



2019.

# **ANNUAL REPORT 2019**

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



## SUMMARY:

**Advocacy and Legal Advice Centre (hereinafter: the Centre) of Transparency International in BiH (TI BiH)** has been operating for more than 15 years as a centre for providing legal support to the citizens facing corruption. The Centre provides practical advice and instructions to the users of its services, drafts all kinds of legal documents (complaints, lawsuits, requests, etc.), and initiates cases to be investigated on behalf of TI BiH.

In 2019, citizens made **1192** calls to the free line **0800 55555** for reporting corruption, and TI BiH acted in **173** new cases.

TI BiH filed 7 criminal charges against officials and other persons suspected to have committed corruption offenses, and due to the lack of free access to public information it submitted **15** lawsuits against different institutions. At the same time, TI BiH won **19** cases in administrative disputes initiated during previous years for violation of the Law on Free Access to Information. TI BiH sent more than **300** letters to the relevant institutions acting upon various cases, and **130** legal opinion/advice to the citizens requesting legal support.

If we observe statistical data from the last year and the content of the described cases, the following trends can be indicated:

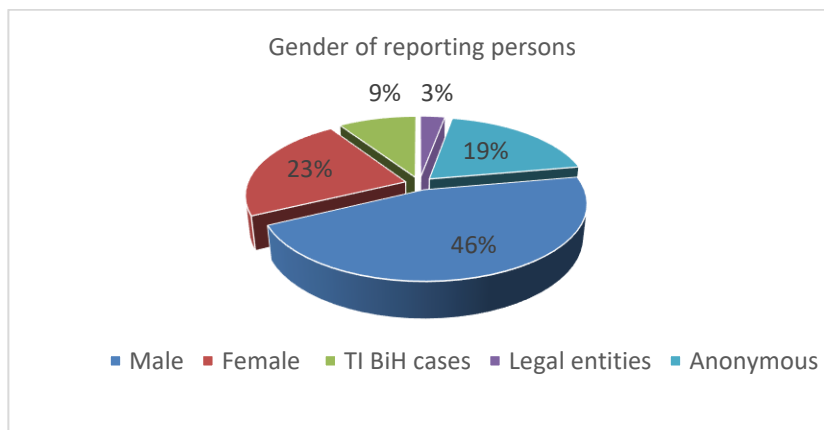
- More than half of the reports against corruption and other irregularities was related to the following sectors: **public administration** and **judiciary**.
- The structure of corruption reporting persons shows that they are mostly **victims** (46.8%), followed by the **witnesses** (38.1%). Compared to the last year, the number of **whistleblowers** is decreased by half (from 20 to 10)<sup>1</sup>, as well as the number of persons reporting corruption related to their work environment. Obviously, the legal framework, and the protection provided by institutions, are still not stimulating enough to motivate more individuals act as whistleblowers. The law protecting persons who report corruption has not yet been adopted in the Federation of BiH.
- The reports are more diverse than in previous years, and the citizens more often suspected the conflict of interest in case of function holders. It is particularly concerning that the persons who complained against the judiciary were mainly victims, persons who had already used all legal means and who could not have obtained an easy access to justice.
- Unlike previous years, the number of reports filed by informal groups of citizens, more individuals joined together or associations of citizens, has increased which means that the number of persons who reported corruption is actually higher than the number of registered cases.
- Particularly concerning is the fact that certain number of cases refers to serious violation of basic human rights and freedoms, such as the right to freedom of movement. We would like to emphasize the case of the group Pravda za Davida which aroused suspicions of corruption in the highest police structures.

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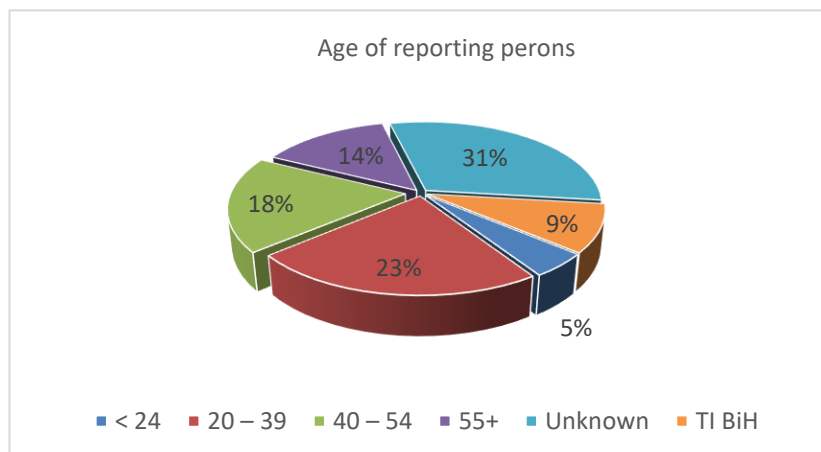
<sup>1</sup> Note: TI BiH defines whistleblowers as prescribed by the internationally accepted definition of TI as the global movement, not as specified by some of the positive legal definitions. Definition according to TI: <https://www.transparency.org/glossary/term/whistleblowing>

# STATISTICAL INDICATORS

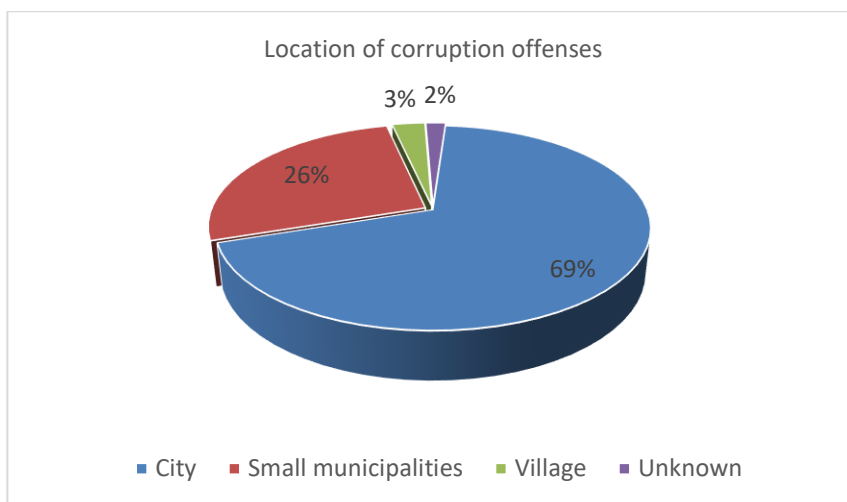
Gender of reporting persons	
Male	<b>78 (44%)</b>
Female	<b>39 (23%)</b>
TI BiH case	<b>16 (9%)</b>
Legal entity	<b>5 (3%)</b>
Anonymous	<b>33 (19%)</b>
Total	<b>173</b>



