

# GET TO KNOW THE CONSTITUTION AND WHAT IT MEANS TO YOU

HANDBOOK FOR SECONDARY SCHOOLS

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# Get to Know the Constitution and What It Means to You

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*“A man who wants to conscientiously influence development of another man, may achieve this goal only in one way: by developing his power of thought – by teaching him to observe facts with his mind and make logical conclusions.”*

(Svetozar Marković, 1846-1875)<sup>1</sup>

Our aim is to create opportunities and situations that support and encourage students’ critical thinking. The workshops and the interactive activities offered in the Manual, are designed to improve students’ observation and logic, and develop their decision making skills.

Along the lines of Dostoyevsky, “Today no one can prevent me from doing what I want do to, but I need to ask myself whether it is a good or a bad thing?” our goal is to encourage students to ask themselves what is good for them.

Why THE CONSTITUTION? Because we are not accustomed to study it, nor are frequent opportunities presented to do so, although it greatly determines our lives. Because the constitution prescribes key issues and provides solutions that define our life course, not only as citizens and nationals, but also as individuals. Because the constitution is the supreme law of a country. Because it offers us the opportunity to participate in decision-making - hence it is important to find out HOW to do this. Because it regulates our rights and responsibilities – so we should understand WHAT those rights and responsibilities are. We expect you to add more reasons for studying the constitution to this list.

During regular classes, opportunities for study and research of the constitution are rather limited. Therefore, we assumed that there is a need to provide an opportunity to all interested individuals to understand the constitution and what it offers to them, and to do so as a part of extracurricular activities. The workshops offered in the Manual may stimulate you to create new workshop models by combining the activities given in the Manual. You may either opt for a few activities available in the Handbook, or implement them in the order proposed within the particular Module.

The choice is yours! Whatever you choose, you will not go wrong. Poor choice only means choosing not to do anything!

*The authors.*

<sup>1</sup> Svetozar Marković, Selected pages, New generation, Belgrade, 1949.

<sup>2</sup> [www.citati.blog.rs/blog/citati/fjodor-dostojevski/2010/06/.../fjodor-dostojevski](http://www.citati.blog.rs/blog/citati/fjodor-dostojevski/2010/06/.../fjodor-dostojevski)

# MODULE 1 – The historical development of constitutionality

1.1. The development of constitutional democracy (3 hours)

1.2. The development of the idea of law – Law and rules among people (2 hours)

1.3. Constitutionality in the 20th century

- The concepts of constitution and constitutionality (1 hour)

- Constitutional principles (2 hours)

## 1.1. THE DEVELOPMENT OF CONSTITUTIONAL DEMOCRACY

Through the activities presented in Module 1, you will be introduced to the historical development of the idea of law and justice in society, the first written documents which have restricted the power of rulers, and the emergence of the constitution as a legal framework for the establishment of a democratic, civil and free society. You will also get familiar with events which have influenced the development of constitutionalism, and which have subsequently guaranteed basic human rights. These documents and events have given rise to preconditions for the creation of modern constitutions. They enhanced our lives by creating equal circumstances and conditions for all people regardless of race, sex, religion and skin color.

### Theoretical framework



### The Oldest City-States

It is well known that Mesopotamia, located in the Tigris-Euphrates river system in Western Asia, is considered the cradle of the world's oldest civilizations. Together with other regions in the Ancient East, Mesopotamia witnessed the creation of city-states. These city-states created the first written law codes, drawn by the political will of their autocratic rulers.

A Law Code is defined as a normative act that in a single document **codifies** the entire law of a state. Some authors even believe that the Codes of the Ancient East city-states were more advanced from legal perspective than many codes developed in the early Middle Ages. The oldest readable scripts date back to Mesopotamia, including the oldest surviving code – Code of Ur-Nammu, adopted by the Sumerian ruler Ur-Nammu (the founder of the 3<sup>rd</sup> dynasty of Ur) around the year 2050 BC. This code is written in cuneiform on tablets, and it mostly deals with the issues of ownership and family relationships.

The most famous code of its time is certainly the Code of Hammurabi, carved in cuneiform script on a black stone tablet. Hammurabi ruled Mesopotamia from 1728 to 1686 BC. The Code consists of three parts, and the ruler Hammurabi enacted it during the last decades of his rule. In the first part of the Code, Hammurabi extensively deals with his obligations towards his nation, which are defined by gods (this is reminiscent of preambles to some modern constitutions, which sometimes refer to an individual/body that established a constitution and the date of the constitution establishment). The second part of the Code contains 282 articles that represent both legal regulations and the essence of the Code, while the third and the final part calls upon subjects to respect the law. The Code of Hammurabi contains



provisions that can be seen as an early example of modern constitutional law and could be classified under criminal law, family law, inheritance, and obligation law. These provisions relate to protecting the system of slavery of that time.

### The Egyptian civilization

Ancient Egypt has developed in the valley of the Nile River during the fourth millennium BC. The rulers of ancient Egypt dynasties were the pharaohs and they were regarded as kings. They had supreme legislative, administrative and judicial authorities (in which case administrative and judicial authorities were not separate). Since a pharaoh was the absolute personification of both divine and human power, he was considered the creator of rights. The second in command was the vizier or *tjati*, who acted as king's representative and coordinated the legal system. The duty of the vizier was established during the fourth Dynasty which lasted from ca. 2613 to 2494 BC. The first written legal document, known as the *Instruction to Tjati Rekhmire*, dates to the Ancient Egyptian Empire. The *tjati* who received this Instruction had probably served the Pharaoh Thutmose III from the 18<sup>th</sup> Dynasty. The Instruction is carved on the walls of the Rekhmire's tomb in the Egyptian ancient city of Thebes and contains directives given by the pharaoh and his council to *tjati* Rekhmire.

What follows from this Instruction is that in Ancient Egypt there was a tendency to base law and justice on the principles of impartiality, legality and fairness in the judicial processes. Furthermore, the document asserts one of key features of the government, also identified in other countries of the Ancient East - that the government is almost entirely centralized and bureaucratic. Additionally, the Pharaoh Bokhoris (720 to 715 BC) allegedly issued a voluminous law code composed of eight books (40 coils), but unfortunately this has not been preserved.

Other big and powerful states with very developed civilizations, such as India and China, will rise in similar circumstances to the Egyptian civilization. However, their impact on further development of law will be far less than that of the Babylon and the Ancient Egypt.

### Ancient Greece

According to certain conceptions the very idea of constitutionality originated from ancient times. Many historians view Ancient Greece as the cradle of modern Western civilization. The term "Ancient Greece" refers to an ancient civilization that is commonly considered to have begun in the 8<sup>th</sup> century BC at the territory of

continental Greece and the eastern Mediterranean. The ancient Greeks are credited with the establishment of the first forms of democracy and freedom of speech. Greek philosophy generated the idea of the equality of all people, and the idea of natural right that belongs to every human being. The Greek civilization exerted a powerful influence on the Roman Empire.

The basic form of political organization among ancient Greeks was the city-state - *poleis*. There were significant disparities between the state and the social administration among city-states. However, they had more or less the same religion, same language and same culture. The Lycurgan legislation was based on the codification of customs, since Lycurgan apparently believed that laws change over time, while customs are less subject to time. According to many historians, Lycurgus, in fact, did not exist, and his role in creating the Spartan laws is very controversial. Lycurgus legislation was known under the name of "Great Rhetra", which introduced into Sparta the equality of citizens before the law. This equality, of course, referred only to free citizens in Sparta, including women, who were almost equal in status to men. Most certainly, one should not dismiss the fact that the Roman society was a slave society, in which civil slaves, or *helota*, were much more numerous than the free Spartans, and constituted the main productive force of Sparta. They lived in very difficult conditions and did not have any rights.

The Athenian city-state is generally considered the first example of a system that corresponds to certain modern concepts of democratic governance. In Athens, the monarchy was abolished in 683 BC. The great legislator Solon (640-560 BC) reformed the legal system by introducing family and criminal law. Solon's laws were inscribed on wooden slabs and posted in public places. Solon himself named his own rules *EUNOMIA* ('good regulation'). However, critics of the Athenian democracy point to the fact that women, slaves and foreigners were not entitled to vote. According to some estimates, only 16% of the population had the right to vote. The Athenian democracy was a system in which the people did not elect representatives to vote on their behalf. Instead, the people voted the legislation directly.

Starting with the 5<sup>th</sup> century BC, ancient Greece witnessed an increased interest in understanding a state and the law, especially through the works of philosophers such as Plato and Aristotle, the fathers of European political thought. Aristotle (384-322 BC) is considered the first legal historian. He based his views on the city-state and studied around 158 polis. His work, "The Constitution of Athens" provides a history of the development and planning of the Athenian state, describing its constitution. It must be noted that the concept of a constitution was already used by *Plato (Laws)* and *Aristotle (Politics)*. At that time, the term was not defining a specific legal act (as we nowadays understand the term constitution), but the administration of a *polis*.

Based on this concept, in the golden age of Ancient philosophy, a concept of natural law was developed, to which modern human rights system traces its roots. It was in Ancient time that a distinction was drawn between regulations governing the government administration, and laws regulating everyday life of the citizens. This distinction marks the early beginnings of the idea of constitutional rule, i.e. the idea of constitutionalism. It presumes that the government cannot simply amend the most important laws, but needs a process, and in this way, legal stability and the stability of the system was ensured, state power was restricted, and basic rights of the subjects were protected.

## The Roman Republic and the Roman Empire

One of the most important legacies of ancient Rome is the Roman law, which refers to the legal system in the Roman Empire from its foundation (cca. 753 BC) until the death of the East Roman Emperor Justinian I in 565 BC. The Roman jurists were very practical, and, as such, avoided definitions. For this reason, they did not provide a definition of the law. The first and only codification of the Roman civil law was done in the mid-5<sup>th</sup> century BC by the adoption of the Law of the Twelve Tablets. The law was a codification of the amended customary law. It marks the



beginning of the history of the Roman private law. The Law of the Twelve Tablets was developed under the pressure of plebeians who were interested in publishing this law to prevent magistrates from applying it arbitrarily. Patricians agreed to plebeians' proposal, and, in 451 BC, the Law of the Twelve Tablets was approved and hung on the forum wall. The law contains a norm that legitimizes the right of the people to pass future laws by themselves. Immediately upon adoption of this law, the Roman Assembly began passing new laws. The Law of the Twelve Tablets has never been officially abolished.

Many legal institutions and concepts that developed as part of the Roman law form the basis of the modern legal systems. However, the Roman constitutional law does not share the same legacy, for instance regarding development of the Roman private law, for reason that the Roman private law had features of certain conservatism and dogmatism.

Legacies of the Roman law can be found in the Byzantine Law after the collapse of the Eastern Roman Empire. The Byzantine Emperor Justinian reigned from 527 to 565 AD. He held the highest legislative, executive and military power in the Roman Empire, and was the head of the church. He conducted a second codification of the Roman law in 529 AD, published as the *Codex Iustinianus*. In Byzantium, the ruler's absolute authority was restricted only by his obligation to respect fundamental laws of the Roman people, and his awareness that he was handed over authority by the people. The Byzantine law is often referred to as a post-classical phase of the Roman law.

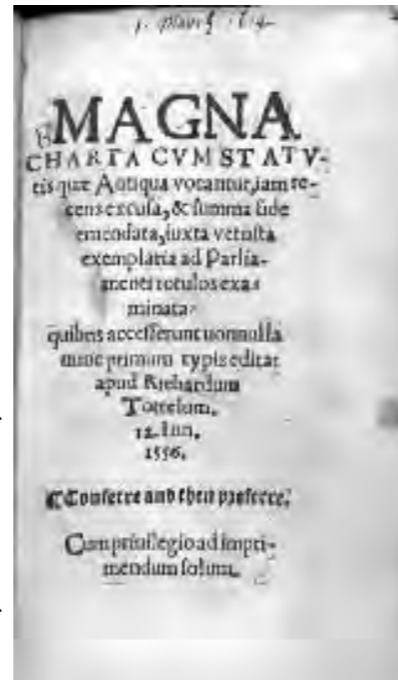
## The Middle Ages

During the Middle Ages, and especially from the 7<sup>th</sup> until the 12<sup>th</sup> century, the development of the idea of constitutionality and human rights witnessed rather difficult circumstances. The 13<sup>th</sup> century marked the beginning of a period of progress in development of legal thought through the study of Roman law.

In the Middle Ages, the church and certain religious communities called „the constitution“ the highest act that establishes their internal organization. The sum of legislation passed by the church is the canon law. The canon law contains regulations of divine origin, i.e. divine right, and the regulations of human origin

– “human rights”. It was believed that divine regulations could not be amended by the people, as opposed to the so-called “human rights” (this term should not be identified with modern understanding of human rights).

In the Middle Ages, the sharia law was instituted in the Islamic world. There are three sources of Sharia law: the Quran, the hadith (commentaries and additions to Quran based on actions of Muhammad), and the Sunnah (which is the total number of hadith). The Quran mostly consists of religious and moral norms, but it also contains provisions with features of legal norms. These provisions mainly relate to family law. In the second half of the 19<sup>th</sup> century, a codification of a large number of collected hadith was conducted and resulted in a number of codes. An additional source of Sharia is represented by the reconciled opinions of experts in the Islamic law, particularly regarding vague legal formulations in the Quran.



### Modern constitutionality

Modern constitutionality is especially based on the socio-political processes in England, North America and France in the 17<sup>th</sup> and the 18<sup>th</sup> century, but it is important to remember events that began much earlier than that. Renaissance in the 14<sup>th</sup> to 17<sup>th</sup> centuries, and Humanism, in the 18<sup>th</sup> century played an important role in the development of constitutionality. These cultural trends promoted the freedom of people and their social status in a country that should be organized on a human scale.

### Events in England

A significant stage in the development of constitutionality begins with the adoption of certain laws that, on paper, govern the topic that would later be incorporated in the first written constitutions. Namely, the period which began with the Charter of Liberties issued by the Henry I of England in 1100, which was in force around 600 years (all the way to emergence of the first written constitutions), was marked by new social processes that led to the emergence of acts of constitutional nature. Trade flourishing brought about enriching and strengthening of the feudal nobility. Strengthening and enriching of the nobility further led to their desire to limit the absolute power of rulers (monarchs), but also, on the other hand, it led to aspirations of the people to free from the governance of feudal lords, that is, to abolish their class privileges. These processes were already announcing revolutionary movements to arise in the 18<sup>th</sup> century.

Relying on the Charter of Liberties of Henry I, the Great Charter of Liberties (Magna Carta Libertatum, 1215) was adopted as one of the most important acts of that period, which preceded important social processes of the 17<sup>th</sup> and the 18<sup>th</sup> century. Most scholars view the Charter as the first sovereign written constitutional act. Divided into chapters and articles, the Charter had all features of a constitutional act. It was developed after a rebellion of the nobility - as (forced) agreement between the English King John (John the “Landless”) and the English nobility (Barons). It happened for the first time in history that one act limited the absolute power of the monarch, provided guarantee for certain property and legal privileges (nobility, clergy and economically free men), guaranteed certain freedoms and human rights (the king can not deny to anyone the right to justice), and established the independence of the church. This Charter also established a body composed of representatives of all the structures of nobility and clergy (General Council of



the Kingdom), which is a hint of the future parliament. The Charter establishes a special organ, composed of the nobility, to control the application of the Charter, i.e. control of the king in terms of his adherence to the rights guaranteed by the Charter. The Charter has had a major impact on development of constitutionalism in England and the United States.

