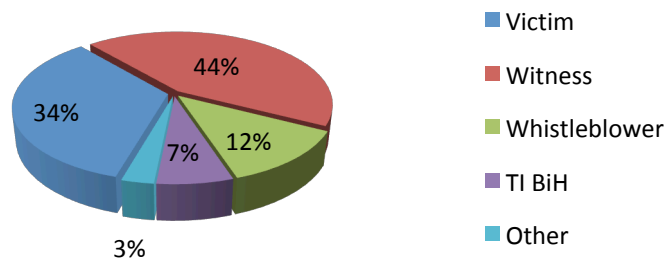


Corruption reports, by sector	
Justice	29 (14%)
Education	17 (8%)
Health	10 (5%)
Police	8 (4%)
Private sector	10 (5%)
Media law	2 (1%)
Public administration	94 (60%)
Conflict of interest	3 (3%)
Construction/Urban planning	10 (5%)
Public procurement	4 (2%)
Access to information	14 (6%)
Other	9 (4%)
Total	210



Persons who reported corruption, by relationship with the case	
Victim	72 (34%)
Witness	92 (44%) of
Whistleblower	26 (12%)
TI BiH	14 (7%)
Other	6 (3%)
Total	<b>210</b>

**Persons who reported corruption,  
by relationship with the case**



Number of calls received via toll-free phone line: 0800 55555	<b>1334</b>
---	-------------

# DESCRIPTION OF CASES BY SECTOR

## JUDICIAL INSTITUTIONS (29 cases in 2018, or 14%)

The majority of corruption reports in 2018 in the area of justice related to the dissatisfaction with the length of court proceedings and complaints about the conduct of judges on suspicion of possible disciplinary offences such as violation of the principle of impartiality, negligence or carelessness in the exercise of official duties, rulings/decisions that are in clear violation of the law, unjustified delays in rendering decisions, etc. It is notable that citizens often contacted TI BiH after they had exhausted all effective legal remedies, which suggests that access to justice remains poor and a fair number of citizens have no access to professional legal assistance.

The complaints against judges and/or prosecutors usually concern the deliberate drawing out of judicial proceedings or suspected existence of grounds for disqualification, but these were allegations that are usually difficult to prove. In most of these cases TI BiH provided citizens with legal assistance by presenting available procedural options, as well as the mechanism for submitting complaints to the **Office of Disciplinary Counsel (ODC)**. One report, for example, concerned alleged violations of the **Prosecutorial Code of Ethics** by a prosecutor who rented out his commercial property to a lawyer whom, according to the person who filed the report, he later on allowed to conclude a plea agreement. After five months ODC informed TI BiH that the allegations contained in the report were still being examined and that, according to the Law on the High Judicial and Prosecutorial Council, they were required to process every complaint within a maximum of two years from the date of receipt.

In late 2018 TI BiH filed criminal charges against judges of the Basic Court in Modriča on suspicion of having committed criminal offences of **Counterfeiting or destruction of official documents** and **Violations of the law by judges and public prosecutors**. In the same case TI BiH also filed a complaint with ODC on suspicion that the judges had committed several disciplinary offences, but the complaint was dismissed as time-barred. The judges were reported because it was established that the Court had never submitted information on a convicted person to the police station for the purpose of maintaining criminal records, as a result of which one individual did not face legal consequences of criminal conviction. This allowed the individual in question to get a job as a senior official in a local government, even though at the time of employment he had to suffer the legal consequences of criminal conviction. TI BiH found the omission in the keeping of criminal records, and established that the individual was entered in the records after TI BiH's insistence and at the time when the legal consequences of criminal conviction could no longer occur by operation of law. Interestingly, in another case there was a report of suspicion of similar omissions in legal consequences of criminal conviction, but this report is still being examined. Legal consequences of criminal conviction are a distinct institute of criminal law which results in the prohibition of exercise of certain rights, such as ban on exercising official duties for the duration of the consequences of criminal conviction. Seeing that the maintenance of criminal records, due to the very nature of this job, takes place away from the public eye, it turns out that it creates corruptive risks.