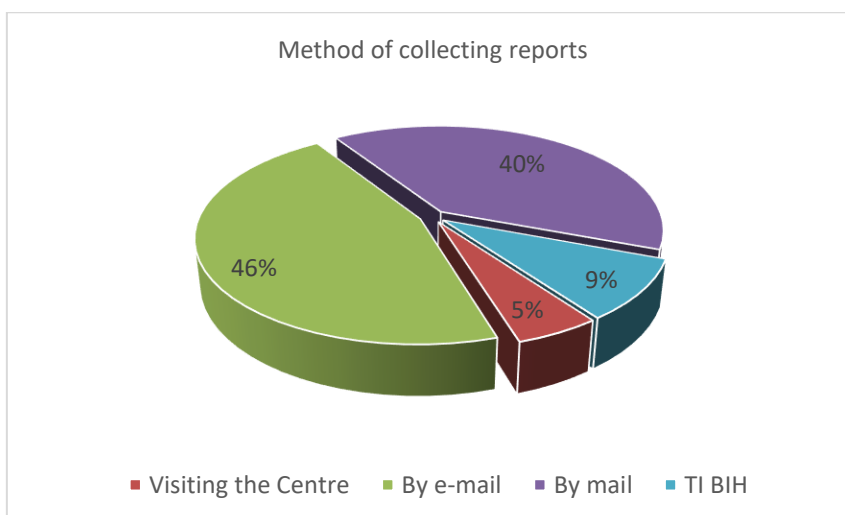
Age of reporting persons	
< 24	<b>8 (5%)</b>
20 – 39	<b>40 (23%)</b>
40 – 54	<b>32 (19%)</b>
+ 55	<b>24 (14%)</b>
Unknown	<b>53 (31%)</b>
TI BiH	<b>16 (8%)</b>
Total	<b>173</b>



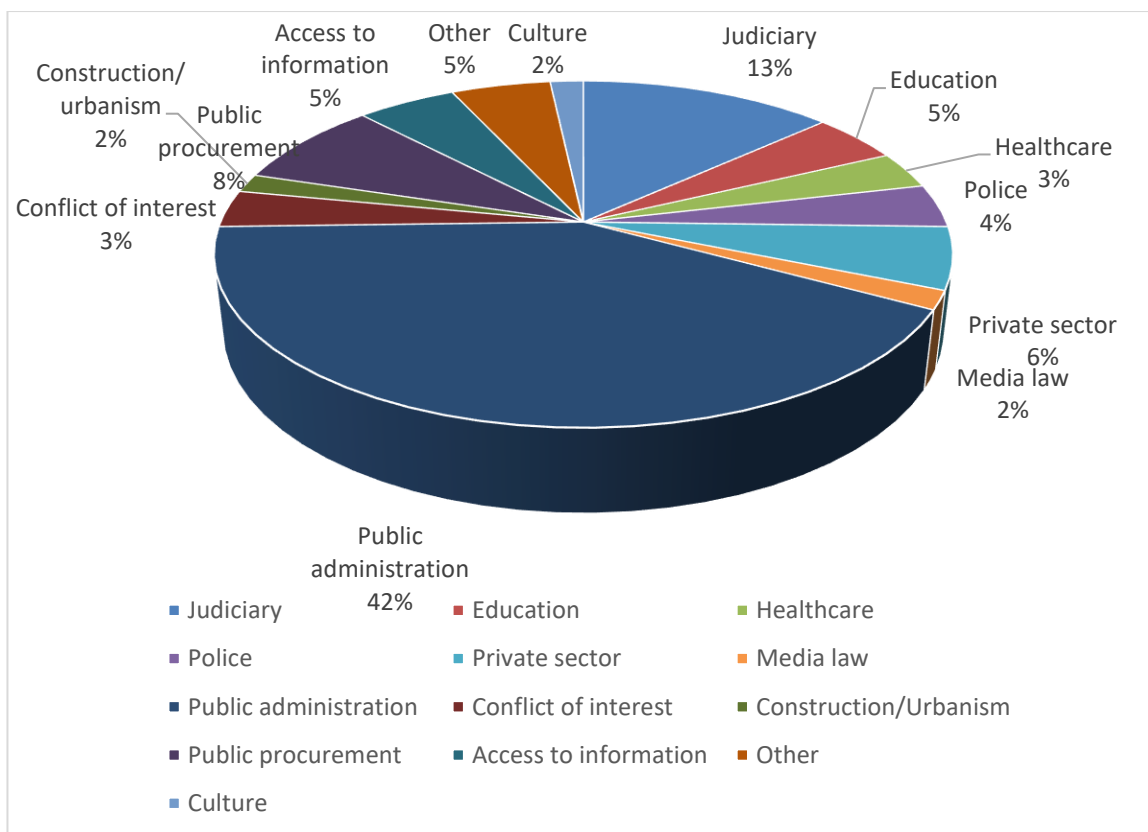
Location of corruption offenses	
City	<b>119 (69%)</b>
Small municipalities	<b>46 (26%)</b>
Village	<b>5 (3%)</b>
Unknown	<b>3 (2%)</b>
<b>Total</b>	<b>173</b>



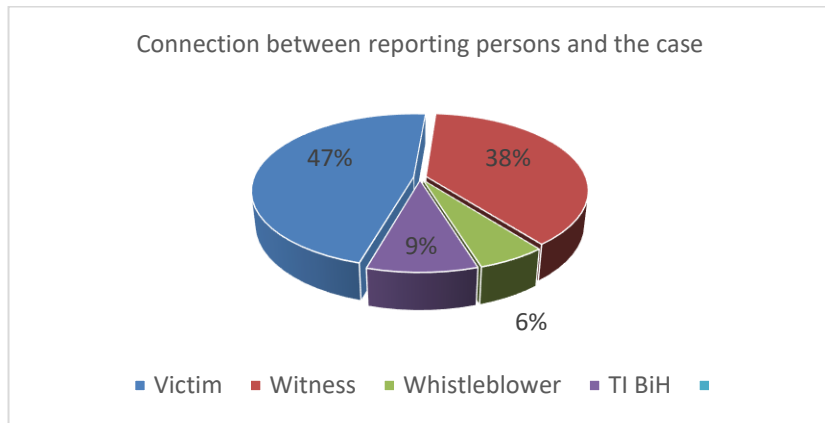
Method of collecting reports	
By visiting the Centre	<b>9 (5%)</b>
By E-mail (centar@ti-bih.org)	<b>79 (46%)</b>
By mail	<b>69 (41%)</b>
TI BIH cases	<b>16 (8%)</b>
<b>Total</b>	<b>173</b>