Finally, the development of the political theory and the political philosophy in this period significantly contributed to the development of constitutionality and the issue of human rights was gradually transferred from the fields of philosophy and religion to the area of law and policy. Important ideas such as the idea that all men are equal, that authority must be fair, that the power of rulers must be limited etc., were promoted during this period. Addressing the issue of social and political order, many philosophers, historians and literary persona of that era were accepting a theory that a state is the result of the “social contract” that people enter into, hence transferring their authority to an individual or a group of people, i.e. to the state. The state, as an outcome of this social contract, becomes a means of securing peace, the rule of law, reason and legislation.

Despite major differences in their attitude, a significant contribution to development of the social contract theory was made by philosophers Thomas Hobbes (1588-1679) and John Locke (1632 to 1704), and later on Jean-Jacques Rousseau (1712-1778). Locke believed that a state must protect people’s inherent right to life, liberty and private property. These principles were embedded in subsequent written constitutions. Rousseau believed that the social contract was granting an individual his/her natural rights (right to liberty and equality), and that democracy is the best form of government that guarantees individual rights.

Another political thinker made a significant impact on the ideas of the French Revolution, and creators of the American Declaration of Independence alike: Charles-Louis de Secondat Montesquieu (1689-1755). He was a creator of the theory on the separation of the power of government, which was exposed in his work titled “The Spirit of the Law”. Montesquieu divided the powers into a legislature, an executive and a judiciary, as a basis for division of modern civil democracies. This separation of powers is encountered in the majority of the world’s constitutions<sup>3</sup>. Montesquieu believed that if the government is divided into different branches, there is a limited possibility that someone could usurp complete power.

Furthermore, Voltaire (1694-1778) made a significant contribution to latter development of the ideas of the French Revolution, through his fight for civil rights and liberties. He called for the separation of a church and a state. As more charters were adopted in England in the 17<sup>th</sup> century, they further strengthened the area of property and individual rights, and, as such, constituted a basis for later written constitutions: the Petition of Rights, 1628, that represents elaboration of the Great Charter on Human Rights; Law on Inviolability of the Citizen (Habeas Corpus Act, 1679), and the Bill of Rights (1689). Agreement of the People (1647) and the Act of Union (1707) were acts that reaffirmed the role of the Parliament of England and precisely defined role of the king.

<sup>3</sup> Brief history of human rights (<http://www.crnakutija.babe.hr/hr/kratka-povijest/>)



Despite the fact that many of the adopted acts were of constitutional nature, formal codified and written constitution of legal relevance had still not been adopted in the English-speaking world. However, although an attempt at the application of the English Instrument of Government (1653), i.e. Cromwell's Constitution, failed, many scholars believe this act to be the first sovereign written constitution. However, this document, that substantively and formally met requirements of the constitution, had not been applied since the nobility believed that, even without the constitution, they had enough powers.

During American struggle for independence, a few important acts were adopted, ("The Human Rights Catalogue", "The American Declaration of Independence", and „The Constitution of Virginia“), which are considered some of the most important documents in the area of human rights' development. The Constitution of Virginia from 1776 is usually considered the first written constitution. This constitution contained a principle of separation of powers between the legislative, executive and judicial branches of government, and advocated for the principle that the power belongs to the people. The confederal constitution was adopted in 1781, while the USA Constitution was adopted in 1787. The Constitution of the United States established a federal government, which is still in force, alongside subsequently adopted amendments. With the development of constitutionality in the USA, the constitutionality of individual human rights occurred. These rights are proclaimed unalienable and represent the core of development of the catalogue of human rights, as follows:

- The right to life, liberty and private property;
- Freedom of assembly and freedom of the press;
- Freedom of movement and the right to petition;
- The right to legal protection;
- The right to vote.

In addition to affirmation of the human rights, the development of the constitutionality of the U.S.A. proclaimed the principle of separation of powers, the principle of the superiority of the Constitution over legislature, and the right of the courts to decide on the constitutionality of laws.

## Events in France

At the same time, the French Revolution, as one of the most important events in history, inclined towards the abolition of the old and establishment of the new bourgeoisie order. On the basis of the French Revolution a number of institutes, important for further development of constitutionality, were introduced, such as: the introduction of the rule of law, establishment of a system of accountability, in particular of accountable government, and the principle of equality of law for all. Furthermore, the French Revolution made a significant contribution to the promotion of the idea of separation of powers, popular sovereignty, and human rights and

freedoms. The French Declaration of the Rights of Man and of the Citizen (1789) is one of the most important acts that affirmed human rights and freedoms, and included matters relating to the organization of government. Containing provisions of the constitutional nature, the Declaration later became an integral part of the latter French Constitution in the form of its Preamble. The Declaration was developed on the ideas of the French Revolution, thus defining the principles of popular sovereignty ("No body or individual may exercise any authority which does not proceed directly from the nation"), and promoting the principles of equality and liberty. The Declaration strongly affirmed the importance of the constitution by stating, "society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." The Declaration adopted the principles of the separation of powers. Its importance is particularly reflected in its impact on the spread of the idea that human rights are "valid for all time."

Events in France in this period played an important role in the development of the rights of women, who exerted considerable influence in social processes both culturally and politically. However, women were prevented from applying the proclaimed rights. In response to this situation, a French writer Olympe de Gauges wrote a separate document - "Declaration of the Rights of Women and Citizens", trying to give a general dimension of the human rights contained in the Declaration of 1789. However, her political engagement was not accepted, and she was executed by guillotine in 1793.

*The Declaration of the Rights of Man and of the Citizen* from 1789 became a preamble of the constitution of the Fifth Republic adopted in 1958. Although this constitution preserved a constitutional monarchy, powers of the king were substantively limited. This constitution introduced for the first time the Parliamentary immunity.

This Constitution was followed by two important constitutions – the Constitutions of 1792 and 1793 – that were not applied, but that contributed much to further development of constitutionality and democracy. In this respect, the Constitution of 1793, so called the Montagnard Constitution, was of particular importance. The Montagnard Constitution was instated by popular referendum, and, as such, became the most democratic act from that period. The Constitution of 1793 was inspired by the *Declaration of the Rights of Man and of the Citizen* (1789), proclaimed uniformity of power and popular sovereignty, prescribed assembly system, and expanded the catalogue of human rights by introducing new social rights. The importance of this constitution lies in the fact that it affirmed the principle of development of the legal state. Similar processes of the development of constitutionality were ongoing in other countries. Among the acts that govern the constitutional matters, one should underline Dušan's Code (1349), which was enacted in feudal Serbia, containing provisions of constitutional character.

\* \* \* \* \*

## OBJECTIVES

Students will be able to:

- Recognize and explain the difference between a constitution and other laws;
- Understand historical circumstances that influenced the constraints of power;
- Identify and explain the circumstances under which the first written laws were created;
- Compare the first written documents and critically relate to them;
- Recognize the benefits of the first written documents that relate to development of the constitutional democracy;
- Explain the value of the first written documents and their impact on the creation of modern constitutions.

**DURATION** - 135 minutes (three hours)

**MATERIALS – Worksheets** (primeval communities and slavery systems; Athens, the Roman Republic and the Middle Ages); Working material (example from England, example from the United States, example from France); Magna Carta - adapted version; the U.S. Constitution adapted version; Declaration on the Rights of Man and of the Citizen - adapted version; the BiH Constitution.

#### DESCRIPTION OF ACTIVITIES

##### Activity 1

In order to focus on the topic at hand, seek the opinion of students on the cited Article of the BiH Constitution.

- „Bosnia and Herzegovina is a democratic state, which operates in accordance with the law.” - Article I, Paragraph 2., BiH Constitution

Make a list of terms that students consider and refer to as essential to the rule of law.

**Expected answers:** *guaranteed equality of all, independent judiciary, fair procedures, individual rights are protected, the government is separated, the media are free and open, etc.*

##### Activity 2

The teacher poses a question: **Was it always this way? Have the states always functioned in accordance with the law?**

After a discussion on this issue, the teacher summarizes the previous activity and introduces students to the next activity (what was the progress in development of constitutionality if one follows the timeframe from the primeval community to creation of the modern constitution).



Divide students in four working groups - each group gets one worksheet: the primeval community and slavery systems; Athens, the Roman Republic and the Middle Ages (the material in the appendix). Students are tasked to research the rule of law and existence of the law in a given time period. Working group conclusions should be noted on a flipchart paper in bullet points, and presented to other groups and the teacher in 3 minutes.

After working groups' presentations follows discussion and comments. The teacher may stimulate the discussion by posing the following questions: “Were the rights of citizens equal in different time periods throughout history?”, “Were fair procedures established in different time periods?”, etc., and encourage students to ask each other questions that relate to the rule of law and existence of legislation in given time periods.

**Note:** It is recommended to use a technique of cooperative learning – *jigsaw puzzle* – in implementing this activity.

##### Activity 3

Based on comments and discussions from the previous activity, induce students to understanding and conclusion that certain historical events influenced development of modern constitutions, and that they initiated a number of developmental processes of constitutional democracy in Europe and in the world. Divide students again into working groups and hand to each working group one piece of text/handout which explains historical circumstances and events that have influenced creation of the first constitutions. The groups are tasked to take note of the aforementioned events.



The first group: **the case of England**; second group: **the case of America**; third group: **the case of France**.

The first group: **the case of England**; second group: **the case of America**; third group: **the case of France**.

#### Questions for comprehension check

- What events influenced the creation of written documents that restricted the autocracy of the individual, the functions of the government, and guaranteed human rights and freedoms?
- Give examples from your working material!
- In what way have these circumstances influenced the writing of contemporary constitutions?

Groups note down the answers, present them and answer questions posed by students from other working groups.

##### Activity 4

For purpose of conclusion and comprehension check of the presented material, present to students, who remain seated within already formed working groups, three key documents that influenced development of constitutional democracy: Magna Carta, USA Constitution, *Declaration of the Rights of Man and of the Citizen* (adopted version).



Students will determine in which way, and within which specific articles, these historic documents protect the rights of man, restrict the government, and guarantee the freedom of denomination and equality before the law. Write down the answers on the blackboard.

**IN WHICH WAY THESE THREE DOCUMENTS:**

**A. protect human rights**

Magna Carta	USA Constitution	Declaration of the Rights of Man

**B. restrict the government and the rule of an individual**

Magna Carta	USA Constitution	Declaration of the Rights of Man

**C. guarantee freedom of denomination**

Magna Carta	USA Constitution	Declaration of the Rights of Man

WERE PEOPLE IN THE COUNTRIES, IN WHICH THE DOCUMENT WERE CREATED THAT WERE CRUCIAL FOR DEVELOPMENT OF CONSTITUTIONAL DEMOCRACY, EQUAL BEFORE THE LAW? LIST AN ARTICLE that relates to this right!

Magna Carta	USA Constitution	Declaration of the Rights of Man

**Activity 5**

This activity provides an opportunity to utilize what has been learned so far in the module.

Share with each student ballot papers to vote, and answer questions that follow, which relate to extent to which the BiH Constitution guarantees mentioned rights. After posing a question ask the students to vote, and then allow them to defend their position.  
***Insist on individual opinions of students and their arguments for defense of their attitude!***



**A. QUESTIONS**

1. Does BiH need to amend its Constitution in order to oblige every citizen to be committed to general principles and the common good?
2. Does BiH need to amend the Constitution in order for the men and women to enjoy the same rights?
3. Does BiH need to amend the Constitution in order to oblige all citizens to vote?
4. Does BiH need to amend its Constitution in order to prohibit activities that pollute the human environment?
5. Does BiH need to amend its Constitution in order to ensure that education is the right of every citizen?

**B. BALLOT PAPER**

Question	NO	YES	BUT WITH MORE RESTRICTIONS
Question 1	NO	YES	BUT WITH MORE RESTRICTIONS
Question 2	NO	YES	BUT WITH MORE RESTRICTIONS
Question 3	NO	YES	BUT WITH MORE RESTRICTIONS
Question 4	NO	YES	BUT WITH MORE RESTRICTIONS
Question 5	NO	YES	BUT WITH MORE RESTRICTIONS

**Worksheet 1.****PRIMEVAL COMMUNITY AND THE SLAVERY SYSTEM** (*The Code of Hammurabi, Egyptian civilisation*)

In the primeval communities there were established patterns of human behavior that governed social relations, i.e. customs. The customs are defined as rules of behavior that have been created by long-term repetition of certain human activities and procedures. Such customary rules of behavior continue to exist in the first states, and gradually grow into legal norms. The most famous code of its time is certainly the Code of Hammurabi, carved in cuneiform script on a black stone tablet. Hammurabi ruled Mesopotamia from 1728 to 1686 BC. The Code consists of three parts, and the ruler Hammurabi enacted it during the last decades of his rule. In the first part of the Code, Hammurabi extensively deals with his obligations towards his nation, which are defined by gods (this is reminiscent of preambles to some modern constitutions, which sometimes refer to an individual/body that established a constitution and the date of the constitution establishment). The second part of the Code contains 282 articles that represent both legal regulations and the essence of the Code, while the third and the final part calls upon subjects to respect the law. The Code of Hammurabi contains provisions that can be seen as an early example of modern constitutional law and could be classified under criminal law, family law, inheritance, and obligation law. These provisions relate to protecting the system of slavery of that time.

Ancient Egypt has developed in the valley of the Nile River during the fourth millennium BC. The rulers of ancient Egypt dynasties were the pharaohs and they were regarded as kings. They had supreme legislative, administrative and judicial authorities (in which case administrative and judicial authorities were not separate). Since a pharaoh was the absolute personification of both divine and human power, he was considered the creator of rights. The second in command was the vizier or *tjati*, who acted as king's representative and coordinated the legal system. The duty of the vizier was established during the fourth Dynasty which lasted from ca. 2613 to 2494 BC. The first written legal document, known as the *Instruction to Tjati Rekhmire*, dates to the Ancient Egyptian Empire. The *tjati* who received this Instruction had probably served the Pharaoh Thutmose III from the 18<sup>th</sup> Dynasty. The Instruction is carved on the walls of the Rekhmire's tomb in the Egyptian ancient city of Thebes and contains directives given by the pharaoh and his council to *tjati* Rekhmire.

What follows from this Instruction is that in Ancient Egypt there was a tendency to base law and justice on the principles of impartiality, legality and fairness in the judicial processes. Furthermore, the document asserts one of key features of the government, also identified in other countries of the Ancient East - that the government is almost entirely centralized and bureaucratic.

**Worksheet 2****ATHENS**

The basic form of political organization among ancient Greeks was the city-state - *poleis*. There were significant disparities between the state and the social administration among city-states. However, they had more or less the same religion, same language and same culture. The Lycurgan legislation was based on the codification of customs, since Lycurgan apparently believed that laws change over time, while customs are less subject to time. According to many historians, Lycurgus, in fact, did not exist, and his role in creating the Spartan laws is very controversial. Lycurgus legislation was known under the name of "Great Rhetra", which introduced into Sparta the equality of citizens before the law. This equality, of course, referred only to free citizens in Sparta, including women, who were almost equal in status to men. Most certainly, one should not dismiss the fact that the Roman society was a slave society, in which civil slaves, or *helota*, were much more numerous than the free Spartans, and constituted the main productive force of Sparta. They lived in very difficult conditions and did not have any rights.