It is also worthwhile pointing out the fact that the Banja Luka District Prosecutor's Office issued, in an unusually short time, a decision not to pursue the investigation against Milorad Dodik based on the criminal charges filed by TI BiH for his statements made at a public rally to the effect that he was the one who decides on who gets a salary increase, and that whoever supports the health workers' strike will not get the increase. In its order to not pursue the investigation, the Prosecutor's Office took the view that the reported offence was not a criminal offence, but it could only be considered a violation of the Election Law, while the criminal charges insisted that it was the criminal offence of **Infringement of the equality of citizens**. TI BiH appealed to the BiH

Constitutional Court after the Banja Luka Prosecutor's Office had previously rejected TI BiH's complaint against the order not to pursue investigation on the grounds that the criminal offence in question cannot be committed in attempt. Tellingly, apart from the very scant rationale behind the prosecutor's decision, is that the Prosecutor's Office rendered the decision not to pursue the investigation against Milorad Dodik in record time of only 20 days, which is extremely unusual given the inordinate amount of time it normally takes the Prosecutor's Office to render decisions in other cases.

#### EDUCATION (17 cases in 2018, or 8%)

Complaints relating to the education sector concerned all sorts of irregularities in the implementation of job competition procedures for professional and support staff in schools. There was an increased number of complaints concerning recruitments without open job competition procedures. Also, there was a considerable number of complaints lodged by concerned parents whose children had faced **peer violence** or unequal treatment by school personnel. The parents were dissatisfied with the reaction of teaching and professional staff to reports of violence, claiming that schools were not prepared to respond adequately and in a timely manner, and that the children suffered secondary victimization because they were not given special consideration as victims of violence.

In these cases, TI BiH included the Institution of Human Rights Ombudsman (hereinafter: Ombudsman), i.e. drafted the reports/applications or statements on behalf of the parents who reported irregularities. In one case, which stands out as being particularly sensitive, where there was a suspicion of unequal treatment of a child by school teachers, TI BiH provided legal assistance to the aggrieved parents by preparing a lawsuit against the school for failure to disclose queried information. The school board had rejected the parents' complaint about unequal treatment, and the parents then sought access to the headmaster's report which details all the actions taken by the school to investigate the complaint that the child suffered uneven and unequal treatment. It is significant that the school refused to grant the parents access to information about the measures and actions taken to address the complaint, and that the school board did not provide an explanation of the material circumstances it was guided by when it rejected the complaint. Also interestingly, the school refused to provide the parents, as directly interested parties, with information on how the child had been treated, while at the same time it shared a large amount of official records and information with the authorities with whom it was not allowed to do so, e.g. the administrative inspectorates. In this regard, the Agency for Personal Data Protection banned the school from continuing to disclose personal information about a minor to the authorities which do not supervise the work of school in terms of education, warning the school that there was no legal basis for such disclosure.

In the field of higher education the Oriental Institute stands out as an example of undesirable practices. According to a number of reports received by ALAC, the Institute never informed participants on the results of the open competition for the selection of teaching assistants and professional staff at the University of Sarajevo according to the 150+ programme. TI BiH got the information about this competition only three months after filing the request for access to information, and after sending repeated reminder notes. The candidates emphasized that they had never been informed of the results, and that they got full information only when our organization provided it, while the Institute claimed to have informed the participants by telephone that they could access the information in person. Further, the special requirements of the competition were not clearly defined, which confused the candidates. The only formulation offered was that these were "other requirements provided for under the general acts of the organizational units of the University of Sarajevo". The reports were submitted to the line ministry, educational inspection and the Ombudsman, which are now looking into the allegations presented in the case that is characterized by striking opaqueness in the work of this educational institution.



Also significant is the case in which an employee of an educational institution, which cannot be named here for reasons of confidentiality, managed to obtain judicial protection as a **protected whistleblower**. Paying due regard to the particular vulnerability of such persons, TI BiH provided legal support to the whistleblower in question, and on numerous occasions sent official letters to the responsible person-employer, as well as to the court in charge of the case. This was important because the **RS Law on Whistleblowers Protection** is still a relatively new piece of legislation which modifies the procedural provisions, so it was important to ensure that the court and the employer, i.e. the educational institution in which the whistleblower worked, are made aware that the proceedings were under close public eye. TI BiH maintained regular correspondence with the whistleblower, who managed to obtain security measure, which is an essential aspect of legal protection for whistleblowers, and return to the job he had had before he had reported corruption in his workplace in connection with illegal spending of public funds. After he reported corruption and filed criminal charges, the whistleblower was faced with demotion. An annex was added to his employment contract changing his employment status, reducing his salary and relegating him to a less senior position. The court issued the security measure binding the employer to return the whistleblower to his previous position and postpone the execution of the annex to the employment contract. Pursuant to the Law on Whistleblowers Protection, security measures may be ordered if the court deems it justified, and in particular if the proponent of the security measure makes credible the existence of an adverse consequence and makes it credible: 1) that this poses an existential threat to the whistleblower or members of his/her family, or 2) that there is a risk that without such a measure, the opponent of the security measure could prevent or significantly impede the exercise of the rights of the proponent of the security measure or cause damage to him/her otherwise.