Hotspots of corruption	
Judiciary	<b>23 (13%)</b>
Education	<b>8 (5%)</b>
Healthcare	<b>6 (4%)</b>
Police	<b>7 (4%)</b>
Private sector	<b>10 (6%)</b>
Media law	<b>3 (2%)</b>
Public administration	<b>72 (42%)</b>
Conflict of interest	<b>6 (4%)</b>
Construction/urbanism	<b>3 (2%)</b>
Public procurement	<b>14 (8%)</b>
Access to information	<b>9 (5%)</b>
Other	<b>9 (5%)</b>
Culture	<b>3 (2%)</b>
<b>Total</b>	<b>173</b>



Connection between reporting persons and the case	
Victim	<b>81 (47%)</b>
Witness	<b>66 (38%)</b>
Whistleblower	<b>10 (6%)</b>
TI BiH	<b>16 (9%)</b>
Total	<b>173</b>



<b>NUMBER OF CALLS TO FREE LINE: 0800 55555</b>	<b>1192</b>
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## DESCRIPTION OF CASES PROVIDED BY SECTORS

JUDICIAL INSTITUTIONS (23 cases in 2019 or 13%)
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For several years now the judiciary has been known for a number of reports related to corruption in this sector. Last year citizens mostly reported **the unprofessional behaviour of judges**, or their incorrect treatment and improper implementation of the procedural rules. A certain number of reports was related to **the length of proceedings** or the violation of the right to trial within a reasonable time. The reporting persons were often interested in the way in which disciplinary charges against judges and/or prosecutors may be filed, and if there is a deadline to act upon their complaints. In all such cases TI BiH advised citizens to address the Office of the Disciplinary Counsel (ODC), and in some cases TI BiH filed complaints by itself based on the previous assessment of the merits of allegations. Thus acting upon a complaint filed by TI BiH, a disciplinary proceeding was initiated against the **Chief Prosecutor of Tuzla Canton Prosecutor's Office, Tomislav Ljubic** for renting the business premises to lawyers. The proceeding is still ongoing, and currently we are expecting a first-instance disciplinary decision to be brought. The citizens were also provided with the legal advice related to the procedure of **the exclusion of judges in** civil proceedings, since there were many inquiries related to the relative reasons for the exclusion of judges such as presumed friendship with a party in the process, family or neighbour relationships. An interesting complaint was submitted against a judge who, according to the complaint, abused the power of attorney provided by her co-residents and made a decision contrary to their interests and without their consent. According to the allegations made, the judge used her official authority and position in the proceeding before the administrative authority. TI BiH submitted allegations about this action to the ODC, indicating some of the potential disciplinary offenses (engaging in duties incompatible with the duties of a judge, behaviour outside the court that damages the reputation of a judicial office, etc.).

The number of cases in which citizens required TI BiH to take passive participation in proceedings they conduct (both criminal and civil proceedings) through **monitoring**, or through the participation of its observers at trials has been increased. Due to the lack of capacities, TI BiH was not able to assist citizens with such cases for years, but it expressed its interest in certain cases before courts. Thus, in one case TI BiH requested from the court a clarification on the scheduling dynamics of the main trial, including the information on the measures taken to ensure the presence of the accused. The information was then provided to the citizens, along with an additional explanation. The difference compared to the previous period is that now TI BiH has been addressed with the same request for monitoring by the lawyers. How serious can be complaints related to the judiciary, where the reporting persons are usually the victims, is best illustrated by the case of a party that initiated proceeding for compensation of damage before the Court of Appeals, before which it also urged to have her complaint resolved, but the relevant judge responded that almost certainly this case will not be resolved even in 2020 (the complaint was filed in December 2017). The legally specified deadlines for actions of second-instance court in appeals are only instructive, but regardless of that, such example which shows how the party is informed that her case will not be

resolved for a long period, illustrates the devastating inefficiency of local judicial system. TI BiH assisted party in drawing up urgencies and pointed to the practice of the European Court of Human Rights in violating the right to trial within a reasonable time. Currently, the party is considering to submit an appeal to the Constitutional Court of BiH.

TI BiH has filed criminal charges against **Ibrahim Bubic**, the President of **the Municipal Court in Zivinice**, since, contrary to the provision on incompatibility of civil servants, he appointed **Ivana Kulic** to the position of civil servant with the Court Administration, although she was performing the duty of the Minister of Justice and Administration in the Government of the Tuzla Canton at the time. According to the Law on Civil Service, the position of the minister is incompatible with the position of the civil servant, which means that Bubic committed criminal offense of **Violating equality of citizens in employment** and/or criminal offense of **Abuse of position or authority** since he used his position or authority of a judge to gain benefits to the Minister Ivana Kulic in the form of employment. Just in that period Kulic was to finish the mandate of the Minister. The Prosecutor's Office of the Tuzla Canton brought the order not to perform an investigation, and the acting Prosecutor submitted only a notice of the order in the beginning. Only after TI BiH insisted, the Prosecutor submitted the order with the reasons for the decision. Namely, the Prosecutor concluded there were no legal obstacles to appoint a person who is the Minister of Justice and Administration to the position of a civil servant at the same time. The Prosecutor does not dispute the facts provided with the report, but she concludes there was no single legal obstacle for the described conduct of the Court President. TI BiH filed a complaint against the order not to perform the investigation, indicating that the Prosecutor had not taken into consideration the provision on incompatibility and conflict of interest of civil servants prescribed by the Law on Civil Service of the Tuzla Canton, as well as the fact that this case was related to the Minister of Justice and Administration and this Ministry provides funds for the work of the respective court, participates in the budgeting of cantonal and municipal courts, and supervises the work of the courts. This points to the conflict of interest that appeared in this case, including the incompatibility of functions TI BiH has been pointing to from the beginning.

EDUCATION (8 cases in 2019 or 5%)
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Reports referring to the sector of education mainly included employment procedures, but also illegal practices of concluding part-time contracts. TI BiH is in a possession of a letter issued by the Agency for Development of Higher Education and Quality Assurance (hereinafter: the Agency) which contains a list of higher education institutions which have not passed the accreditation process, although they were established five or more years ago. The Agency indicates in this letter it informed the ministries of education and inspection bodies so to take further action on this matter. Also, TI BiH required information on the actions taken by the ministries of education/inspection bodies upon receiving the letter of the Agency, but it was determined that the information had not been delivered to all bodies.

