

**Permanent Mission of Bosnia and Herzegovina
to the United Nations
in Geneva**

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202-03-37- 511/2012**

The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, and referring to the communication of the Special Rapporteur on the situation of human rights defenders, pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 16/5 has the honor to transmit response of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations at Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.



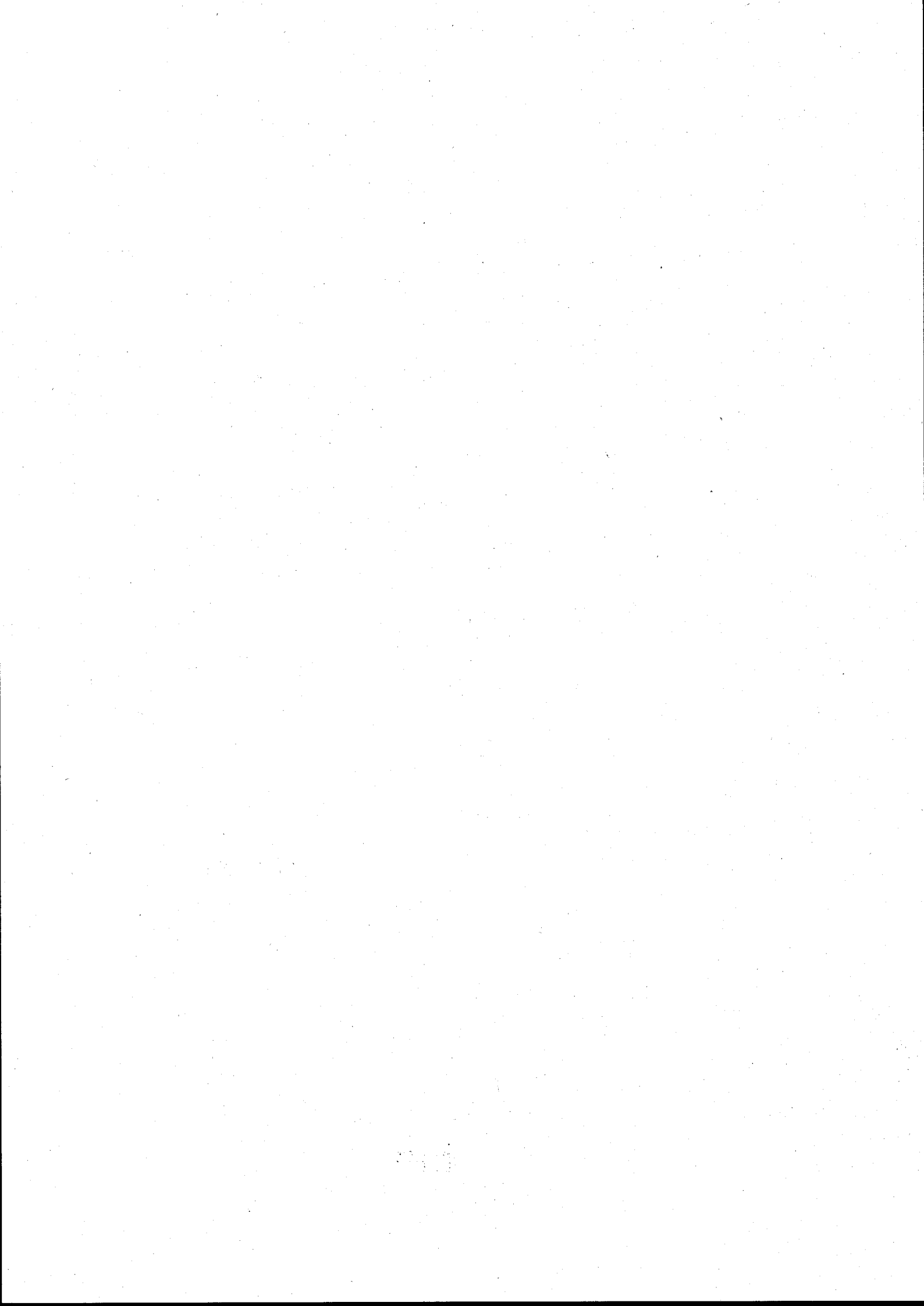
Geneva, 29 June 2012

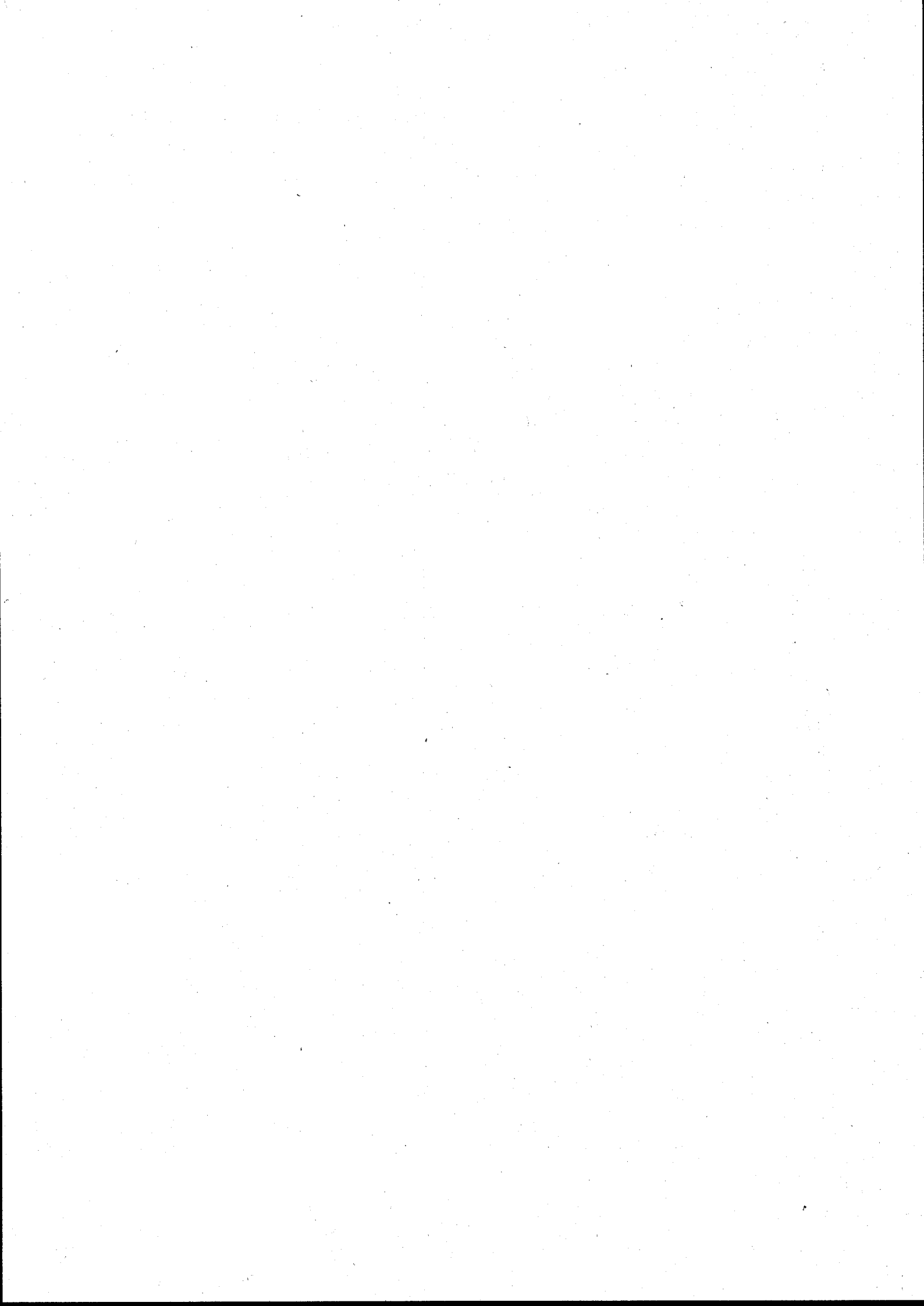
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OHCHR REGISTRY

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FROM : MLJPI

FAX NO. : 387 33 206655

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QUESTION:

- b) Please indicate how those laws and regulations are in line with international human rights standards, including but not limited to, the Declaration on Human Rights Defenders.

ANSWER:

Protection and enjoyment of the right to freedom of expression are provided for in the Universal Declaration of Human Rights (Article 19) and the European Convention on Human Rights and Fundamental Freedoms (Article 109) and guaranteed by the Constitution of Bosnia and Herzegovina and the laws above.

The Law on Communications establishes basic regulatory principles applied in the broadcasting sector whose implementation the Communications Regulatory Agency is in charge of. Pursuant to Article 4 of the Law, the regulatory principles of broadcasting include "protection of freedom of expression and diversity of opinions while respecting generally accepted standards of conduct, non-discrimination, fairness, accuracy and impartiality."

The laws prohibiting defamation in the Entities: the Federation of Bosnia and Herzegovina (hereafter: the Federation) and the Republika Srpska (hereafter: RS) govern acceptable restrictions of freedom of expression with regard to civil liability for damage caused to the reputation of a natural or legal person making or disseminating false allegations, while acknowledging that "The right to freedom of expression, guaranteed by the Constitution and the European Convention on Human Rights and Fundamental Freedoms is one of the foundations of any democratic society, especially when it comes to matters of political and public interest.

Brcko District authorities (hereafter: BD) have not enacted any separate laws or regulations that are aimed solely at facilitating or protecting activities and work of human rights defenders.