The Court concluded that the whistleblower proved that the security measure was warranted, as well as that his reports of corruption could be linked to the actions of the employer. TI BiH follows cases involving protected whistleblowers with close attention, and in the above case the whistleblower suffered adverse consequences (forms of professional degradation), which are usually suffered by persons who dare to report corruption.

#### HEALTH (10 cases in 2018, or 5%)

In the course of 2018 TI BiH received seven reports relating to the health care sector. Reports concerned complaints about the length of the waiting time for hospital treatment, opaque recruitments in health care facilities, shortcomings in procedures for the award of medical specialization, controversial appointments of directors of primary health-care centres, etc.

TI BiH received a complaint concerning recruitments in the Public Health Institute of Una-Sana Canton, specifically that a public competition notice was announced for recruitment of an officer for health promotion, translation and public relations which was designed in advance to suit one particular individual, as well as that prior to the publication of the notice amendments were made to the Regulation on Internal Organization and Staffing.

TI BiH sent the requests for access to information to the USC Public Health Institute as well as the USC Employment Bureau, given that the recruitment was done through the latter institution. The information disclosed by the two institutions was conflicting, but since TI BiH became aware that the requirements for the position departed from those prescribed under the Regulation on Internal Organization and Staffing, and that none of the candidates proposed by the Employment Bureau was invited for a job interview, but the job was instead given to the daughter of the director of the Institute, the collected **information was forwarded to the USC Cantonal Prosecutor's Office**.

In the course of 2018 TI BiH also acted on the complaint filed by a patient concerning concerning the work and actions of staff of the Trauma and Orthopaedics Clinic of the Tuzla University Clinical Centre. TI BiH instructed the party about the Law on the Ombudsman of BiH, in terms of the role

they this institution can play, and sent a letter to the Tuzla University Clinical Centre, after which this institution apologized to the patient for the inconvenience he had endured and offered to help solve the problem.

#### **POLICE (8 cases in 2019, or 4%)**

The number of reports against the police received in 2018 did not differ significantly from the previous year, but the gravity of the allegations contained in the reports did. A number of citizens filed similar complaints against the conduct of police officers in Banja Luka (which were generally filed as one single case) during the December 2018 rallies when the police demonstrated particular ruthlessness against demonstrators. In most other cases people were referred to the internal control mechanisms, and in some of the cases TI BiH followed the actions of the internal control mechanisms.

Also, TI BiH filed criminal charges against several police officers from Banja Luka on suspicion of committing criminal offences of **Violent behaviour** and **Violation of human dignity through abuse of official position or authority**. The charges concern events in late December 2018, when thousands of citizens of Banja Luka took to the streets to protest against police brutality and show support to the family of murdered student David Dragičević. Along with the charges TI BiH submitted a disturbing video footage showing, among other things, police officers using physical force against a helpless individual while they were knocked down on the ground. Rules on the Use of Force of the RS Ministry of the Interior (MUP RS) provide that physical force and truncheon shall not be used against children, the elderly, visibly helpless persons, obviously ill persons, the frail and severely disabled, as well as against women who are obviously pregnant, unless those persons pose a direct threat to a police officer's or another person's lives or their own lives. Along with the charges TI BiH also submitted the testimonies by journalists and politicians who also claimed to have been subjected to physical abuse in the premises of the Public Security Centre Banja Luka. What is particularly worrying about the allegations is that this constitutes a serious violation of fundamental rights and human dignity through use of police force which is documented in the form of video footage, which is also associated with the restriction of the rights to freedom of assembly and expression. The controversial behaviour by police officers in Banja Luka escalated in the days when citizens staged peaceful protests demanding the truth about the murder of **David Dragičević**. By way of a reminder, a great number of citizens do not believe the official police version, according to which Dragičević died as a result of a series of unfortunate circumstances, and openly suspect that members of the RS police are involved in the murder and/or its concealment. It is noticeable that fewer and fewer citizens believe that there is no point in filing complaints with the internal control mechanisms, and that the conduct by police officers was more likely to constitute criminal offences than disciplinary offences.