In the field of education, **the Oriental Institute** demonstrates an example of undesirable practice, which, according to the reports filed by several persons, had never informed the applicants in the public competition about the results of the competition for the positions of assistants and professional associates, based on 150+ program, at the University of Sarajevo. TI BiH received information about the competition only after three months, and after urging them to have it delivered. Candidates stated they had never been informed about the results, and that they had complete information from our organization, while the Institute claimed they were informed by the phone that the results arrived and that they could have an insight into it. The specific conditions in the competition were not clearly specified, and the candidates were confused with that. The competition only stated that these were „other conditions prescribed by the general acts of the organizational units of the University of Sarajevo“. The reports were submitted to the relevant Ministry, the Education Inspectorate and the Ombudsman, and they all acted upon the reports and



examined the allegations made in the case characterized by obvious lack of transparency in the work of educational institution. Only after TI BiH insisted and inspections were repeated, both competitions for vacancies at the Oriental Institute were annulled in parts in which irregularities were observed. However, the Oriental Institute was persistent to conduct the competitions in illegal way and appoint the persons who were controversial from the very beginning (meaning they did not meet the conditions prescribed for the job), so TI BiH assisted an interested party in this proceeding and drafted a lawsuit for the protection of employee rights. TI BiH also filed criminal charges to **the Cantonal Prosecutor's Office of Sarajevo Canton**, pointing to the arbitrariness of the organizational unit of the University, despite the findings of the Ministry, Ombudsman, Inspectorate and TI BiH. The complaint emphasized the fact that they were trying to find out the way to provide employment to a candidate who did not meet the requirements of the competition.

HEALTHCARE (6 cases in 2019 or 4%)
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In 219 TI BiH received six complaints related the healthcare field, but they were different by the seriousness of the allegations made. In one case, the reporting person wanted to know how to report a doctor who asked for a bribe, just to provide, as the allegations stated, information about the type of drug that should be used in medical therapy. The reporting person was explained that the complaint could be submitted directly to the healthcare institution, but also to the Prosecutor's Office since claiming a gift or other benefits for yourself or other person represents the criminal offense **Receiving Bribe**.

Another complaint related to the healthcare sector that deserves to be mentioned because of the seriousness of its character, is the complaint of a citizen who was not satisfied with the medical treatment provided in the hospital, and who pointed to the medical malpractice in case of a close family member which resulted in a death of a patient. The reporting person was presented with the possibilities of legal protection in civil dispute, as well as the possibility of filing criminal charges. The opinion submitted to the reporting person explained the circumstances related to the criminal offense **Medical malpractice** which refers to the situation when a doctor in providing medical help does not follow the rules of the medical profession, thereby causing a significant deterioration of the patient's health. Other medical workers may as well be considered perpetrators in this crime, and the most serious form of it is the one ending with the death of a patient.

The Rulebook on Prevention of Corruption of **the University Clinical Centre of the Republic of Srpska (UCC RS)** prescribes the possibility to report corruption, so TI BiH requested from the UCC RS information on the number of reports against corruption filed in 2018, including the information how the UCC RS acted upon those reports, in terms of filing criminal charges or taking other measures. The UCC RS responded it had not received any report to its email address. The answer is important for several reasons, since the experience of TI BiH also shows that the citizens will more easily report corruption in other sectors than healthcare sector, that they have strong distrust in internal filing of reports, and that even once they file a report they easily give up on using further legal remedies.

POLICE (7 cases in 2019 or 4%)
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The reports concerning police mainly referred to the unprofessional behaviour of police officers, excessive use of force, but also to requiring bribe in one case. TI BiH received an anonymous report by a person claiming that he was asked for a bribe by the police officer while applying for a stay permit. The reporting person only submitted the last name of this police officer and the Ministry of Internal Affairs of RS (MIA RS) conducted an internal investigation and after two months concluded that the made allegations were not confirmed.

TI BiH has filed criminal charges with **the District Public Prosecutor's Office in Banja Luka** against the police officers who deprived the citizens of Banja Luka, recognized as members and supporters

of the informal group **Pravda za Davida (PZD)**, of the right to free movement inside and outside the central temple, exceeding thus their official authority. The report states there are grounds for suspicion that in this way police officers committed severe form of the criminal offense **Violation of equality of citizens** and/or criminal offense **Abuse, Torture and other Inhuman or Degrading Treatments**. Video footages were submitted along with the report.

There was another case related to the informal group PZD, which could be defined as a case of the so-called strategic litigation, when the police restricted the freedom of movement (for more days in a row, same place, same time) for seven persons, so TI BiH provided its legal assistance and drafted **the request for protection of freedoms and rights guaranteed by the Constitution** to each individual, against **the RS Police Director Darko Culum**. The request stated that police officers illegally and disproportionately exercised their authority in relation to **the temporary restriction of the freedom to movement**, and that these actions were handled by the Director of Police. In this way the reporting persons were prevented from and restricted in exercising their fundamental rights and freedoms, including the **freedom of choice and thought, freedom of conscience and beliefs, freedom of public expression of opinion, equal protection of their rights in proceedings before a court and other public bodies and organizations, and freedom of movement**. According to the **Administrative Disputes Act, the District Court** shall decide on the request in **an urgent procedure**. The District Court in Banja Luka denied the request after more than six months, and after several urgencies submitted by both, the reporting persons and TI BiH, to the acting judge and the court president. The Court rejected **the request** of TI BiH and the Helsinki Citizens' Assembly Banja Luka **to participate as intervenor** on the side of the reporting persons, and while it was still being decided upon the request for intervenor, TI BiH was not even allowed to have an insight into the case.

TI BiH drafted a request on behalf of the reporting persons for an extraordinary review of a court decision, which shall be decided on by **the Supreme Court of the Republic of Srpska**. The District Court in Banja Luka believes that the Director of the Police cannot be held responsible since the reporting persons failed to prove that he directly issued an order, and that reporting persons were legally deprived of their fundamental rights, not as the citizens, but as the members of the group PZD. The Court thinks this was justified since there is a letter submitted by the church community complaining about their behaviour, including the misdemeanor reports against some of them. In the request submitted to the Supreme Court, TI BiH reminded the Court that some of these individuals were restricted the freedom of movement for several days, that such actions must have been managed by the Director of the Police (in accordance with his legal powers), that every restriction of the basic rights, such as the right to freedom of movement, based on the practice of the European Court of Human Rights must be **legal, undertaken for the purpose of some legitimate aim** (reasons of national security, public security, preservation of public order, prevention of crimes, health protection, protection of morals and protection of rights and freedoms of others) and **necessary in democratic society**. TI BiH explained that none of these requirements had been met, and that this was a documented and serious violation of the right to freedom of movement against certain persons for political reasons, due to the suspicion they were members of the PZD group. There were several irregularities in the work of the District Court Banja Luka when it comes to this case (forbidding access to case files, doubts about improper delivery, etc.) but what is most concerning is the lack of sensitivity of the courts in cases involving the fundamental human rights and freedoms. As a reminder, it took **more than six months** for the District Court in Banja Luka to decide **in an urgent procedure** on case against the RS Police Director, despite all the urgencies submitted.