The Athenian city-state is generally considered the first example of a system that corresponds to certain modern concepts of democratic governance. In Athens, the monarchy was abolished in 683 BC. The great legislator Solon (640-560 BC) reformed the legal system by introducing family and criminal law. Solon's laws were inscribed on wooden slabs and posted in public places. Solon himself named his own rules EUNOMIA ("good regulation"). However, critics of the Athenian democracy point to the fact that women, slaves and foreigners were not entitled to vote. According to some estimates, only 16% of the population had the right to vote. The Athenian democracy was a system in which the people did not elect representatives to vote on their behalf. Instead, the people voted the legislation directly.

The concept of a constitution was already used by *Plato (Laws)* and *Aristotle (Politics)*. At that time, the term was not defining a specific legal act (as we nowadays understand the term constitution), but the administration of a *polis*. Based on this concept, in the golden age of Ancient philosophy, a concept of natural law was developed, to which modern human rights system traces its roots. It was in Ancient time that a distinction was drawn between regulations governing the government administration, and laws regulating everyday life of the citizens. This distinction marks the early beginnings of the idea of constitutional rule, i.e. the idea of constitutionalism. It presumes that the government cannot simply amend the most important laws, but needs a process, and in this way, legal stability and the stability of the system was ensured, state power was restricted, and basic rights of the subjects were protected. It is this step that, in a way, marks early beginnings of the idea of constitutional rule, i.e. the idea of constitutionalism.

**Worksheet 3****ROME**

One of the most important legacies of ancient Rome is the Roman law, which refers to the legal system in the Roman Empire from its foundation (cca. 753 BC) until the death of the East Roman Emperor Justinian I in 565 BC. The Roman jurists were very practical, and, as such, avoided definitions. For this reason, they did not provide a definition of the law. The first and only codification of the Roman civil law was done in the mid-5<sup>th</sup> century BC by the adoption of the Law of the Twelve Tablets. The law was a codification of the amended customary law. It marks the beginning of the history of the Roman private law. The Law of the Twelve Tablets was developed under the pressure of plebeians who were interested in publishing this law to prevent magistrates from applying it arbitrarily. Patricians agreed to plebeians' proposal, and, in 451 BC, the Law of the Twelve Tablets was approved and hung on the forum wall. The law contains a norm that legitimizes the right of the people to pass future laws by themselves. Immediately upon adoption of this law, the Roman Assembly began passing new laws. The Law of the Twelve Tablets has never been officially abolished. During the Middle Ages, and especially from the 7<sup>th</sup> until the 12<sup>th</sup> century, the development of the idea of constitutionality and human rights witnessed rather difficult circumstances. The Middle Ages in Europe were often referred to as the 'Dark Ages' and stagnation in all fields of human activity, in particular in the field of law and legal culture. The 13<sup>th</sup> century marked the beginning of a period of progress in development of legal thought through the study of Roman law. Roman jurisprudence reached its greatest degree of sophistication in Ancient world, and many legal institutions and concepts that developed as part of the Roman law form the basis of the modern legal systems. However, the Roman constitutional law does not share the same legacy, for instance regarding development of the Roman private law, for reason that the Roman private law had features of certain conservatism and dogmatism.

However, Roman approach to law in regard to development of constitutional law did not bear such fruits, as was the case, for instance, with development of the private law, for reason that Roman law also had features of certain conservatism and dogmatism.

Legacies of the Roman law can be found in the Byzantine Law after the collapse of the Eastern Roman Empire. After collapse of the Eastern Roman Empire, Roman law continued living through the Byzantine Law. The Byzantine Emperor Justinian conducted a codification of the Roman law. The Byzantine Emperor held the highest legislative, executive and military power in the Roman Empire, and was the head of the church. He reigned from 527 to 565 AD, and in 529 AD published the Codex Iustinianus, which is the codification of the Roman law.



**Worksheet 4**

**MIDDLE AGES**

During the Middle Ages, and especially from the 7<sup>th</sup> until the 12<sup>th</sup> century, the development of the idea of constitutionality and human rights witnessed rather difficult circumstances. The 13<sup>th</sup> century marked the beginning of a period of progress in development of legal thought through the study of Roman law.

In the Middle Ages, the church and certain religious communities called „the constitution“ the highest act that establishes their internal organization. The sum of legislation passed by the church is the canon law. The canon law contains regulations of divine origin, i.e. divine right, and the regulations of human origin – “human rights”. It was believed that divine regulations could not be amended by the people, as opposed to the so-called “human rights” (this term should not be identified with modern understanding of human rights).

In the Middle Ages, the sharia law was instituted in the Islamic world. There are three sources of Sharia law: the Quran, the hadith (commentaries and additions to Quran based on actions of Muhammad), and the Sunnah (which is the total number of hadith). The Quran mostly consists of religious and moral norms, but it also contains provisions with features of legal norms. These provisions mainly relate to family law. In the second half of the 19<sup>th</sup> century, a codification of a large number of collected hadith was conducted and resulted in a number of codes. An additional source of Sharia is represented by the reconciled opinions of experts in the Islamic law, particularly regarding vague legal formulations in the Quran.

**WORKING MATERIAL**

**A. An example from England (Magna Carta; Restrictions of King John)**

Trade flourishing brought about enriching and strengthening of the feudal nobility. Strengthening and enriching of the nobility further led to their desire to limit the absolute power of rulers (monarchs), but also on the other hand it led to aspirations of the people to free from the governance of feudal lords, that is, to abolish their class privileges. These processes were already announcing revolutionary movements to arise in the 18<sup>th</sup> century. In this period, new cultural trends (Humanism and the Renaissance) played an important role in development of constitutionality. These cultural trends promoted an idea of freedom of man and his social status in a country that should be organized on a human scale.

**B. An example from the USA (U.S.A. Declaration of Independence)**

During American struggle for independence, a few important acts were adopted, (“Human Rights Catalogue”, “American Declaration of Independence”, and „Constitution of Virginia“), which are considered some of the most important documents in the area of human rights development. Constitution of Virginia from 1776 is usually considered the first written constitution. This constitution contained a principle of separation of powers between the legislative, executive and judicial branches of government, and advocated for the principle that the power belongs to the people. Confederal constitution was adopted in 1781, while the USA Constitution was adopted in 1797. The Constitution of the United States established federal government, which is still in force, alongside subsequently adopted amendments. With development of constitutionality in the USA, constitutionality of individual human rights occurred. These rights are proclaimed unalienable and represent the core of development of the catalogue of human rights.

**C. An example from France (*French Revolution*)**

On the basis of the French Revolution, a number of institutes important for further development of constitutionality were introduced, such as: the introduction of the rule of law, establishment of a system of accountability, in particular of accountable government, and the principle of equality of law for all. Furthermore, the French Revolution made a significant contribution to the promotion of the idea of separation of powers, popular sovereignty, and human rights and freedoms. French Declaration of the Rights of Man and of the Citizen (1789) is one of the most important acts that affirmed human rights and freedoms, and included matters relating to the organization of government. Containing provisions of the constitutional nature, the Declaration later on became an integral part of the latter French Constitution in the form of its Preamble. The Declaration was developed on the ideas of the French Revolution, thus defining the principles of popular sovereignty: “neither body nor individual may exercise any authority which does not proceed directly from the nation. All sovereignty essentially lies with the people. Neither body nor individual may exercise any authority which does not proceed directly from the nation”<sup>4</sup>.



<sup>4</sup> Article 5 of the French Declaration on Human and Civic Rights; taken over (and adopted) from <http://www.bastabalkana.com>



#### MATERIAL FOR ACTIVITY 4

## French Declaration of Human and Civic Rights from 1789

### Article 1

Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.

### Article 2

The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.

### Article 3

The principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.

### Article 4

Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.

### Article 5

The Law has the right to forbid only those actions that are injurious to society.

### Article 6

The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents.

### Article 7

No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty.

### Article 8

The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied.

### Article 9

Every man is presumed innocent until he has been declared guilty. If it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.

### Article 10

No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.

### Article 11

Free communication of ideas and of opinions is one of the most precious rights of man; every citizen therefore may speak, write and publish freely, except what is tantamount to the abuse of his liberty in the cases determined by the law.

### Article 12

To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.

### Article 13

For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.

#### Article 14

All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration.

#### Article 15

Society has the right to ask a public official for an accounting of his/her administration.

#### Article 16

Any society, in which no provision is made for guaranteeing the rights or separation of powers, has no Constitution.

#### Article 17

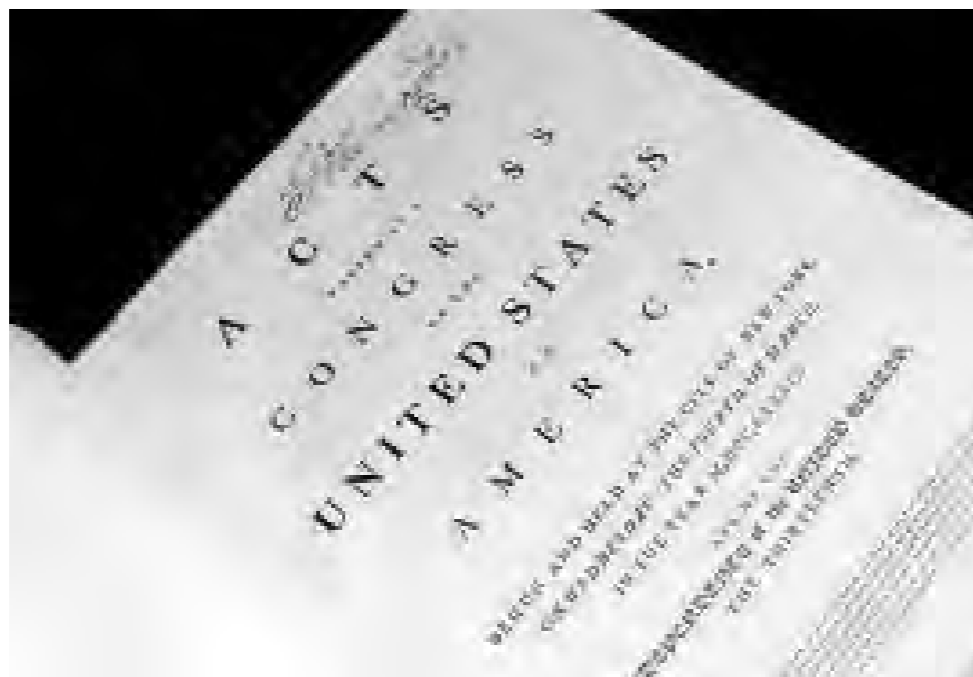
Since the right to property is inviolable and sacred, no one may be deprived thereof, unless legally ascertained public necessity obviously requires it, and just and prior indemnity has been paid<sup>5</sup>.



### Magna Carta

1. First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. We furthermore grant and give to all the free men of our kingdom, for us and our heirs in perpetuity, all the liberties written below, to have and to hold to them and their heirs, from us and our heirs in perpetuity:
2. If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight £100 at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'.
3. If, however, the heir of such a person is under age and a ward, he is to have his inheritance when he comes of age, namely at twenty-one years old, without relief and without fine.
4. The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff or to anyone else who should answer to us for the revenues, and he commits destruction or damage, we will take recompense from him, and the land will be assigned to two worthy and discreet men of the same 'fee' who will answer to us for the revenues, or to the person to whom we have assigned them.
5. The guardian, for as long as he has the guardianship of the land of such (an heir), is to maintain the houses, parks, fish preserves, ponds, mills and other things pertaining to that land from the revenues of the same land, and he will restore to the heir, when the heir comes to full age, all his land stocked with ploughs and all other things in at least the same condition as when he received it.
6. Heirs are to be married without disparagement, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to heir's next-of-kin.
7. A widow, after the death of her husband, is immediately and without any difficulty to have her marriage portion and her inheritance, nor is she to pay anything for her dower or her marriage portion or for her inheritance which her husband and she held on the day of her husband's death.
8. No widow shall be compelled to marry for so long as she wishes to live without a husband, provided that she gives surety that she will not marry without royal consent.
10. If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.
12. No 'sausage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter.

<sup>5</sup> Taken over from <http://www.bastabalkana.com>



13. The city of London **shall enjoy all its ancient liberties and free customs, both by land and by water.** We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.
16. No man shall be forced to perform more service for a knight's 'fee', or other free holding of Land, than is due from it.
17. Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.
18. Inquests shall be taken only in their proper county court.
20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.
22. A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.
23. No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.
27. If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church.
28. No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.
32. We will not keep the lands of people convicted of felony in our hand for longer than a year and a day.
35. There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. Weights are to be standardized similarly.
38. In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, except by the lawful judgment of his equals or by the law of the land.
40. To no one will we sell, to no one deny or delay right or justice.
41. All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs.
45. We will appoint as judges, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.
51. As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.
52. To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgment of his equals, we will at once restore these<sup>6</sup>.

## *Constitution of the United States*

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

### ARTICLE I

#### Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### Section 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. (Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons). The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

<sup>6</sup> Dr Šefko Kurtović, Magna Carta and its constitutional-legal analysis, Almanac of the Faculty of Law in Zagreb, year XXII, Number 3, Zagreb, 1972, pages 329-336.

### Section 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided. The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

### Section 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

### Section 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same.

### Section 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States.

### Section 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.

### Section 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States...

- To regulate Commerce...
- To coin Money, regulate the Value thereof...
- To declare war...
- To promote progress of scientific and useful arts...
- To provide for organising, arming and disciplining the Militia.
- To exercise exclusive legislative power...
- To adopt all Laws which shall be necessary...

### Section 9.

The Migration or Importation of such Persons shall not be prohibited by the Congress, but a Tax or duty may be imposed on such Importation.

No Bill of Attainder or ex post facto Law shall be passed.

No Tax or Duty shall be laid on Articles exported from any State.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

### Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws.

## ARTICLE II

### Section 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows.

The Person having the greatest Number of votes shall be the President, if such Number be a Majority of the whole number of Electors appointed.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

The President shall receive for his Services Compensation, and Before he enters on the Execution of his Office, he shall take the Oath or Affirmation.

### Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.

### Section 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.

He shall receive Ambassadors and other public Ministers.

He shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

He shall take care of the Laws to be faithfully executed.

### Section 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## ARTICLE III

### Section 1.

The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.

The Judges shall hold their Offices during good Behavior.

### Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made.

In all Cases affecting Ambassadors, other public Ministers and Consuls, the Supreme Court shall have original Jurisdiction.

The Trial of all Crimes, except in Cases of Impeachment of high Officials, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed.

### Section 3.

Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## ARTICLE IV

### Section 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

### Section 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens.

### Section 3.

New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the Jurisdiction of any other State.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

### Section 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive, against domestic Violence.

## ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes.



## ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, shall be bound by Oath or Affirmation, but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same<sup>7</sup>.

Done in Convention by the Unanimous Consent of the Assembly that established this Constitution.