Also interesting is the case involving the officers of the **Border Police (BP)**, who were reported by foreign nationals claiming that they had had to give a bribe in order to cross the border between BiH and the Republic of Serbia. The case was reported to the BP's Office of Professional Standards and Internal Control, but after investigation, which lasted almost three months, it was concluded that "there is no sufficient evidence on the basis of which to confirm or reject the report". Foreign nationals who contacted TI BiH demanded that our organization be a mediator in their communication with the BiH authorities following the negative experience at the border crossing, and provided a number of details (time of crossing, the vehicle they drove, etc.) on the basis of which it was possible to establish the factual circumstances in this particular case. In the end, TI BiH forwarded the report to the BiH Prosecutor's Office, after the internal control by the GP was completed.

#### **PRIVATE SECTOR (10 cases 2018, or 5%)**

Reports relating to the private sector mainly concerned labour-related rights, and citizens mostly reported circumstances relating to termination of employment, suspected mobbing or other violations of workers' rights. In a number of cases with credible allegations TI BiH forwarded the reports to inspection authorities, which would then most commonly found such circumstances as undeclared work or overtime work. In all these cases TI BiH requested that the inspection authorities provide copies of the minutes of the inspection checks, which was generally complied with, which leads to the building of public trust in the work of inspectors and creation of partnerships with the aim of eliminating identified irregularities.

#### **MEDIA LAW (2 cases in 2018.g. or 1%)**

A new development in 2018 was that there was a number of cases in which citizens and organizations reported gross violations of their rights or reputation damage due to media coverage, and wanted to know how they could protect their rights and what constituted defamation and other violations of rules of professional conduct by the media. TI BiH drafted requests for corrections or retractions on behalf of the individuals whose rights were infringed, and in one case, drafted a complaint on behalf of a group of organizations, which was filed with the Communications Regulatory Agency (RAK). The complaint concerned the reporting of the **public broadcaster Radio Television of Republika Srpska (RTRS)**, which in its prime-time News programme violated several principles and provisions of the Code on Audiovisual Media Services and Radio Media Services and other related regulations by broadcasting inaccurate information, for example that CSOs were conspiring with western intelligence services to overthrow the government. In one case RTRS published a retraction, but the party was not satisfied with how it was published. Significantly, violations of the media law were most widespread in the run-up to the election, and in all those cases it was very difficult for individuals and legal entities whose rights were violated by unprofessional and defamatory reporting to protect their rights in an effective manner.

#### **CIVIL SERVICE (94 cases in 2018, or 60%)**

Citizens are still most likely to complain about the work of civil servants, and, as earlier, complaints concerned non-transparent recruitments and suspicions of other forms of irregularities in recruitments to the civil service, local government and public enterprises. In 2018 there were slightly fewer complaints about recruitment practices and more complaints against other deficiencies such as misconduct by officials, inefficiency in solving cases, difficult access to services of the public administration, the use of official vehicles for private purposes, etc. Worryingly, in the election year there was an increased number of reports by civil servants concerning their employment status. They mostly requested advice on how to get legal protection from discriminatory practices which changed their working conditions. The aggravated servants usually interpreted that as a form of political retaliation, and TI BiH provided them with assistance in strengthening their case in order to protect professionalism in the civil service. How difficult it is for citizens to access services in the state administration is illustrated by an example in the field of social rights, where TI BiH managed to obtain the right to **disability allowance** for a socially disadvantaged individual. The Social Work Centre (hereinafter: Centre) persistently refused this individual's requests for special social benefit to which he was entitled by virtue of a special decision on the approval of disbursement of transfers for the advancement of the status of persons with disabilities. It is only after TI BiH drafted a request on his behalf, and explained the legal basis to the Centre that this person was granted the right to social benefit. This person had also been denied access to professional legal assistance, so this was an additional proof how important the legal protection mechanisms provided by ALAC are.