PRIVATE SECTOR (10 cases in 2019 or 6 %)
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As in previous years, the majority of reports related to the private sector concerned the employment rights. Employees within the private sector wanted to know their rights in case **the**

**employer terminates the employment contract**, the right to use **(un)paid leave**, the way to initiate **the judicial protection, deadlines** for judicial protection, etc. In all those cases TI BiH provided legal assistance to the citizens, and the most frequent irregularity observed was related to the unfair procedure in termination of the employment contract by the employer. In some cases, TI BiH directed citizens to the inspection authorities, or drafted complaints on their behalf. Also, TI BiH provided legal advice to one employee concerning the amount of compensation she received due to **the injury at work**. Based on the complaint and documentation drafted by TI BiH, this employee managed to win more favourable out-of-court settlement agreement regarding the amount of the damage compensation.

MEDIA LAW (3 cases in 2019 or 2%)

Two cases from the field of the media law were related to the protection from defamation, and the citizens requested from TI BiH a legal opinion concerning the court protection. One case referred to filing an extraordinary legal remedy in a dispute where the reporting person was sued and convicted of defamation, so she asked for an opinion on the merits of her arguments. The other case involved a citizen who was interested to find out in which way he can protect himself from unprofessional reporting by the public media service, so he was presented with the possible legal remedies (filing a complaint/request for correction and possibility of initiating a court proceeding).

In one case a journalist was interested in the ways of protection when she is exposed to persecution and hate speech because of her professional involvement. TI BiH responded to the journalist by instructing her to address the Ministry of Internal Affairs, and by making themselves available in case she decides to file criminal charges since the circumstances she described involved two potential criminal offenses: **Persecution** and **Public provoking and inciting to violence and hatred** (which actually represents incrimination of hate speech).

PUBLIC ADMINISTRATION (72 cases in 2019 or 42%)

Reports in the field of the public administration are still the most common. The citizens mainly complain of the inefficient work of the administration bodies, irregularities in employment procedures (suspected nepotism, political party employments, etc.), but also the emergence of the fake diplomas. The number of complaints submitted by civil servants and other employees with the public administration themselves, complaining of their employment status, discrimination/mobbing practices and professional degradation they had to face after filing complaints about irregularities in work, has been increased. In such cases, TI BiH advised the reporting persons or provided its legal opinions, but also directed them to other organs (primarily to the Ombudsman or exercising their rights through judicial protection). Public administration employees are much more likely to initiate the court protection procedures than those employed with the private sector, which is probably due to the fact that regulations provide a greater scope of rights to them. Still, in a few cases, when the employees had been professionally degraded because filing complaints against their superior/s, they were not protected as whistleblowers. The Federation of BiH has not still adopted a law that would provide special protection to such persons, while, in one case, which involved an employee at the state level, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APCCFC) was very strict in evaluating the merits of the application for the status of protected reporting person.

There were also several inquiries related to realizing the rights from pension and invalidity insurance when the citizens requested additional explanation about certain rights, like for example the disability right or the method for pension calculation. TI BiH assisted one party and drafted an appeal which was submitted to the **Constitutional Court of BiH** in regard to the possibility of exercising the right to old-age pension. The District Court Banja Luka first adopted the lawsuit filed by appellant now, and ordered to the Pension and Disability Insurance Fund of the Republic of Srpska (hereinafter: the Fund) to adopt a new administrative act following the court's legal opinion.

The Court found that the governing body whose act was being challenged (the Fund) had failed to properly apply the regulations, and that the Fund did not define in its act the **special length of service** which could have helped appellant meet all conditions for the old-age pension if it had been properly calculated. The Supreme Court of RS then amended its indictment and expressed a completely different opinion. The dispute concerns the method for calculating the special length of service for the individuals who participated in the last war. **The Law on Pension and Disability Insurance** defines in one line the special length of service and calculates it double for the soldiers who were members of the Republic of Srpska Army, which is the case of person who was forced to appeal. The particularly disappointing is the fact that this appellant request for the pension is being decided on **since 2012**, when he submitted his first request to the Fund. The practice of the European Court of Human Rights indicates that proceedings concerning the exercise of the right to pension should be considered as a matter of priority and urgency.

TI BiH paid special attention to the case of suspected **fake high school diploma**. The report was filed by a citizen who suspected that one employee of the Tax Administration of the Republic of Srpska (TA RS) had falsified her high school diploma. The reporting person stated he had reported this case to the relevant inspection body, but there was no response, and no action undertaken upon his report. TI BiH reported the case again to the Inspectorate, requiring some reply. The Inspectorate conducted an extraordinary investigation and found that the reported employee is not recorded in the high school archive although she enclosed the diploma allegedly issued by this high school centre to the Tax Administration. The case was then forwarded to the police, and the TA RS informed TI BiH that measures resulting in termination of employment contract with this employee will be undertaken. TI BiH is still following this case with the police authorities. It is interesting that the TA RS claims they were not informed on the final outcome of the inspection and that they learned about the fake diploma from the letter submitted to them by TI BiH. The case indicates there was no official cooperation and information exchange between the administration bodies during the diploma examination.

There are few more cases with positive outcome in 2019 that should be mentioned. TI BiH received an anonymous report about **non-transparent practice of allocating money from the Una-Sana cantonal budget to nine associations of disabled person gathered in an informal group**, leaving thus no opportunity for other associations of disabled persons to apply for grants specified for non-profit organizations-associations of disabled persons. As it is indicated in the report, this has been done in this way, without public invitation, for more than ten years. TI BiH addressed the Ministry of Health, Labour and Social Policy of the Una-Sana Canton (hereinafter: the Ministry) stating the observed irregularities. The Ministry forwarded the TI BiH report to the Cantonal Budget Inspectorate and the Cantonal Prosecutor's Office, and expressed their willingness to regulate the procedure of funds allocation to the satisfaction of all associations of disabled persons. This Ministry prepared an act which it delivered to the Ministry of Finance of the Una-Sana Canton, requesting to include a provision in the Law on the Implementation of the Budget of the Una-Sana Canton for 2019, based on which the allocation of funds shall be conducted through **public invitation** from now on. The Budget Inspectorate informed TI BiH that inspectors were not allowed to control and monitor the expenditure of the funds allocated to the associations which formed the informal group, and that due to the suspicion of illegal action and unlawful spending of funds for unintended purposes they notified the **Cantonal Prosecutor's Office** for further action.

In another case, an employment competition was annulled after TI BiH filed a report to the Inspectorate. This took place in the **municipality Kalinovik** whose authorities announced the employment competition for the intern as part of **the Youth Employment Support Program**, requiring specifically a theologian for this position. Such person was employed in the end. However, TI BiH emphasized that neither the law, or any other regulation, can specify that only a theologian can be appointed to the intern position. The Inspectorate annulled the competition and ordered termination of the concluded contract.