W.JACKSON, Secretary

G. WASHINGTON - President

### 1.2. THE DEVELOPMENT OF THE IDEA OF LAW – Law and rules among people

Upbringing and education on the rule of law includes not only learning about the existing laws, but also on the history of law and development of fundamental rules and principles of justice stipulated in constitutions, laws, and international human rights' treaties. It should be understood that the development of the idea of law and reconciliation among people within the state has lasted for 2500 years. The following activities will acquaint us with the development of law and rules in society, the regulation of relations between people, the harmonization of opinions around established rules of conduct, and with certain sanctions for non-compliance with defined rules. The manner and extent of participation of individuals, i.e. groups of individuals, in creating the rules of the state is inseparable from the establishment of the code of conduct and sanctions for non-compliance with the code, which is performed by the state.

#### Theoretical framework

<sup>7</sup> Smerdel Branko, *American Constitution as a Model for New Democracies*, introductory study into Constitution of the USA, USA Embassy in Zagreb, no publishing year.

#### Annexe 3

##### Acte d'habéas corpus Charles II, 1679 (anglais)

[...] Sect. 2. — Lorsqu'une personne sera portée d'un habéas corpus devant un Juge, ou un autre Officier, en faveur d'une personne détenue à leur garde, et que cet habéas corpus sera présenté devant un Officier ou laissé à la prison à un des sous-officiers, ceux-ci devront, dans les trois jours de cette présentation (à moins que l'assignation n'ait eu lieu pour cause de trahison ou de félonie, expresse dans le serment), sur l'offre faite de payer les frais nécessaires pour transporter le prisonnier, faire par le Juge ou par la Cour d'où émane l'habéas corpus (frais qui ne pourront excéder deux deniers par mille), et après sûreté donnée par écrit de payer également les frais nécessaires pour ramener le prisonnier, si le cas échéant, et après garantie que le prisonnier ne s'évadera pas en route, renvoyer cet ordre ou venir et représenter l'individu devant le Lord chancelier ou les Juges de la Cour d'où émane le writ, ou devant telle autre personne qui doit en connaître le motif. D'après la teneur dudit writ, l'officier devra de même déclarer le motif de la détention.

Et dans les trois jours après l'apparition que lorsque le lieu de la prison n'est pas éloigné de plus de vingt milles mais non de cent milles; alors le Juge ou autres Officiers saisis dix jours, et vingt au-delà de cent milles.

Sect. 3. — Tous les writs d'habéas corpus portés en masse; Per stat. in quantum primo Casus sequenti regit, et seront signés par celui de qui ils émanent. Si une personne est, pendant le temps de vacation, emprisonnée ou détenue pour crime, excepté pour ceux de félonie ou de trahison expresse dans le serment, elle aura le choix (à moins qu'elle ne soit déjà convaincue ou embaumée), ou tout autre à sa place, de s'adresser au Lord chancelier ou à tout autre Juge de tel ou tel tribunal, ou aux barons de la Cour de l'Échiquier; et le Lord chancelier, les Juges ou barons sont requis de délivrer sur le vu des copies des mandats d'emprisonnement ou de détention, ou sur le serment que ces copies ont été relevées, et après requête par écrit des détenus, ou de toutes autres personnes à leur place, attestée alors par deux témoins présents lorsqu'elle leur a été remise, un habéas corpus, sous le sceau de la Cour à laquelle appartient l'un des Juges, adressé à l'officier à la garde duquel sera soumis le détenu, lequel habéas corpus devra être renvoyé immédiatement devant le Lord chancelier ou tel Juge ou baron destinés par l'individu, et dans le cas d'absence de ce dernier, devant tout autre d'entre eux, en représentant toutefois l'individu, et en faisant connaître les causes de l'emprisonnement ou de la détention; après quoi, dans l'espace de deux jours, le Lord chancelier ou tel autre Juge délivrera le prisonnier en recevant sa reconnaissance, et comme sûreté, une somme telle qu'il la jugera à propos, eu égard à la qualité du prisonnier ou à la nature du délit, pour l'assurer qu'il comparaitra à la session prochaine devant la Cour du Banc, ou aux plus proches assises, ou sessions, ou sessions de la Cour d'Élargissement général (goal delivery) dans le comté ou dans le lieu de la prison, ou de l'offense commise, ou devant telle autre Cour qui doit connaître du délit. Le writ et son retour, ainsi que la reconnaissance, seront représentés dans la Cour où doit avoir lieu la comparution.

It was noted that Aristotle had stated the following: “Man has potential for great good, but without law and virtue can be the worst of all the animals”<sup>8</sup>. Ideas of law and justice have been cherished in European and the world civilization ever since the ancient times. The existence of a group of individuals leads to the formation of a public organization, and with such organization in place, it was essential to regulate relations in it. One of way to do so is through legal measures. The regulation of relations in a society implies the existence of predefined rules of conduct and their non-compliance must lead to certain sanctions. The regulation of social relations by the state is done through law. In this connection, law is presented as a set of rules of conduct adopted by the state, which regulates relations among people, as well as their relations to the state, and vice-versa. The state ensures adherence to these rules by its organs and by applying certain sanctions. Law is the subject of many scientific disciplines, but also a part of everyday life of people, who often enter into various legal relationships, without even being aware of it.

Precisely because the rules of conduct set by the state are part of the everyday life of its people, it is necessary to create preconditions for people to engage as much as possible in the development of such rules. In this context, we talk about democracy as a form of government that allows individuals – “the people” - to participate in the administration of the state through various systems and forms of governance. Namely, the concept of democracy (Greek: demos - the people and Kratia - rule) translates the rule of the people as form of government.

The idea of law and justice has been expressed and operationalized in modern states through consistent application of the principle of rule of law, particularly the principle of legality, as well as through established systems of governance. These systems of governance sought to develop public awareness on people's obligations and rights, on ways to exercise them, on the concept of rule of law, and on the principle of rule of law. The importance of the principle of rule of law, in relation to the state, lies in the fact that it secures legality of the authorities' decisions, and represents the basis for functioning of a legal state. A modern state rests on the principles of rule of law and democracy. These principles include the integration of a traditional principle of lawfulness of the legal state and modern standards for attaining public services, i.e. welfare state. The concept of a legal state translates into ensuring that the basic principles which constitute the basis of a modern state are not brought into question. The application of the concept of the legal state is a precondition for the rule of law and democracy, for the implementation of constitutionality and legality, and for the achievement of justice and fairness. In order to ensure full implementation of the rule of law and democracy, modern states adopt constitutions, as the highest legal acts, to define their basic principles. A legal system of a state consists of a set of legal institutions, legal branches and legal regulations that make up rule of law in that country.<sup>9</sup>

\* \* \* \* \*

#### OBJECTIVES

The students will:

- Understand the concept of law and justice;
- Be able to explain the importance of existence of legislation;
- Recognize consequences of lack of rules in everyday life;
- Take note of dialectic and gradual development of the constitution, laws and legal acts;
- Use constitution as the supreme law of a state.

<sup>8</sup> Aristotel, *Politics*, Culture, Belgrade 1970

<sup>9</sup> see Bogdan Ljerka et al. *Administrative Procedure Manual*, Zagreb 2007, page 2 ([http://public.carnet.hr/uibs/UPRAVNI%20POSTUPAK\\_III\\_za%20nastavnike.pdf](http://public.carnet.hr/uibs/UPRAVNI%20POSTUPAK_III_za%20nastavnike.pdf) 15.05.2013)

**DURATION** - 90 minutes (*two hours*)

**MATERIALS**- Worksheet; BiH Constitution; The Universal Declaration of Human Rights; piece of paper

### DESCRIPTION OF ACTIVITIES

#### FOCUS

Introduce students to the philosophical opinions of Sophists:

- „It is a law of nature that the strong should not be disturbed by the weak, but that the weak should be dominated by the strong, and that the stronger should set an example, and the weaker obey.“
- „Natural law is the force of the stronger, or justice is on the side of those who have the power.”<sup>10</sup>

Ask students to share their opinion. Afterwards, pose questions to students:

- **How would a life without rules and laws look like?**
- **How do you imagine one day in school without school rules and regulations?**

**Activity 1** Divide the class into small groups of 5-6 students and read to them the following scenario:

*Imagine you came into an unknown land without rules and laws. You and other members of your group will be the residents in that country. You are not familiar with your social status or rules, and with the pattern that will govern your behaviour.*

**Step 1:** Each student must individually come up with a list of a few rights that should be guaranteed to him/her in the new country.

**Step 2:** Students exchange their lists and discuss them in the group, and make a list of 10 rights that the whole group considers to be important. It is necessary to name the new the country, and to write down on a flipchart ten rights that the students have agreed on.

**Step 3:** Each group presents their work. Afterwards, teacher needs to develop a single list to include all rights listed by each of the groups, while marking individual rights that were repeating.

**Step 4:** During this activity, students will compare the rights listed on the main list with the rights noted down on their group lists. They are tasked to identify on the main list the rights that are in opposition to the rights listed on their group lists.

Afterwards stimulate discussion with the help of the following questions:

- Can some rights listed on the main list, which are similar, be grouped into a single right?
- Will these rights apply to all people or only to those who proposed them?
- Will these rights be fair to all people in the community?
- How will the government guarantee the rights that you have suggested?
- Is there any right on the main list that the government may object? Why?

<sup>10</sup> Diis H. Pre-Socratic Philosophers II, Onwards, Zagreb 1983, page 236.



*During the discussion, encourage students to back their opinions with arguments!*

#### Comprehension check

- After you finalise the main list of rights, compare it with the list of rights and fundamental freedoms in the BiH Constitution!
- Identify differences/similarities between your list and the Universal Declaration of Human Rights?

#### Questions:

- Have you changed your opinion on the importance of individual rights during this workshop?
- What would a life look like if we eliminated some of these rights, and insisted only on application of the rights developed in the group?
- Are there some other rights that you would like to add to the main list?
- Why is it useful for us to develop a list of rights that apply to all people?
- Should all rights apply to all people?

#### Activity 2 Critical thinking exercise

**Step 1:** Divide students into two groups and give them a worksheet. After reading, discussion and critical review of the groups, ask students to reflect on the basic concepts (rules, regulation, laws, consent, general purpose).

### Question for discussion in groups:

- How is a code of conduct established?
- What is a way to regulate relationships among people?
- What would constitute a foundation of society that had no rules and laws?
- Can regulations govern just relationships among people?
- How does the social system affect the promotion of justice and law?
- In what way modern constitutions guarantee justice and equity?
- To what extent is the BiH Constitution righteous?

After group discussion, organize a discussion on these issues with the whole class.

### Appendix: Material

#### WORKSHEET

Existence of a group of individuals leads to formation of a public organization, and with such organization in place, it is essential to regulate relations in it. One of the measures to do so is by legal measures. The regulation of relations in a society implies the existence of predefined rules of conduct and their non-compliance must lead to certain sanctions. The regulation of social relations by the state is done through law. In this connection, law is presented as a set of rules of conduct adopted by the state, which regulates relations among people, as well as their relations to the state, and vice-versa. The state ensures adherence to these rules by its organs and by applying certain sanctions. Law is the subject of many scientific disciplines, but also a part of everyday life of people, who often enter into various legal relationships, without even being aware of it.

Precisely because the rules of conduct set by the state are part of the everyday life of its people, it is necessary to create preconditions for people to engage as much as possible in the development of such rules. In this context, we talk about democracy as a form of government that allows individuals – “the people” - to participate in the administration of the state through various systems and forms of governance.

The idea of law and justice has been expressed and operationalised in modern states through consistent application of the principle of rule of law, particularly the principle of legality, as well as through established systems of governance. These systems of governance sought to develop public awareness on people’s obligations and rights, on ways to exercise them, on the concept of rule of law, and on the principle of rule of law. The importance of the principle of rule of law, in relation to the state, lies in the fact that it secures legality of the authorities’ decisions, and represents the basis for functioning of a legal state. A modern state rests on the principles of rule of law and democracy. These principles include the integration of a traditional principle of lawfulness of the legal state and modern standards for attaining public services, i.e. welfare state. The concept of a legal state translates into ensuring that the basic principles which constitute the basis of a modern state are not brought into question. The application of the concept of the legal state is a precondition for the rule of law and democracy, for the implementation of constitutionality and legality, and for the achievement of justice and fairness. In order to ensure full implementation of the rule of law and democracy, modern states adopt constitutions, as the highest legal acts, to define their basic principles. A legal system of a state consists of a set of legal institutions, legal branches and legal regulations that make up rule of law in that country.

A legal system is often defined as a form within which legal norms are effectuated. Legal acts can be general (they relate to indefinite number of persons) and individual, which regulate specific situation from real life. Individual legal acts are adopted on the basis of general legal acts, and the constitution is, as a rule, the highest legal act in one state. Hence, the constitution represents legal foundation for adoption of all other legal acts, **be they** general or individual.

## 1.3. CONSTITUTIONALITY IN THE 20th CENTURY

### – The concepts of constitution and constitutionality

The modern constitution is a set of customs, traditions, rules and laws that establishes basic ways in which the government functions, and how it is organized. It is a state ACT and has the highest legal power in the state, determining economic and political system of a country, establishing the relationship between the citizens and the government, and defining the organization and functioning of the authorities and their interrelations. The Constitution provides a framework in which democratic societies function, while understanding of the Constitution is a precondition for an active, responsible and engaged society. Currently, the youth in BiH does not have enough opportunities to learn about this element of democracy. Hence, it is necessary to make a step forward in this direction. Perhaps this is the opportunity to do so!?

#### Theoretical framework

The constitution is the highest law of the state that establishes the constitutionality, i.e. ensures that certain basic social rules are set up in particular country. These rules should ensure that the government authority is executed fairly, and equally with respect to all citizens. The fact that the constitution is the highest law of the state implies that all laws and regulations in that country must be in accordance with the constitution, i.e. legal documents must not be contrary to the fundamental principles embodied in the constitution. Therefore, the constitutional system is the constitutional order of a society and a state.

A distinction should be made between constitution in the formal and in the material sense. In the formal sense, a constitution is a specific written document, i.e. a legal act as the highest source of law. In material terms, the constitution constitutes the rules that govern the internal structure of the state, establish principles and provide basic solutions for setting in order relations in the most important areas of social life. Namely, each state must have certain rules that establish the forms of government authority and its powers.

The constitutional custom represents unwritten legal rules that result in precedents that public authorities agree on, and obey. This custom is used abreast with written provisions. Even though the constitution is in substance a positive legal text that prescribes present constitutional set-up, it very often exceeds the real possibilities of a given society due to the fact that the constitution is to be in force for a long period of time. In this sense, the constitution is also a programme for the future of the state and underlines the development of both the state and the society. Such provisions are usually listed in the preamble of a constitution.

#### Types of constitutions

Constitutions are classified according to different criteria. Hence, constitutions can be codified and uncoded, written and unwritten, and firm and soft. Furthermore, constitutions can be classified based on the bodies that adopt them.

**Written** constitutions are those constitutions that display all the constitutional content in a written form, while **unwritten** constitutions (also known as customary or historic constitutions) consist of constitutional traditions, as they are not made up of rules in written form. Most modern states have the most important material constitutional norms in written form. However, it should be noted that there are no pure forms of expression of the constitutional matter, i.e. that no modern state in its entirety has a written constitution, or only an unwritten constitution (since in such states some parts of the constitutional matter are codified by regulations). **Codified** constitutions are formal constitutions contained in a single document, while **uncodified** constitutions usually comprise a few written laws. In theory, constitutions are also classified into firm and soft constitutions. According to this classification, constitutions differ according to the procedure of their amendment.