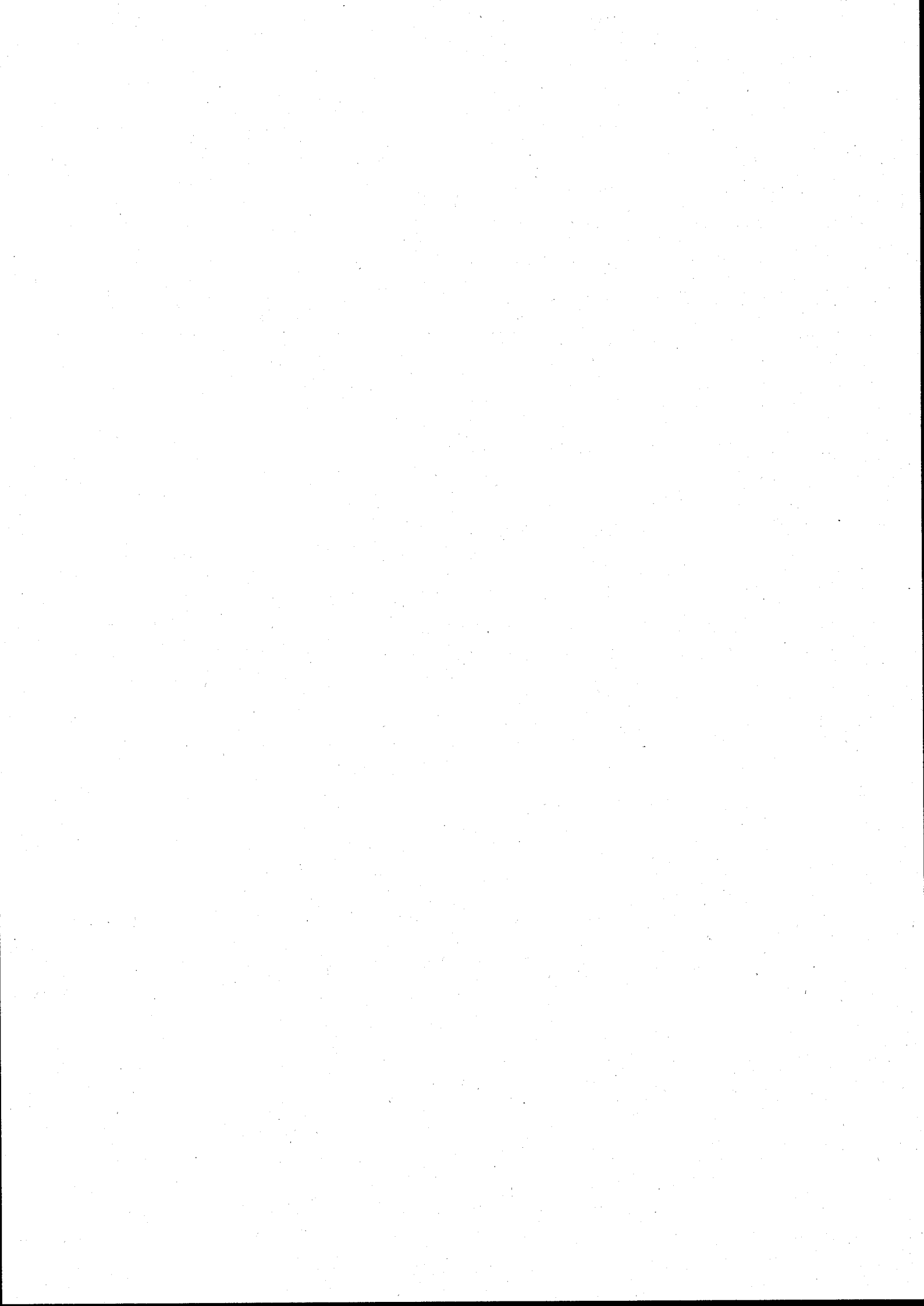
QUESTION:

- c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal actions against and/or prosecution of human rights defenders for undertaking their legitimate work.

ANSWER:

Article 2 of the Criminal Code of Bosnia and Herzegovina (hereafter: BiH CC) provides that "Criminal offences and criminal sanctions shall be prescribed only for acts threatening or violating personal liberties and human rights, as well as other rights and social values guaranteed and protected by the Constitution of Bosnia and Herzegovina and international law in such a manner that their protection could not be realized without criminal justice compulsion."

So this is a provision that defines the purpose of criminal law, which consists of the protection of certain individual and common values and determining the manner to achieve that protection. Thus, in addition to the values guaranteed and protected by the Constitution of Bosnia and Herzegovina, values guaranteed by international law must be respected, too. In this way, the guaranteeing function of criminal law is expressed, which is a fundamental principle of modern criminal law, which includes comprehensive insurance of legality in



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the area of criminal law. It is an extremely important function prescribed by Article 3 of BiH CC, which safeguards freedoms and human rights, protection against arbitrary prosecution, adjudication and punishment.

Human rights and freedoms in RS are defined in the RS Constitution, as the highest legal document and a source of legal standards in RS (Chapter II, points 10, 16, 25, 30 and 32). The protection of human rights is accomplished through judicial protection as defined in Article 48 and further elaborated in Article 49 of the Constitution of the Republika Srpska, which is consistent with Articles 8 - 11 of the European Convention on Human Rights and Freedoms. It follows that all laws of the RS, including the Law on Public Peace and Order and the Law on Public Assembly, are in line with provisions of Title II of the Constitution of RS and that there are no legal provisions that discriminate people or in any way threaten human rights of all citizens, including human rights defenders.

BD laws do not contain restrictive standards that may be applied in order to interfere with the work of human rights defenders. Besides other provisions, the right to freedom of expression and opinion is guaranteed in the Charter of BD ("Official Gazette of BD" no. 2/10), its Title II - Human Rights placing the European Convention on Human Rights and Fundamental Freedoms above all BD laws and ordaining that in their proceedings BD courts should take into account case law of the European Court of Human Rights. In addition, the freedom of public assembly of citizens, guaranteed by the Constitution and Charter of BD and subject to restrictions only in clearly specified situations, can be put in the context of protection of freedom of opinion and expression.

2.

QUESTION:

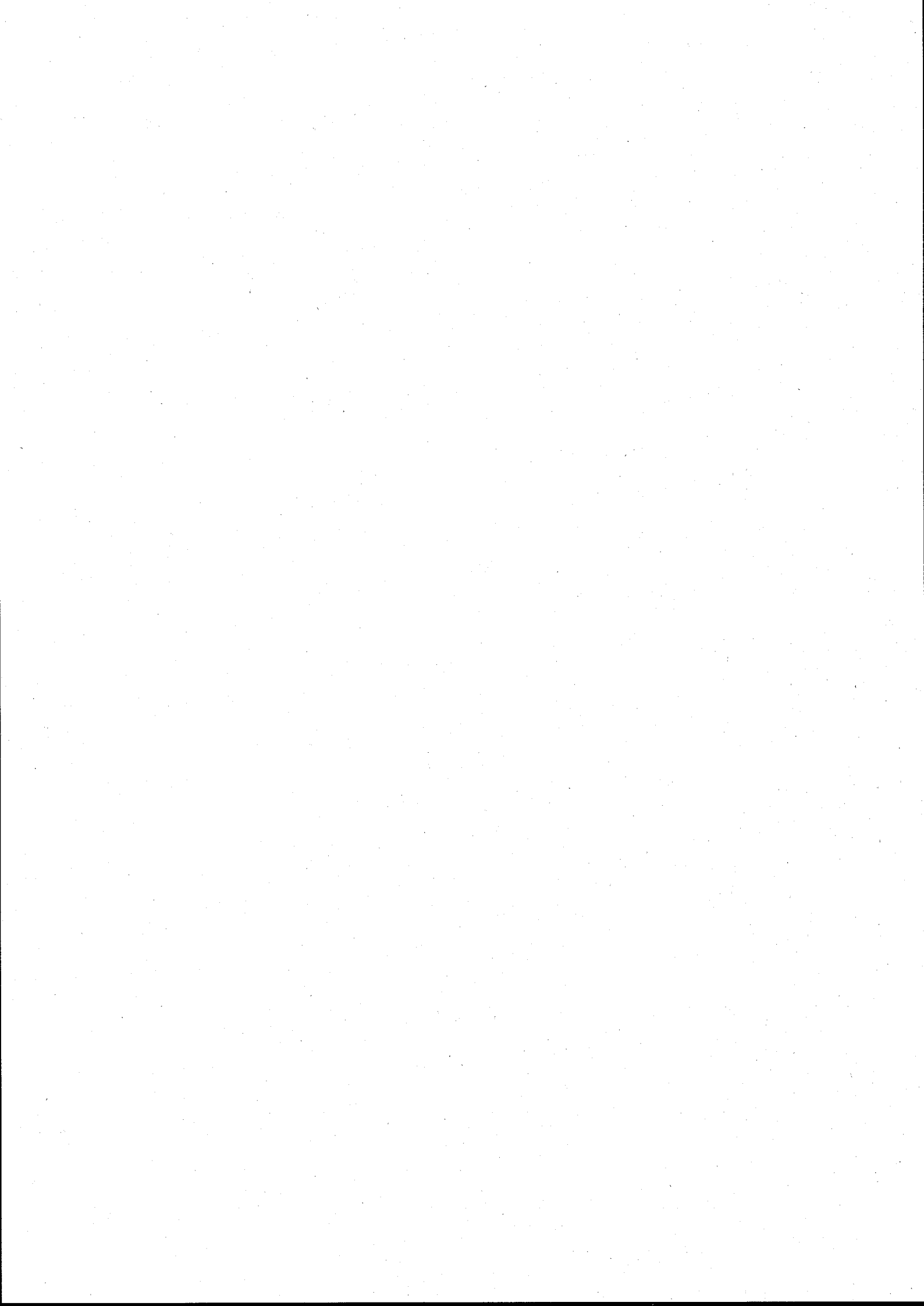
- a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

ANSWER:

Article II, paragraph 2 of the Constitution of BiH guarantees direct application and supremacy of the European Convention on Human Rights and Fundamental Freedoms and Protocols thereto in the legal system of Bosnia and Herzegovina and thereby they have supremacy over national security laws.

In addition, Articles 15 and 16 of the Law on Ombudsman for Human Rights of BiH guarantees independence and immunity from prosecution for human rights defenders carrying out their legitimate work.

Article 15 of the Law provides that: "An Ombudsman shall be under no orders. Within the framework of his or her constitutional and legal competencies, Ombudsman shall not be given any instructions by any authority. Each Ombudsman shall act independently, on the basis of the Institution's own criteria and in accordance with Article 3." Article 16(1) provides that "An Ombudsman shall not be prosecuted, subjected to investigation, arrested, detained or tried for actions expressed or for any decision taken in the exercise of powers associated with his or her duties. 2. In all other circumstances, an Ombudsman may not be arrested or detained, save in case of *flagrante delicto* relating to an offence punishable by a term of imprisonment longer than five years. Paragraph 3: Decisions to prosecute, to detain or to refer an Ombudsman to a court charged with a criminal offence shall be taken only for offences punishable by a term of imprisonment



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longer than five years and only after both the House of Representatives of Bosnia and Herzegovina and the House of Peoples of Bosnia and Herzegovina have decided so.

A court at the level of Bosnia and Herzegovina solely shall be competent to try him or her.
Paragraph 4: Persons holding any office or appointment in the Institution shall not be prosecuted, subjected to investigation, arrested, detained or tried for any action, opinion or decision taken while performing their duties upon Ombudsman's instructions. In all other circumstances, whenever persons holding any office or appointment in the Institution are arrested, detained or tried, the prosecuting authorities shall duly and promptly inform the Institution thereabout."

QUESTION:

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

ANSWER:

The Constitution of Bosnia and Herzegovina, Article II Human Rights and Fundamental Freedoms determines that "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms." Further, Article II 3, paragraphs g) and h), of the Constitution of Bosnia and Herzegovina provides for freedom of thought, conscience, religion and expression.

Further, Chapter XV of BiH CC titled "Criminal Offences Against Freedom And Rights Of Individuals And Citizens"(entity and BD laws have been brought in line with this) prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any grounds. In terms of this crime, denying or restricting rights involves preventing citizens from exercising their rights under the Constitution, laws or regulations.

3.