CONFLICT OF INTEREST (6 cases in 2019 or 4%)
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Cases involving conflict of interest are specific for the lack of action by the institutions to which such cases were reported. The only thing institutions provided were the excuses for not acting upon reports. Particularly concerning is the explanation provided by the Republic Commission for Determining Conflict of Interest in the Authorities of the Republic of Srpska which on several occasions found reasons for not applying the current legal provisions.

In two cases, TI BiH submitted a complaint against two persons who were performing the functions of **MPs** and **Acting Directors** at the same time (**Slavko Gligoric** –Railways of the Republic of Srpska and **Dragan Cavic**-electricity distribution company Elektrokraina). **The Law on Prevention of Conflict of Interest in the Authorities of the Republic of Srpska** is very clear in such matter, and prescribes that the elected representatives cannot be members of the Supervisory Boards or the Directors of the public enterprises at the time of holding public function, including three months after they cease to perform this function. The Law does not make any distinction between Directors and Acting Directors. In both cases, the Republic Commission for Determining Conflict of Interest in the Authorities of the Republic of Srpska (hereinafter: the Commission) suspended the procedure for determining the conflict of interest, explaining they were appointed as Acting Directors, which is a temporary function (or appointment for a short period). In the case of Dragan Cavic, the Commission concluded that Elektrokraina was a dependant company within the public enterprise system Elektroprivreda RS, and that as lower organization form it did not represent full capacity public enterprise.

TI BiH filed a report to the Supervisory Board (SB) of the public enterprise Elektroprivreda of the Republic of Srpska against **Luka Petrovic** who was appointed to the position of the Acting Director of this enterprise. At the same time, Petrovic is performing the function of the General Secretary of the political party **Savez nezavisnih socijaldemokrata**, which represents executive function in the party. As a reminder, **the Law on Public Enterprises of the Republic of Srpska** clearly stipulates the **incompatibility of functions**, i.e. that a person holding an executive function in a political party cannot be appointed as a member of the management of an enterprise. The SB replied briefly that all appointments in Elektroprivreda of the Republic of Srpska have been made in accordance with positive legal regulations.

TI BiH also submitted to the Commission a report against **Milenko Vicanovic**, who is performing functions of MP and Director of the public enterprise Komunalac a.d. Bijeljina at the same time. The Commission rejected the initiative of TI BiH as unfounded, explaining that Vicanovic is a Director of the local public enterprise, and that only local officials can be in conflict of interest as defined by the Law. It is true however that the Law recognizes the conflict of interest only in case of elected representatives, holders of executive functions and advisers in local self-government units if related to the public enterprises established by the local self-government, but it does not specify such restrictions for the representatives elected at the republic level. By analogy, the Commission concluded that MPs can be in conflict of interest in case of public enterprises only if it is a republic public enterprise, which is not explicitly prescribed anywhere. In this way the Commission additionally narrowed the application of the current law on conflict of interest, which already concerns only a few persons and potential conflict of interest situations.

A reporting person addressed TI BiH because of the suspicion of potential conflict of interest, i.e. the **incompatibility of functions related to Nenad Nesic**, the Acting Director of the public enterprise „Roads of the Republic of Srpska“ Banja Luka and the **MP in the House of Representatives of the BiH Parliamentary Assembly**. TI BiH reported this to the Commission for Determining Conflict of Interest BiH which has not acted upon the report yet, as well as to the Supervisory Board of the „Roads of the Republic of Srpska“ Banja Luka which claims to be incompetent until the Commission determines if conflict of interest exists.

## CULTURE (3 cases in 2019 or 2%)

In 2019, TI BiH also acted in several cases concerning the field of culture, and it was mainly related to the suspicion of irregularities in cultural institutions. In one of those cases, TI BiH was providing legal assistance to a dissatisfied party when it realized that the Minister of Education and Culture repeatedly appointed the Acting Director of the Gacko National Library for a definite period of time, which is contrary to the regulations stipulating that temporary appointments can be made on a period of up to two months, without repeating it. TI BiH notified the District Court of Banja Luka on this matter which resulted in an administrative dispute, after which the Ministry of Education and Culture finally conducted a public competition procedure.

TI BiH filed a complaint to **the Ministry of Culture and Sports of Sarajevo Canton** (hereinafter: the Ministry) against the **Director of the public institution Kamerni Teatar 55, Emir Hadzihafizbegovic**, for the engagement of **Pjer Zalica** on the basis of copyright contract, while Pjer was member and president of the Supervisory Board (SB). In this specific case it turned out that the copyright contract concerning the work of Kamerni teatar 55 (production of a play) was concluded between the Director of this institution as a governing body and the president of the SB (in the contract indicated as the author). The Law on Conflict of Interest in the Authorities of the Federation of Bosnia and Herzegovina prescribes that holders of executive functions must not use the official position for the personal gain of the persons related to them. The elected officials, holders of executive functions and advisers must not be in any dependant relations to the persons who could affect their objective views. Only seven months after the complaint was submitted (and some additional interest in this case expressed) the Ministry responded that no illegal action was identified in the reported case.

TI BiH also filed a report to **the Anti-Corruption and Quality Control Office of the Sarajevo Canton** which replied that the **Prosecutor's Office of the Sarajevo Canton** had been already engaged in this matter on similar allegations. The Prosecutor's Office issued an order not to conduct an investigation upon the anonymous report of one employee of the public institution Kamerni Teatar 55, concluding that there were no legal obstacles for the director of the institution and the president of the SB to conclude a copyright contract, and due to it, to provide a compensation for the member of the SB. The Prosecutor's Office did not evaluate other circumstances concerning the possible misuse of the official position or powers for personal gain of two persons who are part of the managerial structures of the same institution.

## ACCESS TO INFORMATION (9 cases in 2019 or 5%)

In 2019, TI BiH was also forced to file complaints against the public bodies that persistently refused to provide access to the requested information. In addition to this, TI BiH provided legal assistance to the journalists and other organizations of the civil society drafting on their behalf different requests, complaints (amendments to complaints) and lawsuits in proceedings for exercising the right to access to information. There was one particularly interesting case in which a higher education institution requested from a journalist a money compensation for the information provided to him (confirmation on completed undergraduate and master studies) in the amount of BAM 300, but they gave up on this request after TI BiH drafted a complaint against them. In 2019, the media won two administrative disputes thanks to the lawsuits drafted by TI BiH on their behalf. In all cases in which journalists were provided with the legal assistance, the subject matter was always the same, access to information about the work of public bodies which should be available to the public according to the Law on Free Access to Information (part-time contracts, amount of salaries of public administration employees, information on subsidies, etc.). The fact that obtaining such information is difficult points to the lack of transparency in the work of public bodies which is present at all levels of government.