If they can be amended through ordinary laws, they are considered as **soft** while the **firm** ones can be amended through a qualified and more complicated procedure than the one needed for the adoption of laws. Of course, unwritten constitutions are, by nature, soft constitutions, but this does not imply that written constitutions are firm. The amendment of firm constitutions implies a special revising process and require complex conditions for launching legal proceedings to amend the constitution, and even more complex conditions to adopt the amendment.

Certain modern classifications of constitutions are established based on the relation between the constitution and the social reality. According to this criterion, constitutions may be classified into **normative, nominal and semantic**. Normative constitutions are founded on particular social realities matching the constitution. Nominal constitutions are those constitutions that are created for social realities that do not match the current social reality in which the constitution should be effective. Such constitutions are ineffective and they only represent a “list of good wishes”, because they are at odds with a particular society. Semantic constitutions are those constitutions that do not allow proper change, and, subsequently, do not allow social change, hence preserving the existing government.

### What is the typical content of a constitution?

The constitution usually contains principal regulations on the social, economic and political order of a state. The constitution defines the rights and duties of citizens and determines legislative, executive and judicial authorities and their interrelations.

Naturally, every constitution is specific and it regulates constitutional matters in a specific way. Nowadays, a constitution is usually a written document that contains the basis of the state organization, and the mechanisms to guarantee implementation of human rights and freedoms contained in the constitution. To guarantee the protection for individuals, modern constitutions contain fundamental human rights and freedoms and establish a system to guarantee their preservation and enable their realization. Moreover, a constitution may provide mechanisms for the protection of values recognized by a society as common, such as the protection of public welfare, the protection of currency, the protection of national good, etc.

Modern constitutions generally contain mechanisms that guarantee the implementation of the principle “rule by the people”, by providing a system that ensures expression of the will and rule of the majority in society. Additionally, modern constitutions aim at incorporating mechanisms that ensure the expression of free will and the protection of the rights of minorities.

### What does a constitution consist of?

The constitutions of most countries consist of a preamble, general principles, normative section, annexes and amendments to the constitution.

A **preamble** is the introductory part of the constitution. It precedes the normative content of the constitution. The preamble often contains principles and general rules regarding the state, the fundamental human rights and freedoms, and the goals of social and national development, such as sovereignty, independence, integrity, democracy, rule of law, freedom and equality. The majority of constitutions contain a preamble, but there are also constitutions that immediately proceed with the normative content. According to some analyses of the constitutions in force in the world, out of 194 constitutions in force, 140 of them contain a preamble (Note: this is the data from 2010). A preamble sometimes includes information on an individual/body that adopted the constitution, and on the date of the constitution’s adoption. It also provides a rationale for its adoption. Sometimes a preamble refers to the history of a state and its people. Further, preambles often set forth fundamental human rights and freedoms, and guarantees for their realization. A preamble may be written in a solemn tone.<sup>11</sup>

<sup>11</sup> <http://www.pravosudje.ba/>, 15.03.2013

**The normative section of a constitution** contains constitutional norms governing all the issues of the constitutional matter. From a legal and technical point of view, there are significant differences in style, language and classification of constitutional norms. Constitutions are classified into two groups based on their writing style: constitutions that rely on European Continental law, and constitutions under the influence of the Anglo-American tradition. For constitutions pertaining to the first category, an article is the basic unit for organization of a legal norm, and it is marked in Arabic numerals. An article can be separated by a new rows or can be divided in items or paragraphs that are marked with letters and sub-numerals. These articles are systematized into sections, and sections are systematized into chapters. In constitutions created under the influence of the Anglo-American tradition, the articles are usually marked in Roman numerals, while internal systematizing of articles is organized by combination of uppercase and lowercase letters and numbers.

**Annexes** to the constitution are formally and technically separated from the main text of the constitution, but they represent its constituent parts, with equal legal force as the main text. Annexes mostly appear in the constitutions of the Anglo-American countries, and those countries whose constitutionality is under their influence (this partly explains why the BiH Constitution has annexes). Annexes elaborate certain constitutional provisions, or amend the constitution with new provisions. Generally, annexes are adopted in parallel to the constitution, through the same procedure and by the same authority.

**However, constitutional amendments** can be adopted after the adoption of the constitution when the need arises for introducing amendments in the constitution’s normative part. Amendments change or amend the main text of the Constitution, and they become a constituent part of the constitution with the same legal force as its other provisions.

### How are modern constitutions enacted?

Throughout history a number of different ways of new constitutions’ enactment has arisen. Still, constitutions are mostly enacted in the so-called “constituent assembly”; the state authority that enacts the constitution is called the constituent power. To a certain extent, the constituent power is unlimited, since no rules existed prior to the constituent power that could oblige it. For this reason, it is also called the establishing authority, while the authorities that were established by the constituent power are called the established authorities. The process of constitution-enactment in the constituent assembly reminds of the enactment of “firm” constitutions, since the procedure is far more complicated than the one used for the enactment of “soft” constitutions. A firm constitution is enacted by a special body, a constituent assembly that is established with the aim of enactment of the constitution; after this aim is accomplished it either dissolves or continues to work as an ordinary assembly. “Soft” constitutions are mostly enacted by an ordinary assembly. The “soft” constitution is usually enacted by the constituent assembly or a full legislative body (assembly, parliament), but through particularly envisaged procedure. The procedure for enactment of a new constitution should respect the continuity of the constitutional order, and provide regulations for the adjustment of the constitution to social change. “Octroyed” constitution is defined as a constitution of a state that was not passed through democratic means, but was imposed by a monarch or dictator, oligarchy, etc.

### Way of enactment of the BiH Constitution

It may be stated that the Constitution of Bosnia and Herzegovina, was, in a sense, imposed by the international community; however, the B-H constitutional model was defined in the form of an international contract, and, as such, set a precedent. Namely, 11 Annexes were signed to the General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement). Annex 4 of the Peace Agreement served as the Constitution of Bosnia and Herzegovina. The procedure for the enactment of the Japanese Constitution after World War II was also specific in the sense that the occupying power of the U.S. insisted on the democratization of the Japanese post-war society, and, in fact, imposed a new constitution for Japan.



### How can a constitution be amended?

No law adopted in the legal system of a state is immutable. The same applies to constitutions. Every constitution recognizes the possibility of a proper amendment, and prescribes conditions and procedure for such amendment. Based on its scope and range, constitutional amendment may be: individual (through constitutional amendments), broader and more important (through revision or reform of the constitution), and comprehensive (which would actually imply adoption of the new constitution).

There are two basic techniques for the constitution amendment:

- through constitutional law, by which a constitution is amended to abolish the constitutional article that is to be amended, and thus it replaces the abolished article with a new one; it can also be amended only by addressing the section where amendments are needed (this technique is more suitable in case of majority of amendments);
- through constitutional amendments - the original text of the constitution remains intact, while any amendment to the original text only adds norms in the form of amendments (this technique is more appropriate in case when the constitution is only amended by adding new provisions).

The jurisdiction over the amendments to the constitution in force usually belongs to legislators (usually the parliament). However, when a legislator amends the constitution in force, he does not proceed in accordance with common legislative procedure, but rather in line with a special procedure, which is more complex than the legislative procedure. In addition, it is possible that amendments voted in the parliament become final only after the confirmation of such amendments by the citizens through a referendum, or through direct vote.

### The EU Constitution

The term 'constitution' is usually linked to the sovereignty of a state in which the constitution represents the basic and supreme law. However, in the process of unification of the European countries emerged an opportunity for consolidating all the EU documents in a single constitution - the EU Constitution. At the session of the European Council in December 2001, a decision was made to convene a public convention of the EU Member States, which was attended by representatives of these states, representatives of their national parliaments, the European Parliament, and the European Commission. This convention resulted in a draft EU Constitution, whose main goal was to conduct its reform in order to bring the EU closer to its citizens. The final text of the Treaty establishing a Constitution of the EU was harmonized in July 2004. New Constitution was supposed to replace all agreements that have been signed in the past 50 years, apart from the agreement on Euroatom. If ratified by the Member states, this European Constitution would become the first official EU Constitution.<sup>12</sup>

<sup>12</sup> [http://www.bbc.co.uk/croatian/specials/1738\\_constitution\\_br/index.shtml](http://www.bbc.co.uk/croatian/specials/1738_constitution_br/index.shtml), 15.03.2013

The proposed constitution of the European Union is actually a book of rules that determines what the EU may, and what it may not do. It defines values and political objectives of the European Union, and clarifies that Member states transfer authority to the EU, and not vice versa. Furthermore, it creates room for enhanced integration of the Member states. Some believe that this will turn the EU into a true federal state. This would become legitimate only after the EU Constitution is ratified by all Member states and as of now, this has proven unsuccessful. Still, the EU Constitution should not be considered from the point of view of the national government, as the EU should not become a political community built on the model of nation-states. This example actually demonstrates the way in which the states may partially surrender their sovereignty in order to create a unique international legal order.

### Why is it important to be familiar with the Constitution of one's state and its entities?

The issues governed by the constitutional law and the constitution are of particular importance in the countries that are undergoing a period of transition, as is the case of Bosnia and Herzegovina. The complex organizational structure of Bosnia and Herzegovina as state and society underlines the importance of constitutional law as the most important law branch, to further the democratic development of the country. Therefore, it is crucial to provide everyone with knowledge of the constitution and the matter governed by the constitution and the constitutional law. One can not expect citizens' familiarity with all aspects and legal nuances of the constitution. However, an individual must be provided with the opportunity to familiarize him/herself with the organizational system and the relations between the country's institutions, the modes that govern these relations in the society, and how such relations can change. Only in this way people can be aware of their rights and liberties and of ways to realize them.

\* \* \* \* \*

**THE OBJECTIVE** of this workshop is to introduce students to a constitution, its features and parts, and learn more about the circumstances in which the BiH Constitution was developed.

The students will:

- understand the obligation of citizens to obey the laws, and be able to explain the ways to do so;
- identify imperfections of the constitution and the law, and be able to specify ways for their application;
- learn the rights guaranteed to the BiH citizens by the Constitution.

**DURATION** - 45 minutes ( 1 hour)

#### HANDOUTS

BiH Constitution – adapted version; a list of questions; response cards; worksheets; appendix

#### DESCRIPTION OF ACTIVITIES

**Activity 1** Divide students in 4 groups, and hand to each group **A list of questions** (Appendix 2.1.) and **Response cards** (Appendix 2.2.).

Students should respond to posed questions by reading and searching through the index cards.

**Note:** Response cards should be situated alongside a list of questions, and students should be able to provide correct answers.

## Activity 2 – Think – Pair – Exchange

Suggestion for work:

A teacher poses a question requiring analysis, evaluation or synthesis. Students are given approximately one minute to think about possible answer, provide it to the teacher and write it down. Students exchange their responses with other students in the team, followed by exchange of responses with the whole class through discussion.

### Questions for discussion:

- To what extent a constitution may influence daily lives of its citizens?
- Why does a state need a constitution and whether all modern states have a constitution?
- What does the term “constitutionality” stand for?
- What citizen rights are guaranteed by a constitution and what opportunities does a constitution provide for protecting these rights?
- Does a constitution impose certain obligations on citizens, as well as certain rules to be adhered to?
- Who enacts a constitution and can it be amended?
- List different types of constitutions and explain what category the BiH constitution falls into?
- What is the connection between a constitution and other pieces of legislation?

## APPENDIX: Handouts

### Appendix 2.1.

#### A list of questions

- Is the BiH Constitution written or unwritten?
- Is it codified or uncodified?
- What are annexes and amendments, and does the BiH Constitution have annexes?
- Is it semantic or normative?
- What does «firm » constitution stand for, and what does « soft » constitution stand for, and can soft constitution be amended?
- What parts a modern constitution consist of, and how many sections are there in the BiH Constitution?
- Under what circumstances was the BiH Constitution developed, and what events preceded its enactment – signing?
- Can BiH Constitution be considered as imposed? If yes, why?
- How can a constitution be amended? List ways to do so?
- What is the importance of being familiar with features of the constitution of your country?

### Appendix 2.2. – Response cards

#### Index card 1

The constitution is the highest law of the state that establishes the constitutionality, i.e. ensures that certain basic social rules are set up in particular country. These rules should ensure that the government authority is executed fairly, and equally with respect to all citizens. The fact that the constitution is the highest law of the state implies that all laws and regulations in that country must be in accordance with the constitution, i.e. legal documents must not be contrary to the fundamental principles embodied in the constitution.

#### Index card 2

In the formal sense, a constitution is a specific written document, i.e. a legal act as the highest source of law. In material terms, the constitution constitutes the rules that govern the internal structure of the state, establish principles and provide basic solutions for setting in order relations in the most important areas of social life.

#### Index card 3

Even though the constitution is in substance a positive legal text that prescribes present constitutional set-up, it very often exceeds the real possibilities of a given society due to the fact that the constitution is to be in force for a long period of time. In this sense, the constitution is also a programme for the future of the state and underlines the development of both the state and the society. Such provisions are usually listed in the preamble of a constitution.

#### Index card 4

**Written** constitutions are those constitutions that display all the constitutional content in a written form, while **unwritten** constitutions (also known as customary or historic constitutions) consist of constitutional traditions, as they are not made up of rules in written form.

#### Index card 5

**Codified** constitutions are formal constitutions contained in a single document, while **uncodified** constitutions usually comprise a few written laws.



### Index card 6

If they can be amended through ordinary laws, they are considered as **soft** while the **firm** ones can be amended through a qualified and more complicated procedure than the one needed for the adoption of laws

### Index card 7

Certain modern classifications of constitutions are established based on the relation between the constitution and the social reality. According to this criterion, constitutions may be classified into **normative, nominal and semantic**. Normative constitutions are founded on particular social realities matching the constitution.

### Index card 8

Nominal constitutions are those constitutions that are created for social realities that do not match the current social reality in which the constitution should be effective. Such constitutions are ineffective and they only represent a “list of good wishes”, because they are at odds with a particular society. Semantic constitutions are those constitutions that do not allow proper change, and, subsequently, do not allow social change, hence preserving the existing government.

### Index card 9

What does a constitution consist of? The constitutions of most countries consist of a preamble, general principles, normative section, annexes and amendments to the constitution.

### Index card 10

A **preamble** is the introductory part of the constitution. It precedes the normative content of the constitution. The preamble often contains principles and general rules regarding the state, the fundamental human rights and freedoms, and the goals of social and national development, such as sovereignty, independence, integrity, democracy, rule of law, freedom and equality.

### Index card 11

The majority of constitutions contain a preamble, but there are also constitutions that immediately proceed with the normative content. According to some analyses of the constitutions in force in the world, out of 194 constitutions in force, 140 of them contain a preamble (Note: this is the data from 2010). A preamble sometimes includes information on an individual/body that adopted the constitution, and on the date of the constitution's adoption.