TI BiH acted in a case in which an aggrieved candidate who participated in open competition for the position in the FBiH Ministry of Finance had her appeal dismissed because the **Appeals Board** (hereinafter: Board) refused to decide on it, despite all indications that the process of fair

competition had been disrupted. TI BiH notified this to the FBiH Ministry of Justice, which is responsible for the administrative supervision of the implementation of the Civil Service Law, warning the line minister that the loss of the right to appeal in a public competition procedure in the civil service defeats the object of all reform efforts and principles of the independent and professional public administration. In this case, it was found that the Board had refused to decide on the appeals of aggrieved candidates in the second instance since the end of 2017, when the regulation expressly laying down its mandate was repealed. The FBiH Civil Service Agency, on the other hand, believes that the Board's mandate arises from the Civil Service Law, and that it is clearly competent to handle complaints by candidates participating in procedures for the selection and appointment of civil servants. While the Agency and the Board argue about the mandate and the competences, candidates are unable to pursue effective legal remedies. Therefore, TI BiH helped the candidate bring a lawsuit and initiate a judicial redress procedure. The above example shows that there are not even minimum guarantees of a fair open competition procedure for civil service recruitments.

TI BiH provided legal support to the participants of the Public Call for co-financing self-employment as part of the **Start-up 2018** programme. The public call was open on the website of the **FBiH Employment Bureau (FZZZ)** for only one minute, which angered the applicants whose applications were rejected just because they were not fast enough. Applications were submitted electronically by logging on to the FZZZ's website, and were accepted in the order of arrival. The call was closed as soon as the total amount of allocated funds was reached. A similar situation occurred with the previous call, when the competition was open for as long as eight minutes. TI BiH reported the case to the Ombudsman, who concluded that the public call had violated the principles of good governance, and ordered FZZZ to consider introducing the option to submit applications in person or by post, as well as appeal against decisions on the award of grants.

In 2018 ALAC identified large-scale irregularities in the work of the **RS Authority for Geodetic and Property Affairs (RUGIPP)**. One case involved a conflict of interest by a civil servant, who also served as councillor although this is prohibited by the Law on Civil Servants. In the end his employment was terminated. In the second case, whose resolution is still pending, it was found that the RUGIPP employees who were indicted for criminal offences against official duty were not removed from their jobs even though their employment had to be terminated. The law stipulates that the termination of employment is mandatory when there is an indictment against a civil servant for offences committed in the exercise of his/her tasks and duties, which was exactly what happened in this case.

#### CONFLICT OF INTEREST (3 cases in 2018, or 3%)

In most cases in this area citizens sought our organization's legal opinion as to whether a particular situation constitutes a conflict of interest under current regulations.

TI BiH sent a report to the Commission for Conflict of Interest against **Dragan Anđelić** for violating the Law on Conflict of Interest in the Institutions of BiH, because after he resigned from his position as **deputy director of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK)** he was appointed as acting executive director of the "*ZP Rudnik and Termoelektrana Gacko*" [Gacko Mine and Thermal Power Plant]. This position, according to the internal regulations of public enterprises, along with the positions of the director and three executive directors, constitutes the administration or management of a public enterprise. The Conflict of Interest Law clearly stipulates that elected officials, executive officeholders and advisors cannot serve on the management board, steering board, supervisory board, assembly, executive board, or act in the capacity of an authorised person for a public enterprise, for six months after they leave office. Deputy Director of APIK is appointed and elected by the BiH Parliamentary Assembly in accordance with the BiH Law on Ministerial, Council of Ministers and other Appointments, and his function was considered an executive function, which means that he was

subject to the provisions of the Conflict of Interest Law. Interestingly, while serving as deputy director of APIK, Anđelić was also member of the Commission for Conflict of Interest and held an executive position in the body responsible for preventing corruption, and, as such, was certainly aware that by moving to the position as member of the management of a public enterprise he was in violation of the Law that he until recently had applied himself.