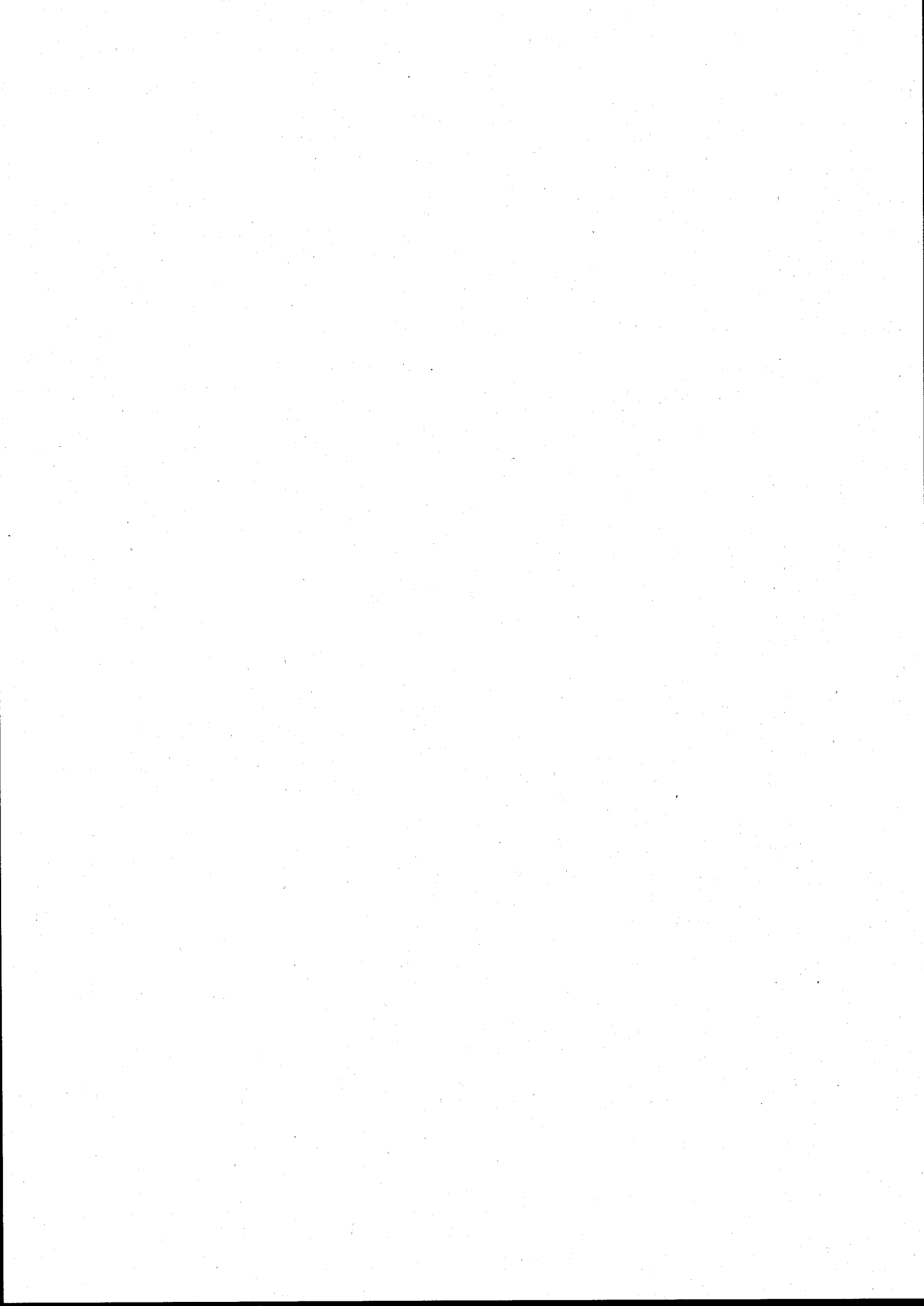
QUESTION:

a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

ANSWER:

The aspect of international criminal law and international human rights law, which is well developed, has a remarkable influence on the national criminal law, especially procedural codes. This influence is an integral part of the internationalization of the minimum standards of protection of fundamental rights and freedoms. In this regard, the international protection of human rights complements the picture of BiH criminal legislation and changes in the system of criminal law, criminal procedure and the judiciary of BiH since 2003 (when radical reforms were introduced and have been constantly monitored and extended ever since) mostly meet international standards. When it comes to criminal law, in Bosnia and Herzegovina, the legislator has certainly fulfilled the obligation that standards should be clear, precise, short and accessible to the public.

Article 16, paragraphs 1, 2, 3 and 4 of the Law on Ombudsman for Human Rights of Bosnia and Herzegovina guarantees immunity to human rights defenders from prosecution and ensures that they are not discriminated against in the administration of justice, whether



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through the imposition of disproportionate punishments, unreasonable delays in criminal or other proceedings or any other means.

In addition, the Criminal Procedure Code incorporates institutes, concepts and principles that guarantee all citizens equality before the law and a quick and fair trial, such as: the principle of legality, the presumption of innocence, *in dubio pro reo*, *ne bis in idem*, the right to defense, legality of evidence, the right to compensation and rehabilitation, the right to trial without delay, accusatory principle, principle of legality of criminal prosecution.

Pursuant to the Law on BD Police, the police are entrusted with the protection of human rights and freedoms guaranteed by the Constitution and the Charter of the Brcko District. In this regard, the police ensure that all human rights and freedoms are recognized and respected by all in the BD entire territory and, through various activities, support the work of organizations and associations dealing with the protection and promotion of human rights. In the past, the police had no objections to or comments on their work when it comes to human rights defenders; on the contrary so far we have been repeatedly praised and we have been awarded a variety of awards and acknowledgments.

QUESTION:

- b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handling down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

ANSWER:

The aim of criminal proceedings in BiH is directed towards the idea that procedural rules should ensure that no innocent person be convicted and that an offender receives a criminal conviction under the conditions prescribed in the Criminal Code and other laws of Bosnia and Herzegovina that define criminal offenses and following a statutory procedure. The former applies, therefore, to protection of innocent people from unjust conviction and the latter applies to the efficiency of criminal prosecution of perpetrators of criminal offenses within a statutory framework.