### Index card 12

**The normative section of a constitution** contains constitutional norms governing all the issues of the constitutional matter. From a legal and technical point of view, there are significant differences in style, language and classification of constitutional norms. Constitutions are classified into two groups based on their writing style: constitutions that rely on European Continental law, and constitutions under the influence of the Anglo-American tradition.

### Index card 13

**Annexes** to the constitution are formally and technically separated from the main text of the constitution, but they represent its constituent parts, with equal legal force as the main text. Annexes mostly appear in the constitutions of the Anglo-American countries, and those countries whose constitutionality is under their influence (this partly explains why the BiH Constitution has annexes).

### Index card 14

Constitutional amendments can be adopted after the adoption of the constitution when the need arises for introducing amendments in the constitution's normative part. Amendments change or amend the main text of the Constitution, and they become a constituent part of the constitution with the same legal force as its other provisions.

### Index card 15

Still, constitutions are mostly enacted in the so-called “constituent assembly”; the state authority that enacts the constitution is called the constituent power. To a certain extent, the constituent power is unlimited, since no rules existed prior to the constituent power that could oblige it.

### Index card 16

A firm constitution is enacted by a special body, a constituent assembly that is established with the aim of enactment of the constitution; after this aim is accomplished it either dissolves or continues to work as an ordinary assembly. “Soft” constitutions are mostly enacted by an ordinary assembly. The “soft” constitution is usually enacted by the constituent assembly or a full legislative body (assembly, parliament), but through particularly envisaged procedure.

### Index card 17

“Octroyed” constitution is defined as a constitution of a state that was not passed through democratic means, but was imposed by a monarch or dictator, oligarchy, etc.

### Index card 18

It may be stated that the Constitution of Bosnia and Herzegovina, was, in a sense, imposed by the international community; however, the B-H constitutional model was defined in the form of an international contract, and, as such, set a precedent. Namely, 11 Annexes were signed to the General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement).

### Index card 19

Based on its scope and range, constitutional amendment may be: individual (through constitutional amendments), broader and more important (through revision or reform of the constitution), and comprehensive (which would actually imply adoption of the new constitution). There are two basic techniques for the constitution amendment:

- through constitutional law, by which a constitution is amended to abolish the constitutional article that is to be amended, and thus it replaces the abolished article with a new one; it can also be amended only by addressing the section where amendments are needed (this technique is more suitable in case of majority of amendments);

- through constitutional amendments - the original text of the constitution remains intact, while any amendment to the original text only adds norms in the form of amendments (this technique is more appropriate in case when the constitution is only amended by adding new provisions).

In addition, it is possible that amendments voted in the parliament become final only after the confirmation of such amendments by the citizens through a referendum, or through direct vote.

#### **Index card 20**

The complex organizational structure of Bosnia and Herzegovina as state and society underlines the importance of constitutional law as the most important law branch, to further the democratic development of the country. Therefore, it is crucial to provide everyone with knowledge of the constitution and the matter governed by the constitution and the constitutional law.

#### **Index card 21**

One can not expect citizens' familiarity with all aspects and legal nuances of the constitution. However, an individual must be provided with the opportunity to familiarize him/herself with the organizational system and the relations between the country's institutions, the modes that govern these relations in the society, and how such relations can change. Only in this way people can be aware of their rights and liberties and of ways to realize them.

### **1.3. CONSTITUTIONALITY IN THE 20<sup>th</sup> CENTURY – Constitutional principles**

Students need to understand the BiH Constitution and the circumstances under which it was passed and adopted, but also the possibility of bringing constitutional principles closer to real life, real values, citizens' needs, abilities and specificities. After this activity, students will be able to comprehend and understand how the constitution meets the needs of a man and how the constitution may be imperfect if it is a copy-paste version of some other constitutions. The complex organizational structure of Bosnia and Herzegovina, both as a state and as a society, further underlines the importance of the matter of constitutional law, as the most important legal branch, in further democratic development of the country. In this sense, it is crucial to provide everyone with knowledge of the constitution and of the matter regulated therein.

#### **Theoretical framework**

Ending the conflict in Bosnia and Herzegovina during the year 1995 implied the signing of a peace agreement, and the adoption of a new constitution of Bosnia and Herzegovina as a pre-condition for the functionality of the state. The General Framework Agreement for Peace in Bosnia and Herzegovina, reached on 21 November 1995 in Dayton, and signed on 14 December 1995 in Paris, contains 11 annexes, which define the basic principles of public law, and civil and military aspects of the peace agreement. Annex 4 of the Agreement contains BiH Constitution, as the highest legal and political act of the state. The BiH Constitution is contains a Preamble, 12 Articles, as well as Annex I: Additional agreements on human rights, which will be applied in Bosnia and Herzegovina, and Annex II: Transitional provisions.

The Constitution of Bosnia and Herzegovina is an integral part of the Dayton Peace Agreement, that is, Annex 4 of the same treaty, while Annex 3 of the Dayton Peace Agreement, which regulates elections, Annex 6, which deals with human rights, and Annex 7, which regulates the matter of refugees and displaced persons, are not part of the Constitution, but in certain way regulate the constitutional matter.

BiH Constitution came into effect after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina. The Republic of Bosnia and Herzegovina, which is the official name of the country since the Agreement came into force, has maintained its legal existence under the international law as a state. Its internal structure is amended by the BiH Constitution within already existing internationally recognized borders. The country remained a state member of the United Nations, and it may either maintain the membership or apply for membership to other organizations within the United Nations system, as well as other international organizations. According to Article I/3 of the Constitution, the state of Bosnia and Herzegovina obtained a new internal constitutional and administrative-territorial organization of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska.

Particularity and, to larger part, disadvantages of the BiH Constitution stem from the circumstances under which the BiH Constitution was passed. The BiH Constitution is an act of international character. It was not issued by a special constituent body and it was not passed by special procedure. Hence, in a certain way it can be perceived as imposed by international community. The original text of the Constitution was written in the English language.

The constitution's preamble stipulates the core values that the Constitution guarantees, such as: respect for human dignity, liberty and equality, and democratic governmental institutions and fair procedures as the best means for creating a democratic society. The Preamble expresses the obligation to build internal peace, and the values of justice and tolerance for peaceful coexistence within the Bosnia and Herzegovina. Such an obligation can not be found in other constitutions, and its purpose is to encourage citizens of the state to overcome the aftermath of the war, and thus, it cannot be found in other constitutions. In the eighth paragraph indentation of the Preamble, the Constitution a priori gives notice of protection of human rights and their instruments, which are further declared binding in Annex I of the Constitution.<sup>13</sup>

The twelve Articles of the BiH Constitution establish the following: the continuity of the state, democratic principles, the composition of the state, the movement of goods, services, capital and persons, the capital of BiH, symbols and BiH citizenship, human rights and fundamental freedoms, responsibilities and relations between the Institutions of BiH and the Entities, the Parliamentary Assembly, the Presidency and the Council of Ministers, the Constitutional Court, the Central Bank of Bosnia and Herzegovina, and transitional arrangements.

#### **Constitutional principles of the BiH Constitution**

The constitutional principles are the goals, motivations and the core values of a state. The BiH Constitution explicitly refers to certain constitutional principles in the Preamble and Article I. Additionally, other constitutional principles, which are not explicitly mentioned, can be deduced based on interpretation of entire text of the Constitution.

<sup>13</sup> Steiner-Ademović. Commentary on the Constitution of Bosnia and Herzegovina, Konrad Adenauer Stiftung. ([http://www.ustavnareforma.ba/files/articles/20070327/10/bs.Steiner\\_i\\_Ademovic\\_Ustav\\_BiH\\_Komentar\\_20.04.2010..pdf](http://www.ustavnareforma.ba/files/articles/20070327/10/bs.Steiner_i_Ademovic_Ustav_BiH_Komentar_20.04.2010..pdf); March 15, 2013)



### The principle of democracy

- is explicitly mentioned in the 3<sup>rd</sup> paragraph indentation of the Preamble (by which democratic governmental institutions and fair procedures should contribute to building a peaceful and pluralistic society), as well as in the Article I/2 of the Constitution.

### The principle of complex state

- Article I/3 of the Constitution states that the country consists of two entities. Administrative-territorial organization is defined in the Amendment I to the Constitution of Bosnia and Herzegovina, which came into force on 26 March 2009. With this Act, the Brčko District was finally introduced as separate and integral part of the state.

### The principle of single market and free movement

- Article I/3 of the Constitution promotes the principle of free movement of goods and persons throughout the whole territory of Bosnia and Herzegovina.

### The principle of protection of human rights

- Stems from several provisions of the Constitution, with particular importance given to provisions of Article X/2, which prescribes that no amendment to the Constitution may eliminate or diminish any of the rights and freedoms enumerated in the Article II of the Constitution, nor alter such provision, which guarantees immutability of this principle.

### The principle of constituent peoples

- The principle of human rights protection builds on the principle of constituent peoples (falls within the protection of collective human rights and freedoms), which is prescribed in the 10<sup>th</sup> paragraph indentation of the Preamble. The BiH Constitutional Court concluded in its decisions that the term “constituent peoples” falls under the principle of collective equality of all three ethnic groups. This principle does not allow privileged status of any of the three constituent peoples and members of one or two people are not recognized special, additional rights than the rest.

### The principle of distribution of powers

- This principle has not been explicitly stated, but it stems from the decisions of the BiH Constitutional Court, decision which the state of BiH respects.

### The principle of the Rule of Law

- This principle has also not been explicitly stated, but based on the wording of Article I/3 (“BiH is a democratic state that functions in accordance with the law”<sup>14</sup>), as well as based on the spirit of the Constitution, it follows that it must function on this principle

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### OBJECTIVES

- Students will be able to: define the term “constitutional principles”;
- Explain the importance of the constitutional principles of the Constitution of Bosnia and Herzegovina;
- Bring into connection the circumstances under which the BiH Constitution and its principles were developed;
- Understand the way in which the principles of democracy and human rights are applied to the BiH Constitution.

14 Article\_I, Item\_2, BiH Constitution\_

**DURATION** - 90 minutes (2 hours)

**MATERIALS** – BiH Constitution

### DESCRIPTION OF ACTIVITIES

**Activity 1.** In order to place the focus on this topic, it is necessary to “define” with students the term - PRINCIPLE. It is possible to write a term on a piece of paper or on the board, and ask students to name the terms that they associate with the term in focus of discussion, while the teacher writes down associative terms. Ask the students to say what they mean by this term and also (in dashes) record their answers. Finally summarize the above and conclude with a summary of what this term represents for all students.

**Activity 2.** Ask students the following question:

- **What are the constitutional principles?** (Encourage students to share their opinions and to state, in as much detail as possible, answers to this question)

- **In your opinion, what principles should a constitution include?**

Record the answers!

Divide students into several groups and hand them out the Preamble of the Constitution and Article I. After reading, commenting and discussing within the groups, request from students to specify principles identified in this section of the Constitution. The identified principles should be recorded on a large piece of paper by students.

*It is necessary to mark (underscore) the principles set aside by more than one group.*

**Expected responses:** *the principle of democracy, the principle of a complex state, the principle of freedom of movement, the principle of equality, the principle of constitutionality, the principle of distribution of powers, protection of human rights.*

Continue the discussion with support of additional questions:

- Why should a constitution maintain certain principles?
- Which of these principles - examples that you noted – could be traced in the constitution of your class (or in the law on the school that you attend)
- Do you believe that the BiH Constitution should include some additional principles?

*Write down students' responses.*

**Activity 3.** - How is the principle of democracy and human rights protection materialized in the Constitution of Bosnia and Herzegovina?

Groups of students are given a task to determine where and in what way are certain principles defined in the BiH Constitution reflected in real life and practice.

After presentation of the conclusions of students' groups, discussion continues with the following question:

- Do the principles in the BiH Constitution reflect reality, are they real or formally transferred from some European constitutions?

*Insist that students support their attitudes with argumentation.*

## LESSON USE OR UNDERSTANDING CHECK

Organise discussion around the following questions:

- ✓ Is there a perfect constitution?
- ✓ To what extent is the BiH Constitution realistic?
- ✓ How perfect is it?

### PRESENT A TEXT

**Particularity and, to larger part, disadvantages of the BiH Constitution stem from the circumstances under which the BiH Constitution had been passed. In fact, the BiH Constitution is an act of international character. It was not issued by special constituent body, nor was it passed by special procedure. Hence, in a certain way it can be perceived as imposed by international community. The original text of the Constitution was written in the English language.**

Ask students to provide comments.

# MODULE 2 – Human rights and freedoms

- 2.1. Civil rights - Creating a Class constitution (2 hours)
- 2.2. Political rights - Civic participation (2 hours)
- 2.3. Economic and social rights - The right to work (3 hours)
- 2.4. New rights and freedoms (3 hours)
- 2.5. Human rights and mechanisms for their protection
- 2.6. Comprehension check of the content of Module 2

# Human rights and mechanisms for their protection

## Theoretical framework

*(Theoretical framework that follows can be used for all lessons within this module)*

### Introduction

Throughout history, three generations of human rights can be identified. All of them rely on the same basic notions: personal freedom, and protection of individuals from the tyranny of the state. The first generation of rights appeared between the end of the 18<sup>th</sup> and the beginning of the 19<sup>th</sup> century, and includes citizen and political rights. The second generation emerged during the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> century, and comprises economic, social and cultural rights. The third generation dates back to the second half of the 20<sup>th</sup> century, and includes new rights of solidarity. Most of the third generation rights may, by their nature, be included within the previous generations of rights. This generation appeared after the others for several reasons, such as technological development in the case of environmental laws.

The development of human rights through generations suggests an idea of constant progress in this area. It implies that we are likely to encounter new generations of human rights instances in the near future. The expansion of human rights is caused by a variety of factors: changes in the conception of human dignity, technological progresses, emergence of new threats, consequences of globalization, and modern lifestyle.

Several dispositions of the BiH Constitution refer to international conventions on human rights. The Constitution establishes a list of fundamental human rights and freedoms of every person located on the territory of Bosnia and Herzegovina, and enumerates the international treaties in force in Bosnia and Herzegovina. The BiH Constitution ensures direct application and priority of the European Convention on Fundamental Rights and Freedoms, including its protocols, over other laws. In addition, the Annex I of the Constitution of Bosnia and Herzegovina establishes a list of 15 international treaties and conventions on human rights that apply in Bosnia and Herzegovina.



### Civil and political rights

Civil and political rights primarily relate to the relationship between the individual and the state. Civil rights emphasize the autonomy of a human in its relation to the state. Namely, the state may interfere with their behavior and of all citizens other country fellows. Political rights are the rights of a human to participate in the administration of the state and the community.<sup>15</sup>

Particularly important are so-called *personal rights and freedoms*. They aim at protecting the citizens' integrity, morality and dignity. These rights and freedoms are historically the oldest and they form the basis of all human rights. They are inalienable, and they may only be restricted by law and to the extent and in the manner in which it is prescribed by law. These rights and freedoms are included in all documents and catalogues on human rights. In all modern societies, these rights are regulated by a constitution. The Constitution of Bosnia and Herzegovina also protects personal human rights. **The right to life** is a fundamental, inalienable human right. In protecting this right, numerous international conventions specifically address the issue of death penalty – from its restrictions in terms of imposition and execution to its complete abolition. The issue of capital punishment is addressed differently in the UN member states, while in the majority of the European countries it has been abolished. The right to **liberty and personal security** is also an inalienable right that is contained in international conventions on human rights. It is protected through the prohibition of illegal deprivation of liberty, the granting of special rights to persons deprived of liberty, the obligation of humane treatment of these persons, the ban on torture etc. A number of bodies of the international community monitor compliance to this right. The BiH Constitution also protects the right to liberty and security of all citizens.