In the beginning of 2019, TI BiH filed a lawsuit against **the Ministry of Interior of the Republic of Srpska (MOI RS)** for not **providing the report of police officers on the use of force** during the days when citizens gathered in Banja Luka to protest against police brutality and to provide support to the family of the murdered student David Dragicevic. The MOI RS issued a decision by which it refused to allow access to information, claiming there was no public interest which can justify the public insight into the police reports on the use of force, although numerous local, regional and world media reported about critical events when the force was used. In its lawsuit, TI BiH emphasized that potential initiation of disciplinary proceedings against police officers depends on the report on the use of force, and that under the circumstances of the increased criticism about the work of the Police and MOI of the Republic of Srpska it is in interest of the Ministry itself to publish all reports. The lawsuit specifically indicates that reports on the use of force are related to the numerous statements of the citizens and activists who publicly testified that the excessive force was used against them, and that several cases concerning the work of the RS Police have been initiated before the Ombudsman. The verdict in this case will be very significant, since TI BiH has not requested access to such kind of information so far, and the most interesting will be a part in which the court must decide if the public interest in this specific case is more important than some of the potential exceptions to the access to information.

In this year TI BiH also won many cases (**19 in total**) in administrative disputes initiated in the past years for violation of the Law on Free Access to Information. The most common reasons for conducting those disputes were rejections of the institutions to implement the Law on Free Access to Information, silent administration, illegal reference to the personal data and privacy protection, failure to perform the public interest test...

Institutions which lost disputes include: the Ministry of Interior Canton 10, Appeals Council of the Council of Ministers, the RS Banking Agency (decided by the Supreme Court of RS), the Gacko coal mine and thermal power plant (two decisions), public health institution University Clinical Centre RS (UCC RS), Vodovod a.d. Celinac, water supplying company (based on the decision issued by the Supreme Court of RS), the Municipality of Bugojno, Hrvatske telekomunikacije Mostar - telecommunication public company, public utility enterprise Vodostan Ilijas, public electric utility enterprise Elektroprivreda BiH Sarajevo, public utility enterprise KP Komunalac Brod, public utility enterprise Komunalac Kozarska Dubica (based on the decision of the Supreme Court of RS), public utility enterprise Sarajevo-sume Sarajevo, Ljubija Iron Ore Mine Prijedor (based on the decision of the Supreme Court of RS), public electric utility enterprise Elektrodistribucija Pale (based on the decision of the Supreme Court of RS), the Ministry of Energy and Mining, the Prosecutor's Office of BiH, public enterprise Televizija Sarajevo.

**The Cantonal Court in Livno** rendered a very significant judgment indicating that public authorities must submit the copies of travel orders for the official vehicles and that „any other decision would imply that the vehicle was not used for the legally defined purposes“. Namely, the MOI of Canton 10 refused to provide to TI BiH the travel orders claiming it was personal data and an exception to the privacy protection. In other important case, **the Ministry of Foreign Trade and Economic Relations of BiH** refused to provide the written recommendation for the appointment of the members of the Concession Commission explaining the data was personal. The competition for the election of new members of this Commission is followed by a lot of controversy since it has not been completed since 2016, although the term of office of the Commission members has expired. The Court of BiH has decided in favour of TI BiH, stating that the requested information from the competition procedure cannot be considered personal data, that information in the possession of the public bodies are defined as public assets, and that public bodies in procedures for the exercise of the right of access to information must primarily apply the Law on Free Access to Information that has the character of *lex specialis*.

TI BiH filed **15** lawsuits for failing to provide the requested information in 2018. Some of the institutions against which lawsuits were submitted are the following: public electric utility

enterprise Elektroprenos BiH, the City of Banja Luka, public healthcare institution the University Clinical Centre of the RS, the Ministry of Agriculture, Forestry and Water Management of the RS, the Dependent Company Rudnik and Thermal Power Plant Gacko (two lawsuits), the Cantonal Prosecutor's Office of the Central Bosnia Canton, the Federal Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War, GAS-RES Ltd., public PTT enterprise BH Posta, public utility enterprise Kanalizacija i cistoca Ljubinje, MOI of the Canton 10, Mixed Holding „Elektroprivreda Republike Srpske“ Parent company Trebinje, public enterprise Slobodna zona Samac, the FBiH Government, the BiH Prosecutor's Office, the Municipality of Bugojno, the Municipality of Novi Grad Sarajevo, public utility enterprise Vodograd Prozor-Rama (a request for the extraordinary review of the court decision was also filed after the Cantonal Court decided to reject the lawsuit)

Information which the defendant institutions refused to submit concerns:

- information on the allocations of the funds to the non-profit and other organizations;
- a copy of the order not to conduct the investigation;
- information on the number of cases transferred to other prosecutors/judges;
- information about the public procurement procedure;
- information on the work of the public enterprises (financial reports, the composition of governing bodies, number of employees, external audit reports);
- etc.

#### CONSTRUCTION-URBANISM (3 cases in 2019 or 2%)

Citizens' Initiative from Velika Kladusa approached the Advocacy and Legal Advice Centre of TI BiH asking for a clarification about the obligation to pay the fee for using the building land until the disputed provisions of the Law on Building Land of FBiH, regulating the subject matter, are harmonized with the decision of the FBiH Constitutional Court. They were also interested to find out what options the citizens may use in case the local self-government units disobey the verdict and whether the citizens must make the payment in accordance with the order delivered after the verdict has been made. The citizens were advised that the provisions of the law which the Constitutional Court found inconsistent with the Constitution cease to be applied from the date of publication of the verdict in the Official Gazette, and that they have the right to appeal against the received orders, as well as that failing to enforce the court decision is to be considered a criminal offense.

In other cases, citizens mainly requested from our organization to „accelerate“ the demolition process of illegally built constructions, or they needed more information from the municipal administration bodies in cases that implied illegal construction.

#### PUBLIC PROCUREMENT (14 cases in 2019 or 8%)

In 2019 there was an increase in the number of reports concerning the field of public procurement. The reports were mainly submitted by the bidders who complained about the arbitrariness of the contracting authority, the lack of possibility to have the adequate legal protection, then about the technical specifications that only one bidder can meet and fictitiously concluded contracts. Also, the part of reports was submitted by the witnesses, i.e. employees with the contracting authority pointing to the irregularities during the selection of bids, favouring certain bidders and not following the contractual obligations. TI BiH presented the ways of legal protection to the bidders, taught them how to file complaints and in some cases even lawsuits for compensation of lost profit,



and in cases reported by the employees, TI BiH investigated cases more thoroughly and then submitted reports to the competent authorities for action, informing the public in a timely manner.