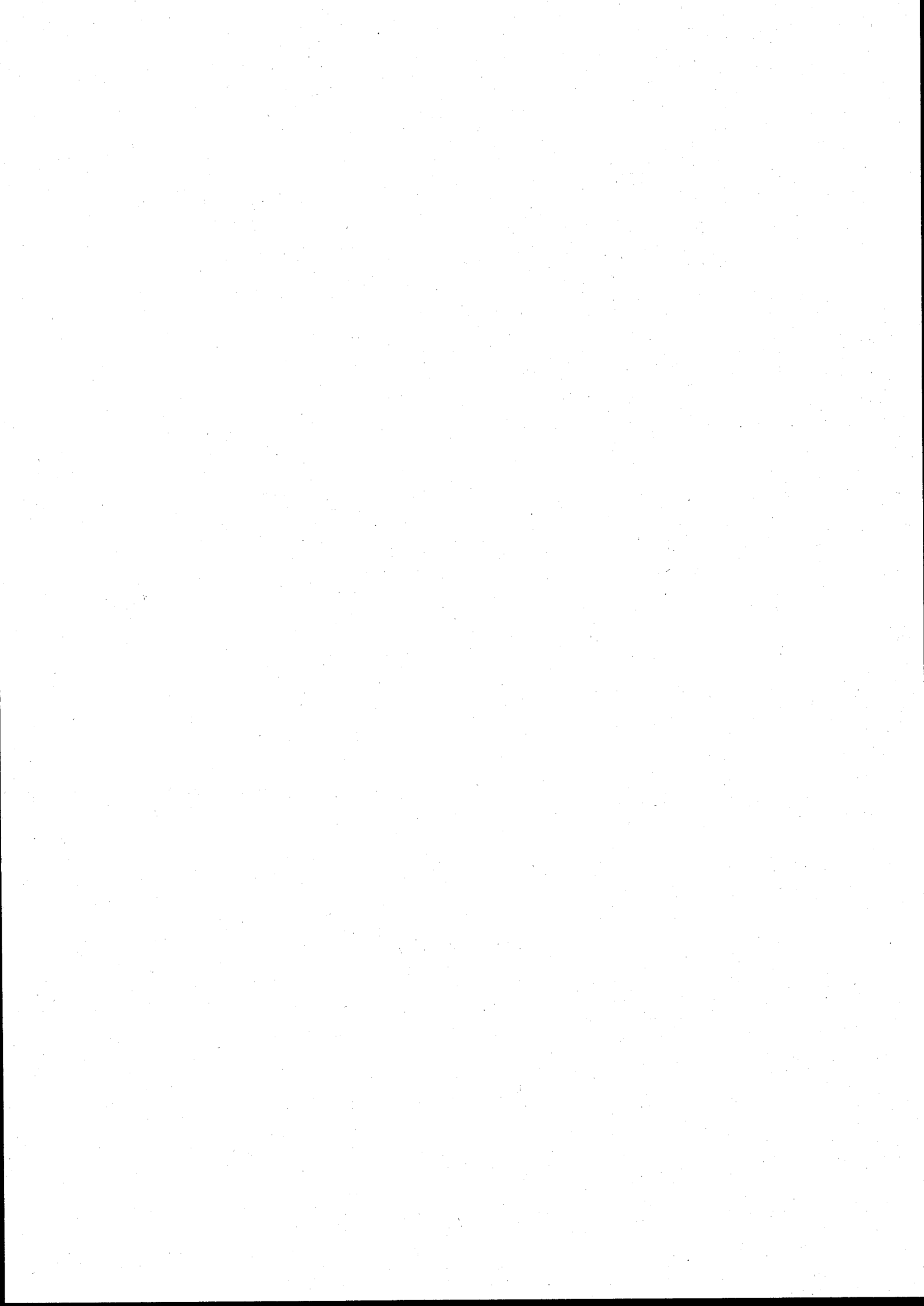
Bosnia and Herzegovina ensures efficient criminal proceedings through amendments to criminal legislation, bringing provisions and measures that enable prosecution authorities to follow (new) trends in the fight against crime and unhindered actions so that the goal of the criminal proceedings can be achieved in the fastest and most efficient fashion and, on the other hand, ensures a tendency to protect human rights and freedoms, without arbitrariness and encroachment on fundamental human rights and freedoms.

4. **QUESTION:**

- a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organizations. Please cite the names of any such laws or regulations in full.

ANSWER:

BiH has the Law on Associations and Foundations of Bosnia and Herzegovina ("BiH Official Gazette" 32/01, 42/03, 63/08 i 76/11) (entity laws on associations and foundations harmonized), governing the establishment, registration, internal organization and



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Resolution of associations and foundations.

Further, BiH has adopted the Rules on Keeping the Register of Associations and Foundations of Bosnia and Herzegovina and Foreign and International Associations and Foundations and Other Non-profit Organizations ("BiH Official Gazette" No. 44/10). These Rules prescribe the procedure for registration in the Register of Associations and Foundations of Bosnia and Herzegovina and Foreign and International Associations and Foundations and Other International Organizations, the method of application and an application form for registration of changes in the Register, the form and content of the Register and the manner of its keeping and storage of the Register and collection of documents, issuing of certificates from the Register and other issues important for data entry and keeping of the Register, in accordance with the Law on Associations and Foundations Bosnia and Herzegovina.

The Brcko District of BiH has no specific law governing only the matter of non-governmental organizations.

When it comes to non-governmental organizations and their work, the Law on Associations and Foundations of BD ("BD Official Gazette" 12/02, 19/07) is in effect in the territory of

QUESTION:

- b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

ANSWER:

Article II 3. i) of the Constitution of Bosnia and Herzegovina provides for freedom of peaceful assembly, so laws and regulations on associations and foundations are fully in line with the Constitution of BiH. The Constitution of Bosnia and Herzegovina, Article II Human Rights and Fundamental Freedoms, paragraph 2 International Standards determines „The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply fully in Bosnia and Herzegovina. These shall have priority over all other law.“

Therefore, any association or foundation that fulfils statutory requirements may be incorporated in BiH, i.e. there is no special obstacle or advantage for human rights defenders.