**The right to equality** is also an inborn and inalienable human right. It implies that citizens are equal before the law, in their rights and duties, and that they are equally protected by the state authorities, regardless of differences such as nationality, race, sex, religion, or other beliefs, education, social origin, property,

<sup>15</sup> Human Rights Observatory - Bosnia and Herzegovina, <http://judskaprava.ba/politicka-prava-08/>, 15.03.201



etc. This right, proclaimed in the UN Charter and elaborated in the Universal Declaration of Human Rights (“*All human beings are born free and equal in dignity and rights*”), forms the basis of the principle of **non-discrimination**. **The right to non-discrimination** cannot be considered separately from the other rights and freedoms, and it is one of the basic principles for effectuation of other rights. Recognizing the importance of non-discrimination, the BiH Constitution prohibits discrimination in a separate article (Article 2 of the Constitution of Bosnia and Herzegovina). The BiH Law on Prohibition of Discrimination defines the concept, types and forms of discrimination and establishes safeguards against discrimination<sup>16</sup>. However, despite this constitutional and legal framework, a report on discrimination in BiH issued by BiH Ombudsmen Institution in 2011 notes that discrimination penetrates all aspects of life in BiH.<sup>17</sup>

Furthermore, human rights in proceedings before the state organs, that is, human rights in criminal proceedings, are the rights intended to ensure human dignity in the course of proceedings, and to ensure that no innocent person is convicted. These rights are: **the right of a person not to be judged and punished before accusations are made to him/her, the right to defense, the right to an independent, impartial and public trial, the right to presumption of innocence, the right to appeal, etc.** These rights are also guaranteed by the Constitution of BiH.

The rights ensuring the protection of human **dignity include the right to human privacy, to the inviolability of one’s home and correspondence (secrecy of letters), the right to non-interference in private and family life, and the right to respect of one’s honor and reputation.** These values are protected by the law, and democratic systems make provisions for punishment of those who threaten these rights and freedoms. Hence, acts such as unauthorized wiretapping, the use of hidden cameras, unauthorized disclosure of personal information and records, etc. are punished. In BiH, a legal mechanism has been established for the protection of these rights and freedoms.

<sup>16</sup> Under the Act, discrimination is “any discriminatory treatment, including any form of exclusion, restriction or giving preference to someone, on the basis on real or implied basis, to any person or group of persons on the basis of their race, color, language, religion, ethnicity, national or social origin, connections with a national minority, political or other beliefs, property, membership to a trade union or other association, education, social status and gender, sexual orientation or expression, as well as any other circumstance whose goal or end purpose is to restrict or endanger recognition, enjoyment or exercise of rights and freedoms on an equal basis to any individual in all spheres of public life

<sup>17</sup> [http://www.ombudsmen.gov.ba/materijali/publikacije/diskriminacija/2011/HRV\\_DISKR2011.pdf](http://www.ombudsmen.gov.ba/materijali/publikacije/diskriminacija/2011/HRV_DISKR2011.pdf)

In addition, the **freedom of movement and settling** are personal freedoms that can be restricted only in exceptional circumstances. Article II, Paragraph 5 of the **BiH Constitution** explicitly establishes special rights of refugees and displaced persons as a specially protected category of citizens. **Freedom of conscience, thought, religion or belief** is guaranteed without restrictions.

**The freedom of expression and information** is considered one of the fundamental freedoms which guarantee that civil and political rights are respected. Freedom of expression and information includes freedom of information gathering, and imparting realizations and information through print or electronic media. **Freedom of speech** and freedom of receiving information via free media are the backbone of all democratic societies. Only well-informed citizens can adequately participate in the public and political life of their country. The BiH Constitution explicitly guarantees freedom of expression by calling upon relevant provisions of international conventions. As for freedom of press, it is guaranteed by the Constitution of the Federation of Bosnia and Herzegovina. The Constitution of Republika Srpska also protects freedom of press, but without any reference to international conventions.

**The right to participate in public authorities** is also one of the rights that constitute the backbone of a democratic system. This right allows any individual to engage in political life and to contribute to the establishment and the development of universally accepted values in the society. This right is reflected primarily in the right to vote, which includes implicitly active and passive right to vote. Active voting rights imply the right of a citizen to vote, while passive voting right stands for the right of a citizen to be elected. Conditions that usually must be met in order to gain the right to vote in a country are citizenship and full age. Citizenship is defined as the relationship between an individual and a sovereign state on the basis of which that person acquires certain rights (civil, political, economic, etc.) as well as certain obligations. The Constitution of Bosnia and Herzegovina recognizes citizenship of Bosnia and Herzegovina and the citizenship of the Entities. It means that all citizens of Bosnia and Herzegovina are also nationals of one of the entities. What this implies is that all BiH citizens are at the same time the citizens of one of the two Entities. This right – **the right to citizenship** - is one of the rights protected by international conventions and the BiH Constitution. It is protected in a way that prescribes that no one may be arbitrarily deprived neither of their BiH citizenship and Entity citizenship, nor in any way be left without citizenship. In addition to voting rights, individuals also have **the right to equal access to public services**. Namely, in relation to the right to participate in public authority, the state needs to allow citizen participation in public life, in particular at the local level, through measures that include proper distribution of information. In this context, it is necessary to consider solutions contained in the BiH Constitution and the rights tied to a particular group - the constituent peoples. **Freedom of assembly and association, and the right to political organizing**, as constituent part of this right, are considered as fundamental political freedoms. In the field of political organizing, a special importance is given to political parties through which citizens participate in the exercise of political power. Apart from political parties, one must mention association through various non-governmental organizations engaged in promotion, monitoring and reporting on human rights. Along with other rights and freedoms, there are various restrictions that relate to this type of freedom - namely prohibition of associations focused on the exercise or giving impetus to violence, destruction of the constitutional order aimed at threatening sovereignty and territorial integrity of the country, inciting national, religious, and racial hatred. Bosnia and Herzegovina’s



Constitution guarantees the freedom of association and the freedom of assembly. **The right to petition** also forms part of the group of political rights and freedoms. Given that opportunity for participation in political decision-making at various levels of political organization within one community is important in the area of political rights, it is important to take note of the BiH structure (BiH, Entities, District, cantons), that represents the basis for regulation of the election system, and leaves room for different approach to implementation of these rights at the local level.



### Economic and social rights

The idea that a state should assume a more active role and create necessary preconditions for meeting standards of much broader freedoms and rights, especially those that improve economic and social status of the majority of population, emerged at the beginning of the 19<sup>th</sup> century, when trade unions and other organizations of workers appeared.<sup>18</sup> Economic and social rights, as well as cultural rights, are human rights of the second generation. This implies that these rights are more recent compared to personal and political rights, that economic and social rights are substantially different, that they are focused on other values, and that more active role of the state is needed for their effectuation.

Even though certain rights in the group of economic and social rights relate to particular social groups, such as employees, the unemployed, students, pensioners and others, **the general rule**, as with the other rights, **is that these rights are accessible to all without discrimination**. Furthermore, not only should a constitution guarantee the afore mentioned rights. It should also ensure that the state acts in a manner which will provide material resources and all other preconditions for their implementation, in accordance with its development potential.<sup>19</sup> Various international acts establish minimum economic and social rights, while governments may, in accordance with their own capabilities, provide greater economic and social rights than prescribed. The International Convention on Economic, Social and Cultural Rights, dating from 1966, contains an expanded list of rights in relation to former international acts. According to the BiH Constitution, this Act shall also apply directly in Bosnia and Herzegovina.

### Some of the most important rights are:

**The right to ownership** – Even though due to its significance, the right to ownership also has features of personal rights (protection from arbitrary restriction of this right is envisaged in the Universal Declaration of Human Rights), this right is classified among economic and social rights with respect to need of an individual to freely enjoy and dispose of their property with the aim of improving living conditions.

**The right to work** is one of the fundamental social rights. Its importance lies in the fact that it enables economic independence of citizens, which is one of the preconditions for freedom. Furthermore, the exercise of this right provides for full development and fulfillment of one's personality. It should be noted that the prohibition of slavery and forced labor are important preconditions for the right to work to be respected, as slavery and forced labor not only threaten human dignity, but also represent a form of exploitation of another person's work and thwart free choice of work.

<sup>18</sup> Trnka, Kasim, Constitutional Law, The Faculty of Law, University of Bihać, Students' Printing House, of the University of Sarajevo, 2007, oage 175.

<sup>19</sup> Trnka, Kasim, Constitutional Law, The Faculty of Law, University of Bihać, Students' Printing House of the University of Sarajevo, 2007, oage 176.

**The right to just and favorable working conditions** – The right to work would not make sense unless a worker received a fair remuneration, and unless work was performed under conditions worthy of man. Therefore, the right to just and favorable working conditions is inextricably linked to the right to work. Workers have the right to a fair wage and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. In addition, remuneration that workers receive must be sufficient to provide a decent living for themselves and their families.

**The right to associate in trade unions** implies the right of workers to form trade unions and join trade unions. It also includes the right of trade unions to function freely, and the right to establish national or international associations of trade unions.

**The right to social security**, in its broadest sense, includes the right to social security and social assistance. Generally speaking, the social security workers allocate certain percentage of their salary so that they and their family members are later entitled to certain compensation, for example, in case of illness, injury at work or retirement. Social assistance includes compensation that individuals receive on the basis of their position (e.g. the unemployed, the disabled, etc.). The origin of such compensation is public funds that are filled from taxes.

The Universal Declaration of Human Rights stipulates that everyone has the right to a **standard of living** that ensures health and well-being. In a similar way, this right is mentioned in the International Convention on Economic and Social Rights (CESCR), which states that “The States Parties recognize the right of every individual to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. (Article 11, Paragraph 1). The right to a decent standard of living should ensure that nobody is in a position to be exposed to humiliation (e.g. begging, prostitution, etc.) in order to survive.

In modern constitutions, special attention is paid to **protection of the family**, and maternity protection. Children must also be provided protection without any discrimination. It is important to emphasize that children must be protected from any economic and social exploitation, and that the law stipulates minimum age for employment. In Bosnia and Herzegovina, the minimum age for employment is 15 years.

The majority of modern constitutions in the world contain provisions on **protection of health and other forms of social insurance** as one of important human rights. The World Health Organization, whose headquarters are based in Geneva, and one of whose members is Bosnia and Herzegovina, monitors implementation



of all measures to protect health and takes necessary measures to raise the level of health care, in particular by providing technical assistance<sup>20</sup>. The Universal Declaration of Human Rights of 1948 recognizes the right of every person to social security.

**The right to education** means active participation of a state in ensuring material and other preconditions for its exercise.<sup>21</sup> By international standards, states should ensure that elementary and secondary education is accessible to all, while higher education should be accessible to all on equal terms and subject to ability, while the state should take measures to ensure that higher education is also free of charge. The state should organize the education system in such a way so that parents, when it comes to their children, as well as individuals have the ability and the right to choose an educational institution.



## Cultural Rights

Cultural rights relate to a lifestyle within the cultural community and they often receive less attention than other rights. Cultural rights include the right to free participation in cultural life of the community, and also, if possible, the right to education. However, many other rights, which are not officially considered cultural rights, are of fundamental importance for the life of minority communities within society due to the role these rights play in preserving cultural diversity of those communities, such as the right to non-discrimination and equal protection, respect for the values and traditions of groups around the world, the right to collective self-determination, language, religion and culture.<sup>22</sup>

All human rights are interdependent. It is dangerous to argue that certain rights are of higher priority and more important than others. Such tendencies still exist: civil liberalism tends to underestimate economic, social and cultural rights considering that the state must not interfere with economy and business, while many socialists, especially those who ruled in the countries of real socialism, believed civil and political rights to be of secondary nature and luxurious, and even saw them as some sort of interference with collective development.

## International non-governmental organisations

NGOs play an important role in providing assistance to injured parties to develop and submit complaints, charges and petitions to national and international bodies for human rights protection. Some of the organizations that protect human rights across the world are:

<sup>20</sup> Trnka, Kasim, Constitutional law, The Faculty of Law, University of Bihać and Students' Printing House of the University of Sarajevo, 2007, page 182.

<sup>21</sup> Trnka, Kasim, Constitutional law, The Faculty of Law, University of Bihać and Students' Printing House of the University of Sarajevo, 2007, page 183.

<sup>22</sup> Mrnjauš, Ksenija. Human Rights - Upbringing for education on human rights, for human rights and through human rights, page 20. [http://arhiva.ffri.hr/datoteke/kmrnjauš/opca\\_pedagogija\\_ljudska\\_prava.pdf](http://arhiva.ffri.hr/datoteke/kmrnjauš/opca_pedagogija_ljudska_prava.pdf), 15.03.2013.g

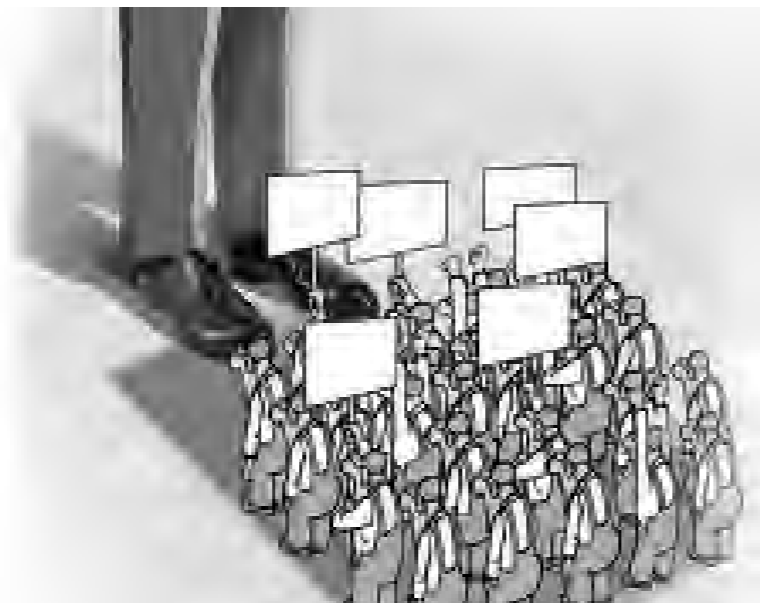
## Amnesty International (AI) –

Amnesty International (AI) is an independent non-governmental and non-profit organization that takes action to protect human rights. The work of this organization is based on careful study of human rights protection across the world and their implementation in line with international legal standards. AI is independent of any government, political ideology, economic or other interests. AI does not support or oppose the views of the victims whose rights they seek to protect. Amnesty International takes action to benefit of individual victims of human rights violations around the world, demands from governments to adhere to the law, ratify and implement human rights standards, work on development and improvement of existing international standards as well as on amendments to national laws that are inconsistent with the human rights principles. AI organizes training programs on human rights and on raising awareness on human rights, i.e. it encourages international organizations, individuals and all parts of society to support and respect human rights. Their activities range from public demonstrations to letter-writing, from human rights education to concerts, from approaching local authorities to lobbying with intergovernmental organization, from targeted appeals on behalf of individuals to global campaigns on a particular country or topic.