The contracting authority **Rudnik and Thermo Power Plant Gacko** showed in two cases an example of unlawful action in terms of violating the bidders' rights to legal protection. In the first case, during the period when the Complaints Review Office was still considering the complaint of the interested bidder, the contracting authority awarded the contract in the negotiated procedure without prior publication of notice to the same bidder that was awarded in the previous, open procedure. In the second case, three days after the procedure was annulled, during the period which represents the deadline for appeal, the contracting authority awarded the contract in the negotiated procedure to a certain bidder. Claiming that the conditions for the application of the negotiated procedure were not met, and that urgency must not be related to the contracting authority, TI BiH filed a complaint to the Public Procurement Agency and criminal charges to the **District Public Prosecutor's Office in Trebinje** for suspicion of the contracting authority's responsibility for not executing the decision of the Complaints Review Office, illegal favouring of business entities and the abuse of office and authority.

Acting upon the report that **public enterprise „Sarajevoputevi“** has never conducted a single public procurement procedure, TI BiH examined the allegations on the Public Procurement Portal and reports issued by the Audit Office of the Institutions of FBiH, but also requesting some information from this public enterprise directly. After examining all circumstances, a report was filed to the **Cantonal Prosecutor's Office of the Sarajevo Canton** for the suspicion that a director of this enterprise, as a responsible person, had conducted the criminal offense of the **Abuse of the Official Position or Powers** by procuring goods, works and services without conducting the public procurement procedure (according to the audit reports, the expenditure in 2018 was BAM **5.319.736**) for the suspicion that the members of the Supervisory Board had conducted a criminal offense of the **Lack of Commitment in Office** violating thus several regulations and failing to supervise the business operations of the enterprise which they are obliged to do according to the Law on Public Enterprises.

Perhaps the most striking example of failing to follow the provisions of the Law on Public Procurement can be seen in case related to the contracting authority **Mines „Kreka“ Tuzla**, which procured goods, works and service worth millions on regular basis and through direct agreements with several privileged bidders. The auditors determined that this contracting authority concluded a direct agreements BAM **6.311.400 KM** with one bidder for the lease of machinery worth, although a significant number of mining machines necessary for regular mining activities could have been bought for this amount. In this case, TI BiH filed criminal charges against the Director of the mine and other responsible persons to **the Cantonal Prosecutor's Office of Tuzla Canton**, emphasizing the obvious intent of the suspects who remained persistent in their actions, although as everyday participants in various procurement procedures, they are very well familiar with the bidding rules and the Law on Public Procurement.

OTHER (9 cases in 2019 or 5%)
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This category contains cases that do not belong to other sectors. Citizens, journalists or organizations submitted various requests, often requiring information related to property relations, war damage compensation or information on the work of TI BiH or other organizations. One number of complaints was related to the consumer law, in which the citizens were interested to find out where to file their complaints and in what way.

STATISTICS AND IMPORTANT INFORMATION
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In 2019 TI BiH submitted **324** reports to the relevant institutions and provided **130** legal advice/opinions to the citizens, organizations and the media.

TI BiH received **3** recommendations from the Ombudsman after filing the reports. One was related to the **Oriental Institute** where the Ombudsman ordered to the Director of the Institute to annul the public competition for the position of the „Expert Associate - Librarian“ concluding that the Institute was obliged to provide the Decision brought by the Senate to all participants in the competition, not only to the selected candidate. In this way all other candidates were deprived of the possibility to file some legal remedy, so the Ombudsman concluded that the **competition was illegal** since it lacked the judicial control over the work of the administration bodies. From the beginning TI BiH emphasized the fact that the competition had been conducted in a non-transparent and illegal way, and the whole case resulted in filing criminal charges to the Cantonal Prosecutor's Office of the Sarajevo Canton against the management of the Institute.

TI BiH filed **7** criminal charges against official and other individuals for criminal offense that can be associated with corruption. The most frequently reported criminal offense was the **Abuse of the Official Position or Authority**.

In addition to the aforementioned criminal charges, TI BiH filed a complaint to the **Cantonal Prosecutor's Office of the Central Bosnia Canton** against the Director of the public utility enterprise **VITKOM Vitez (VITKOM) Jasna Babic**, members of the Supervisory Board and other employees. TI BiH is in the possession of evidence that suspect the Director of this public enterprise to have been elected and appointed to a new function, although she was obliged to first resolve the conflict of interest since she was performing the function of the councilor in the municipal council at the time. Babic was reported for the suspicion of committing a criminal offense of **Certification of Untrue Content** (she provided a statement that she was not in conflict of interest), while the members of the Supervisory Board and the Selection Commission were reported for committing a criminal offense of the **Abuse of Official Position or Authority** since they did not examine this or other conditions of the competition properly. TI BiH asked the acting Prosecutor to examine the validity of the verified statement on non-existence of the conflict of interest, specifically the one that includes the functions within the political parties, since it has information that Babic is also a member of the Municipal Board of HDZ BiH in Vitez.

The proceeding against unknown persons who presented themselves as „**Friends of Vlado Dzajic**“ and who used the list of patients to obtain phone numbers and promote the political candidate Dr Dzajic, was also completed in 2019. The Chief District Prosecutor of the District Public Prosecutor's Office in Banja Luka concluded that „the use of someone else's phone number, even if obtained from the personal data provided for the list of patients, cannot be considered a criminal offense as reported, specifically since the law allows the use of phone numbers“. As a reminder, TI BiH had in its possession a recording that proves that patients were called for the political purposes but it submitted it to the Prosecutor's Office. The persons who made calls were suspected of unlawful use of personal data for the purpose of election promotion.

In 2019, the ALAC of TI BiH organized several successful advocacy campaigns concerning the legislative activities. TI BiH commented the **Draft Law on Police and Internal Affairs** and the **Draft Law on Public Peace and Order**, requesting to be withdrawn, specifically in terms of controversial provisions through which the proposer tried to expand the scope of powers for the police officers and introduce a new kind of violation of public peace and order (**unauthorized taking photos and recording** in a way to disturb police officer while performing his/her duties), endangering thus democratic freedoms and rights guaranteed by the Constitution. TI BiH delivered its comments to the National Assembly of RS, presented them at the sessions of the Boards, and sent them to the proposer of the regulations – the Ministry of the Interior of RS.

**The Draft Law on Public Order and Peace** has been withdrawn from the legislative procedure, including the specific controversial provisions of the Law on Police, primarily those TI BiH emphasized from the beginning, i.e. an attempt to prescribe that an **undercover investigator** can be every individual (not only an authorized official) although this was not in compliance with the

Criminal Procedure Code. TI BiH believes this is contrary to the principle of subsidiarity which refers to the special investigation activities (which have a separate treatment and must be defined through criminal law norms). Undercover investigators are individuals who can infiltrate into criminal organizations in order to detect criminal offenses, so it would be dangerous legislative adventure prescribe that every individual can do it, particularly through the police regulations which provided complete discretion in decision-making to the police structures. After numerous advocacy activities, meetings and public reactions of the civil society, the majority of disputed provisions proposed by the Ministry of the Interior of RS, was withdrawn.