5.

QUESTION:

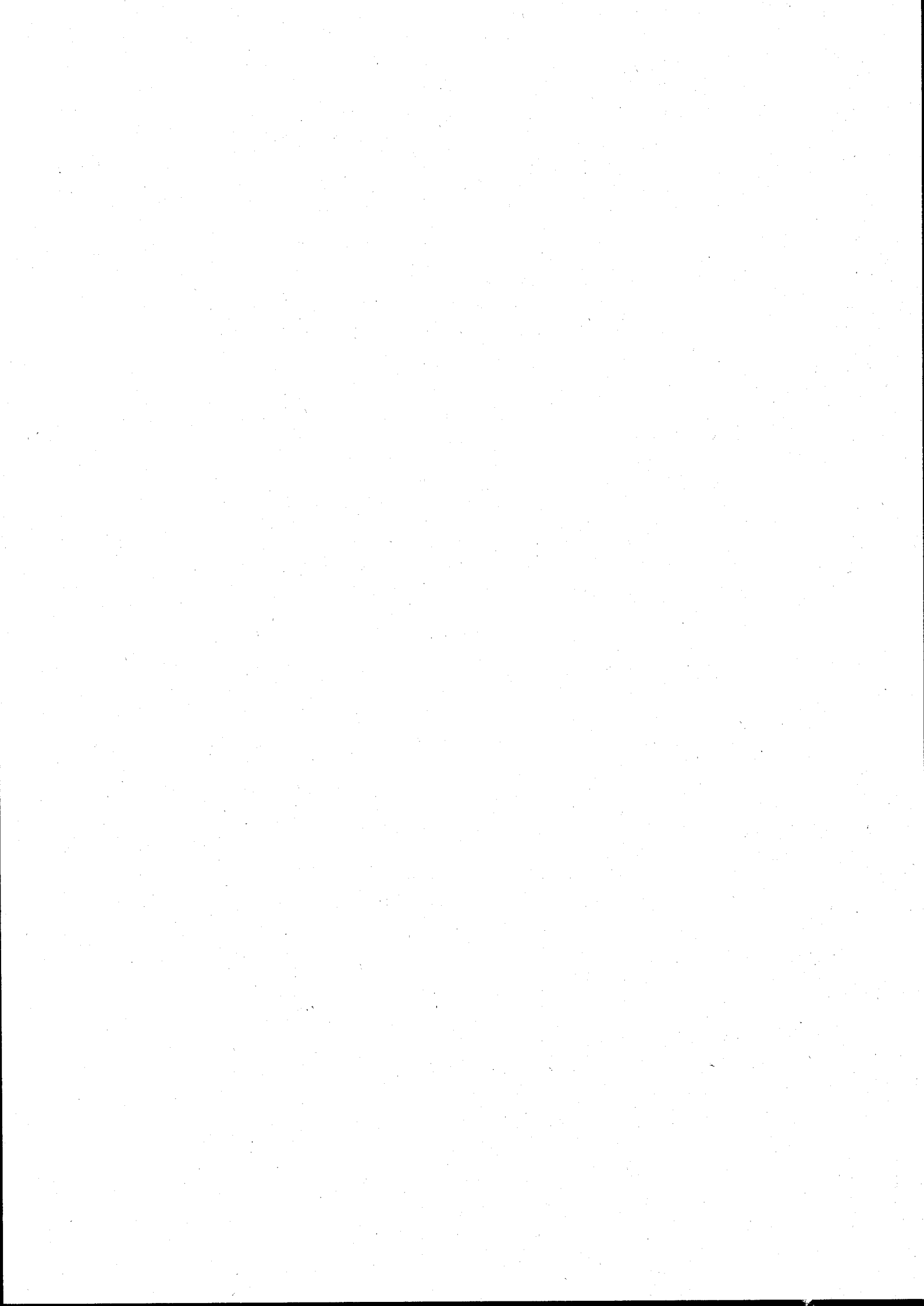
- a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

QUESTION:

-) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

ANSWER:

Article 8 of BiH CC provides in paragraph (1): "The criminal legislation of Bosnia and



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Herzegovina shall apply to anyone who perpetrates criminal offence within its territory."

Accordingly, provisions of this article determine the validity or application of the criminal legislation of BiH on the territorial principle as the starting and basic principle of jurisdiction of criminal legislation. According to this principle, the criminal legislation applies to anyone who commits criminal offense in the territory of BiH regardless of the nationality of the offender.

Offender under this article may be any person. The judiciary, as one of the three branches of the *trias politica* principle in Bosnia and Herzegovina, is made up of judicial bodies. The courts are independent and exercise judicial powers independently and, in exercising their powers, are human rights safeguards. The judicial authorities protect constitutional and statutory rights, ensure consistent application of law and equality before the law.

Advocating for human rights in the BD is not tied to strict procedures, but a non-governmental organization is required to comply with the law above in order to get the status of a legal person. It follows that human rights defenders will not be prosecuted unless they go out of the scope of his/her activities and clearly and unambiguously start violating generally accepted standards of behavior.

6.

QUESTION:

Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards,

ANSWER:

Article 28, paragraphs 1, 2, 3 and 4 of the Law on Ombudsman for Human Rights of Bosnia and Herzegovina provides for procedures of the Ombudsman in cases where the investigation or documents are classified as confidential or secret. In such cases, the Ombudsman shall apply the requisite discretion to these documents and shall not make them available to the public.