#### ACCESS TO INFORMATION (14 cases in 2018, or 6%)

As in previous years, TI BiH acted in a number of cases that concerned difficult access to information of public importance. Some of the cases concerned the information requested by TI BiH as a legal entity in the case in which it acted. At the same time TI BiH provided legal assistance to citizens, journalists, activists and other non-governmental organizations in the procedures for accessing information. TI BiH is recognized as an organization with a long experience in this field, so it is not uncommon for it to receive enquiries from civil servants (information officers) and journalists, asking whether certain information is to be considered information of public interest under the applicable freedom of information law. There was an interesting enquiry by a journalist who wanted to know whether courts were required to disclose judgements relating to offences against sexual integrity. Judgements in such cases are of a highly sensitive nature, and, despite anonymization, can contain information that may reveal the identity of the victim or circumstances from which one can reconstruct the criminal offence and its actors. According to the opinion submitted to the courts on this situation so could apply legal exceptions concerning the protection of the interests of defence and security, and the protection of public security, or in connection with the protection of privacy. can I find information that may reveal the identity of the victim or circumstances from which it can reconstruct the crime and its stakeholders. According TI BiH provided the opinion that in such situations courts could apply legal exemptions concerning the protection of the interests of defence and security, and the protection of public security, or in connection with the protection of privacy.

In 2018 TI BiH won a very important lawsuit against the **RS Ministry of Education and Culture** (hereinafter: Ministry), which is one of the institutions that habitually exercises secretiveness in its work. TI BiH requested access to the Ministry's decision upholding the appeal lodged by the Public Institution "Early Childhood Education Centre" Banja Luka against the earlier decision by the education inspector ordering an open competition procedure for the recruitment of a preschool teacher on a fixed-term contract to be repeated. The Ministry argued that, under the administrative law regulations, TI BiH did not have the status of a party to the proceedings, and therefore they were under no obligation to disclose the requested decision. The court found that the Ministry had acted in contravention of the law by denying access to information, and that the fact that TI BiH was not a party to the proceedings was not relevant to the subject matter. The information requested concerned the actions of a public authority and therefore there is a clear public interest that it should be made available to everyone. Also unbelievable was the fact that the Ministry considered that a second-instance decision did not constitute information under the Freedom of Information Law. The court ruling in favour of TI BiH is significant because the court instructed the Ministry how to implement the legislation, and also because the mechanism for reviewing actions by public bodies through request for access to information is an essential tool in the work of watchdog organizations. In the case at issue TI BiH wanted to review the Ministry's final decision because it had earlier reported the controversial open competition to the RS Educational Inspectorate. As the decisions of the inspection and the Ministry differed markedly, it was important to present to the public the reasoning behind both decisions.

In 2018 TI BiH also won judgements in administrative proceedings brought in previous years for violations of the Freedom of Information Law. Some of the institutions against which TI BiH won the judgements: RS Ministry of Education and Culture (in three cases), Appeals Council at the Council of Ministers, City of Trebinje, RS Ministry of Industry, Energy and Mining, RS Administration for

Inspection Affairs, HT d.d. Mostar, Una National Park, SC Ministry of Interior, Municipality of Novi Grad, etc.

In the course of 2018 TI BiH filed **15** lawsuits for failure to disclose requested information against the following institutions: SC Ministry of Interior, City of Goražde, City of Trebinje, UCC Banja Luka, District Commercial Court of Banja Luka, Municipality of Novi Grad, etc. Most commonly, the institutions refused to disclose information such as:

- minutes of the meetings; minutes and other decisions related to public procurement procedures;
- contracts between public authorities and companies;
- internal acts of public authorities and staff lists.

Additionally, TI BiH prepared three lawsuits for other organizations (Centres for Civic Initiatives – CCI, Centre for Investigative Journalism, NGO Futura), which also requested access to information under the Freedom of Information Law. CCI, for example, requested access to information about a session of the Herzegovina-Neretva Canton Government (start and end of the session, venue, presence of government members, agenda, etc.). The government denied access to the information by issuing a conclusion stating that its conclusion cannot be the subject of further review, so it was very important to ensure that the court expounded its view in this case, especially because the requested information was directly related to the work of the Government as the executive branch.

#### CONSTRUCTION-URBAN PLANNING (10 cases in 2018, or 5%)

In the majority of cases citizens reported **illegal construction** and inefficiency of inspection bodies that had failed to implement decisions on demolition of illegally constructed buildings. In these cases TI BiH approached local authorities in charge of physical planning and inspection bodies closely following their further actions. In most of the cases the process of demolishing illegally constructed buildings was not implemented because the investor had submitted a request for subsequent legalization.

TI BiH also acted on the complaint filed by displaced persons who felt they had been harmed in the regional housing program because they had not been allowed to participate in the public call on equal terms with other candidates in order to obtain funds for the reconstruction of their family house in Mostar. The complainants pointed out that they had never been informed that their complaint had not been addressed because of missing documents, so they could not provide missing documents. In this case TI BiH found a worrying lack of transparency in the work of the BiH Ministry for Human Rights and Refugees, which disclosed all the information related to the case in question (which was held by it) only after administrative silence and intervention by the Administrative Inspectorate. In order to protect the displaced persons as a vulnerable group and because of the suspected shortcomings in the work of the administration, TI BiH submitted a report to the Administrative Inspectorate asking it to re-examine whether the Commission which decided on the distribution of funds for the reconstruction of residential buildings had acted in compliance with the legal provisions and whether the basic principles of administrative procedure, such as the “right to be heard” principle and the principle of material truth, had been violated.

#### OTHER (9 cases in 2018, or 4%)

The category “Other” concerns cases that could not be classified under any sector. Citizens, journalists or organizations approached TI BiH with various enquiries, asking for explanations of certain legal institutes or assistance in drafting applications or petitions to be submitted to various authorities. A number of cases, as in previous years, concerned the protection of consumer rights, and consumers were mostly interested in how they could claim a refund for a faulty product or where to report an unfair trade practice.

Also, TI BiH filed reports with the Central Election Commission (CEC) against several candidates for violations of the Election Law, and provided legal assistance to citizens who reported their suspicions as to irregularities in the registration process. One case that stood out in terms of its gravity was reported to both the Prosecutor's Office and the Agency for Protection of Personal Data, and it concerned a candidate who misused the personal data of his patients for election purposes.

## STATISTICS AND HIGHLIGHTS

In the course of 2018 a total of **431** letters were sent to competent institutions and **141** instances of legal advice/opinion were given to the parties. TI BiH filed **seven** criminal charges against officials and other persons for offences that may be related to corruption, and drafted two complaints on behalf of the parties against prosecutorial decisions not to pursue investigations.

One of the cases that stands out in terms of its gravity concerns criminal charges brought against several officials employed in the City Administration of Banja Luka on suspicion of having committed criminal offences against official duties (Abuse of official position and Misfeasance in Office) by using their official position to do a favour to an investor whose illegally constructed building was due for demolition after the decision on demolition became effective, thus causing damage to the public interest.

In late 2018 the **BiH Constitutional Court** rendered a decision partially upholding the appeal lodged by TI BiH and found that TI BiH's reputation had suffered as a result of *Nezavisne novine* daily's writing about the alleged racketeering of businesspeople organized by TI BiH. The Constitutional Court's ruling reversed the judgement of the Banja Luka District Court, which had earlier rejected TI BiH's appeal lodged in the libel suit, and referred the case back for rehearing. This provides hope for the final judicial outcome of the TI BiH's long-running legal battle to protect its rights, which were grossly violated by the unprofessional reporting by *Nezavisne novine* and *Glas srpske* daily newspapers. TI BiH brought the libel suit as far back as September 2008, and after exhausting all judicial remedies was forced to lodge an appeal to the BiH Constitutional Court. This was a very important judgement in which the Constitutional Court instructed the lower-instance courts how to distinguish between defamation and freedom of expression, and confirmed that legal entities, including civic associations, were entitled to seek protection of their reputation from unprofessional and defamatory media reporting. Shortly before the publication of the controversial articles, which were the subject of litigation, TI BiH had published an analysis and report revealing the massive economic harm resulting from corruption in the privatization of the Republika Srpska's oil industry, also calling to account the Republika Srpska Government.

In the first half of the year TI BiH submitted to the **RS Constitutional Court** an initiative for a review of the decision of the Banja Luka City Council on general conditions for the production, delivery and use of thermal energy for district heating. In TI BiH's view, the Council's decision was curtailing consumers' rights by laying down very strict conditions for disconnections from the district heating network. Citizens expressed a great interest in this case, and often approached TI BiH with queries about the outcome of the proceedings before the Constitutional Court, as well as their rights as end users of district heating services.