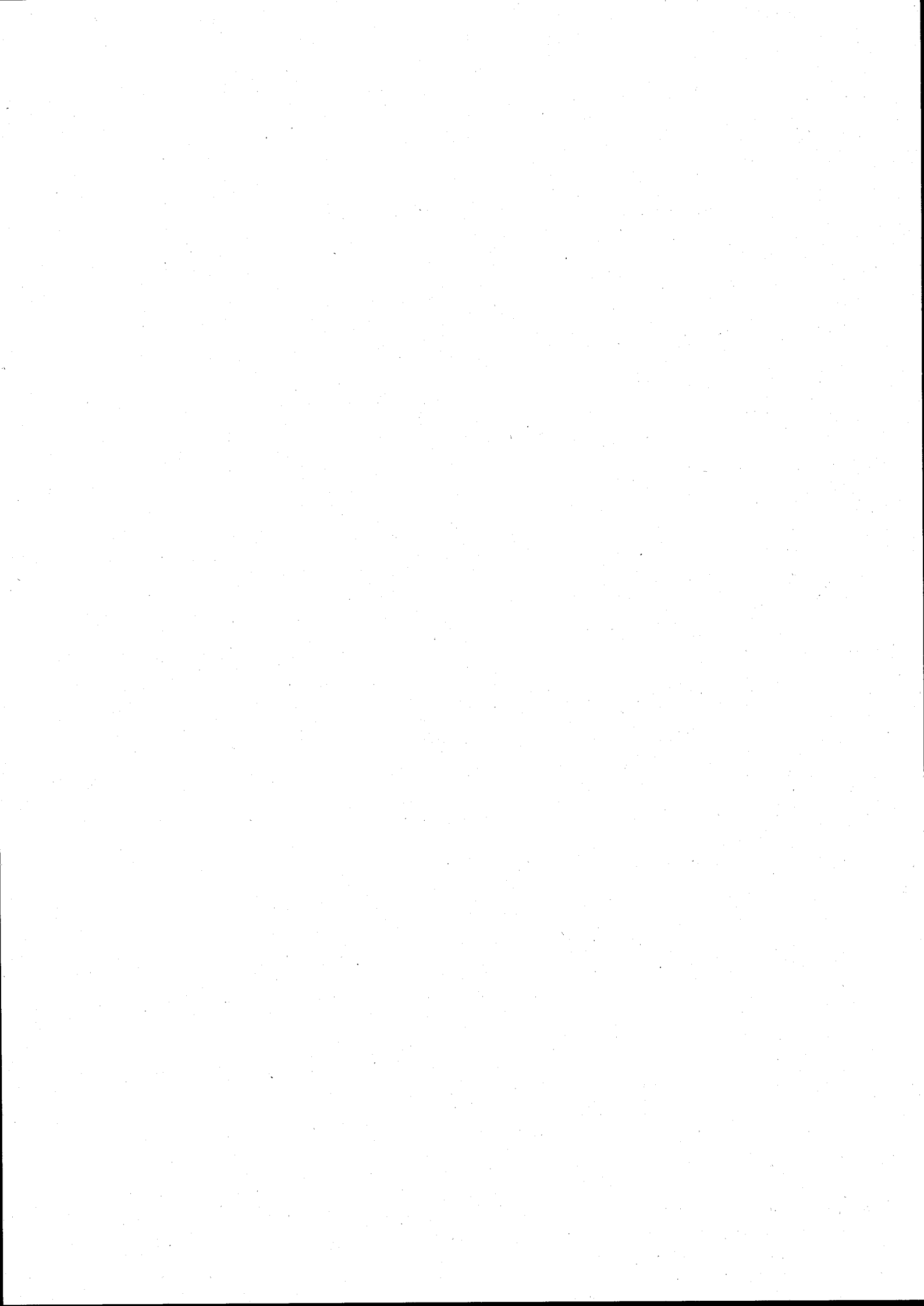
In addition, in accordance with the Law on Free Access to Information, the State Investigation and Protection Agency issued a Guide for Access to Information of the State Investigation and Protection Agency. The Guide enables applicants to familiarize themselves with procedures of exercising the right of access to information held by and under the control of the Agency, includes a written application form for access to information and refers to the Agency's Index Register and how to access it.

The police are consistent in applying the Law on Free Access to Information Act, the Law on Data Protection and the Law on the Protection of Classified Information of BiH and has incorporated them in rules and procedures it follows and reached required standards when it comes to this area. In this connection, the police have received no objections about their activities lodged by human rights defenders.

7.

QUESTION:

Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion



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and expression of human rights defenders.

ANSWER:

With constant monitoring of standards and regulations in this area and training and performance enhancement, the police deliver a proactive approach and work in the field of human rights and freedoms, which is an assumption that in the event of a violation they will immediately take measures and actions within their competences.

QUESTION:

- 1) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

ANSWER:

Law on Free Access to Information provides that every natural or legal person is entitled to access information held by a public body. The exception to the provision of information is possible only after completion of a public interest test/establishment whether disclosure of the information may be expected to cause substantial harm to legitimate goals of Bosnia and Herzegovina.

Laws on Protection against Defamation are devised so that the application of their provisions can ensure full freedom of expression. More specifically, they provide that, in determining liability under these Laws, a need for restricting the right to freedom of expression must be clearly identified in accordance with Article 10 (2) of the European Convention on Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights. Furthermore, by adoption of these Laws, defamation was criminalised, i.e. excluded from the group of criminal acts under earlier Criminal Code.

8.

QUESTION:

Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of each legislation in full.

ANSWER:

Answers given above in this questionnaire list all laws respecting the protection of human rights defenders.