**International Helsinki Federation for Human Rights - IHF** ([www.ihf-hr.org](http://www.ihf-hr.org)) is an international non-governmental organization which aims to monitor and promote respect for human rights in accordance with the Helsinki Accords signed in 1975 by thirty-five North American and European states. The Members of the Helsinki Federation submit reports on the situation in the area of human rights, freedom of the media and civil society development in the developing countries. The Members also monitor elections, highlight and strengthen democratic forces and institutions, strengthen capacities of other organizations to perform these activities, and educate and inform citizens. In Bosnia and Herzegovina, the IHF is represented by the BiH Helsinki Committee for Human Rights and the Helsinki Committee for Human Rights of the Republic of Srpska.

**Human Rights Watch (HRW)** was founded in 1978 under the name "Helsinki Watch". Its headquarters are in New York City. Similarly to Amnesty International, HRW is dedicated to international protection of human rights. HRW conducts campaigns for protection of human rights, publishes current information on the violation of human rights, issues publications on human rights and annual World Report on the worldwide state of human rights.



**Save the Children** is a network of 27 organizations. It is the largest independent worldwide movement for protection of children's rights. Save the Children organizations are active in 110 countries around the world. With its partners, Save the Children works on improving the situation in the following areas: protection, promotion and support of children's rights, protection of children without parental care, protection of children in war and post-war conditions, prevention of exploitation, violence and trafficking of children. Save the Children also helps children in crisis situations, particularly in overcoming trauma, and in improving their education conditions. This organization promotes the rights under the Convention on the Rights of the Child, and informs the general public accordingly.

\* \* \* \* \*

## 2.1. CIVIL RIGHTS – Developing a class constitution

The analysis of school regulation is the best way in which one can perform assessment of human rights situation in a school. By defining the mission of the school and the way to carry it out, school regulation allocates roles, defines authorities and reveals links between school and elements in its surroundings.

Students are granted specific rights and can participate in the education process. They have the right to express their ideas and opinions, to demonstrate their agreement or disagreement – in a word, to fully participate in defining the rules of the game. Democracy can only truly exist within a democratic framework, where participation is not only allowed but encouraged, where opinions can be openly expressed, where students and teachers are guaranteed freedom of expression, where fairness and justice are guaranteed, and where everyone feels stimulated and invited to promote democratic values. Whatever the nature of certain regulation, regulation bears specific values. This fact invites us to promote a set of values such as peace, equality, fraternity, justice, tolerance and solidarity.

### OBJECTIVES:

Students will:

- recognize the need for laws;
- understand and be able to explain the following terms: law, justice, fairness, respect
- recognize the importance of civil rights and identify their application in their daily lives
- be able to identify attitudes and behaviors that ensure rights and freedoms are respected at school
- understand the importance of school regulation by comparing it with the principles of the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Convention on the Rights of the Child
- be able to adequately use the Constitution and international instruments in situations concerning their rights.



**DURATION** - 90 minutes (*two hours*)

**MATERIALS** - Universal Declaration of Human Rights; European Convention on Human Rights; Convention on the Rights of the Child; BiH Constitution; RS Law on Secondary School; FBiH Law on Secondary School; **Handout**– Class Constitution;

**DESCRIPTION OF ACTIVITIES:**



### Activity 1

- ✓ The purpose of this activity is to introduce a given topic to students and ensure their focus. Organize discussion using the following questions:
- Why do we need rules?
- Why do we need laws?
- Why do we need rights?
- What are our responsibilities?
- Do we have the right to demand rights, and ignore responsibilities?

Ask the students to substantiate their response with arguments and examples.

### Activity 2

- ✓ Divide students into groups (3-5 students). Groups should be given a task of filling Class Constitution, the form of which is located in the Worksheet. (*You may use a given form of class constitution or some other form*).

Depending on their choice, the students can draw or propose a form of the constitution, *that relates to possible violations of their rights, disregard of responsibilities in the classroom, school, community, by students or teachers.*

**Note:** Instruct students to fill in the words missing in the class constitution, using articles and text of the following documents: the UN Declaration, European Convention on Human Rights, Convention on the Rights of the Child, and the BiH Constitution.

**Critical thinking exercise**

- ✓ After groupwork, that is, writing or filling in the class constitution, and before its final adjustments, the students should **answer presented questions** within the same groups.

**The discussion** that will develop in a group in the course of answering the questions, aims at demonstrating mutual respect of students, their understanding of achievements of mutual interest, the way in which they create a favorable atmosphere for work, and harmonize and identify rights and responsibilities of all participants in the learning process. Furthermore, the discussion aims at demonstrating the level of tolerance, responsibility, and willingness of students to compromise and agree, as well as their level of dedication to goals and common good.

**Questions for group discussion:**

- What is respect?
- How to create an atmosphere of respect?
- What are our responsibilities as students?
- What are the responsibilities of a teacher towards us?
- What are our rights in the classroom?
- What are the rights of our teachers?

### Activity 3 - Checking understanding

- ✓ After group work, the teacher asks students the following questions:
- Do our rules (defined in the class constitution) fit into the guidelines for school and municipal rules?
- How do these rules fit into the class regulations?
- Will every rule be fair to all students in the classroom?
- Do our regulations meet the test of “good rule”?
- Are the rules articulated in simple language?
- Are the rules easy to follow?
- Are they in conflict with other rules?

The teacher listens carefully to students’ responses, based on which he/she assesses whether the proposed rules are clear, fair, realistic, whether they restrict the freedom of an individual, whether they are short and clear. The answers to these questions will allow the teacher to assess the level of achievement of the previously set goals. The questions do not necessarily need to be asked in the aforementioned order, but the teacher should insist that students provide verbal explanation of their answers and substantiate them with examples.

**The final activity**



- ✓ During the final activity, the students will discuss different versions of the school constitution, (developed within the group) and make a decision on how the class constitution will be written; this activity implies that they will need to agree on a final version of the class constitution. The class constitution is to be written on a large piece of paper, which must be conspicuous and hung on the classroom wall. In this way the class constitution will be formed and ratified.

## APPENDIX: Handouts

### Worksheet – Classroom constitution

#### Material for students

1. School is a place where students feel \_\_\_\_\_ and \_\_\_\_\_.
2. Teachers support students in meeting their \_\_\_\_\_ and interests.
3. Friends in my school community are not \_\_\_\_\_ in any respect, and they try to establish \_\_\_\_\_ in the best possible way.
4. Members of my school community object \_\_\_\_\_ in school, and each mode of \_\_\_\_\_ behavior.
5. Friends from my class care about my preferences and offer me help when I \_\_\_\_\_.
6. When it comes to fights we try to solve it in \_\_\_\_\_ way.
7. When someone complains of harassment or discrimination, \_\_\_\_\_ procedures are applied.
8. There are no disparaging or insulting words in school either on national or \_\_\_\_\_ basis.
9. Anyone who is suspected for certain offence is presumed innocent until proven \_\_\_\_\_.
10. Freedom of thought and \_\_\_\_\_ is respected in school.
11. My school welcomes students, teachers, civil servants and other staff, who are of another \_\_\_\_\_ or different origin.
12. I have full freedom to express my religious \_\_\_\_\_ without fear or discrimination.
13. My friends have the opportunity to participate in \_\_\_\_\_ processes and \_\_\_\_\_ making in school.

#### Material for teachers

1. School is a place where students feel safe and secure.
2. Teachers support students in meeting their needs and interests.
3. Friends in my school community are not misbehaving in any respect, and they try to establish cooperation in the best possible way.
4. Members of my school community object discrimination in school, and each mode of violent behavior.
5. Friends from my class care about my preferences and offer me help when I encounter problems.
6. When it comes to fights we try to solve it in a tolerant way.
7. When someone complains of harassment or discrimination, fair procedures are applied.
8. There are no disparaging or insulting words in school either on national or religious grounds.
9. Anyone who is suspected for certain offence is presumed innocent until proven guilty.
10. Freedom of opinion and speech is respected in school.
11. My school welcomes students, teachers, civil servants and other staff, who are of another ethnicity or different origin.
12. I have full freedom to express my religious feelings without fear or discrimination.
13. My friends have the opportunity to participate in democratic processes and decision making in school.

#### A list of words to fill in the Class constitution:

safety, security needs, lack of culture, cooperation, discrimination, violence, preferences, problems, tolerance, justice, religious grounds, guilt, freedom of opinion and expression, ethnicity, feeling, democratic processes, decisions.



## 2.2. POLITICAL RIGHTS – Citizen participation

Political rights and freedoms, combined with personal rights and freedoms, belong to the so-called - the first generation of human rights. What distinguishes these two categories of rights and freedoms is the fact that political rights imply active participation of individuals, while personal rights and freedoms are of a more passive nature. Political rights and freedoms allow citizens to participate in political life indirectly (through elected representatives), and directly through forms of direct democracy. Political rights, as the rights of “participation”, enable individuals to participate in administration of public (government) jobs.

### OBJECTIVES

#### Students will be able to:

- understand and recognize the importance of characteristics of an active citizen and his/her participation in government;
- demonstrate civil belief and skills which are important for effective and responsible participation in a democratic society;
- develop principles and mode of behavior in line with fundamental democratic values;
- understand and represent the ways in which citizens can influence the government;
- learn to demonstrate and identify a role model of a citizen engaged in social and political action;
- argue his/her stance on the need for active citizenship;
- analyze advantages and disadvantages of each mode of operation;
- recognize and understand different ways of civic participation using the Constitution of Bosnia and Herzegovina;
- understand that participation in governance is a precondition for democratic changes in the society.



**DURATION** - 90 minutes (*two hours*)

**Materials:** Posters-flipchart paper; BiH Constitution; work material (modes of civil participation).

### DESCRIPTION OF ACTIVITIES

#### Activity 1.

The teacher asks:

- You are walking down the street and you notice that a reporter, journalist, local television tries to approach you. How do you react?

Write down students' responses on a blackboard or on a flipchart!

One alternative is to offer to students more answers, such as:

Before a journalist asked you a question, you had decided the following:

- Yes, I'll talk to him/her.
- No, I do not want to talk to him/her.
- I will avoid the journalist.

In this case, you need to write down students' answers in order to form working groups based on provided answers.

#### Activity 2.

Each student in the group receives the same task.

Imagine that you are talking to a journalist. He/she asked you the following question:

- Why do you a citizen of Bosnia and Herzegovina could show some dissatisfaction?

You need to specify and argue for a minimum of three reasons for dissatisfaction.

Each student provides individual written response to the question, and then shares their answer with the rest of the group and talks about the listed reasons.



### Activity 3

- ✓ In this activity, the students, divided in groups, respond to the following list of questions and write down the answers on a flipchart.

#### Questions:

- Are the reasons of dissatisfaction of the BiH citizens, that you listed during Activity 2, of political nature or of other nature? Please classify questions / “issues” based on the following categories:
- Who can solve these issues?
- Where are such issues resolved?
- As a citizen, in what way could you influence the resolution of the issues that may affect you?
- Can an active citizen be uninformed?
- Have you participated in the last election (as active citizens)?
- In your opinion, what are the key characteristics of an active citizen?
- List some ways of participation of citizens in public life, and ways to influence the government? What forms of citizen participation are you familiar with?
- In your opinion, what are the most effective ways of participation?
- How can politicians learn about our problems?

**Remark:** A teacher may choose a set of questions that will be presented to students for group discussion.

Each group selects a representative who will present the answers. It will facilitate discussion and encourage the students to ask each other questions, in case they do not understand the answer given by another group or in case there is difference of opinion on a particular question.

#### Using a lesson

- ✓ The students are asked to list three modes of civic participation.
- ✓ For each of the listed modes, the students should explain why they believe this particular mode of civic participation to be an appropriate way to protect their fundamental rights;
- ✓ Afterwards, the students will receive a handout attached to the handbook; the handout will familiarize them with:
  - planning activities within problem-solving area;
  - defining a target group;
  - anticipating changes that will occur, and
  - ways of encouraging change.

This activity is targeted for individual or pair work. In each of the listed items (A, B, C, D and E) students should opt for one of the provided options. This will enable them to learn more about the ways in which they can encourage change and reach the desired result. At the same time, use BiH-Constitution/Constitutions of Entities, and assess the extent to which they allow such activities.

#### APPENDIX: Handouts



## Activity planning

### A. What issue do you want to resolve?

- When people claim their rights
- When there is violence in society
- When a citizen is imprisoned for freedom of thought
- When a certain ethnic minority suffers discrimination

### B. What is your target group?

- The youth
- The residents of your local community
- Mothers
- The politicians
- The business community
- The international community

### C. What changes do you expect to happen?

- Changes in awareness of the target group
- Newly acquired skills
- More active engagement of other participants
- Media coverage of the action
- New laws
- Correcting injustice
- Discussion on an identified issue



### D. How will you bring about change?

- Argument/persuasion
- Legally permissible methods
- Elections/referendums
- Enhanced readiness
- Increasing level of self-awareness of the power of his/her own group
- Informing about specific cases
- Public pressure/ lobbying
- International influence



### E. What means will you use to influence the public?

- Advertising messages in newspapers
- Internet
- Campaigns/ public gatherings
- Advertising materials
- Flyers/posters
- Articles from newspapers
- Train the trainer programs
- Debate programs
- Seminars/workshops
- Letters to government

### 2.3. ECONOMIC AND SOCIAL RIGHTS – Right to work

In modern constitutions, the scope of **the right to work and labor rights** and the guarantee of these rights are ever expanding. These rights are defined by the effort to

create conditions for a wider range of the working population to use these rights, or to provide a certain level of social security to those who cannot use these rights. The right to work does not imply that a job must be secured for each and every individual. It primarily includes the right for everyone to have the opportunity to provide a livelihood through work that he or she has freely chosen or accepted.

The idea that every person is entitled to the right of ensured employment was mostly represented in countries of real socialism. This idea can be traced in general, legally non-binding formulations of the Universal Declaration (Article 23 Paragraph 1) and the African Charter (Article 15). However, although the right to work does not mean the right to obtain position, states have an obligation to take measures to reduce unemployment, and to set as their policy goal provision of full employment.

The right to work and labor rights are elaborated in a number of ILO (International Labour Organization) conventions. Bosnia and Herzegovina is a member of this organization and, as such, it has to make sure the rights and obligations established in the 68<sup>th</sup> Convention of the International Labor Organization are respected. However, according to the latest research in Bosnia and Herzegovina, the right to work is one of the most threatened rights, which is often violated, and special attention should be paid to protecting of this right.

#### OBJECTIVES:

Students will:

- understand and be able to explain the concept of discrimination at work
- be able to identify the occurrence of discrimination based on sex and/or age;
- understand and be able to explain the concepts of solidarity, equality and justice;
- know how to respond appropriately to discrimination based sex and/or age;
- understand the importance of promoting equality, solidarity and justice in society;
- know and understand how to protect labor rights;
- through BiH Constitution and relevant international conventions, be able to claim their rights to fair compensation for work – wage;
- promote the right to adequate compensation and profits on the basis of actual performance.

**DURATION:** 135 minutes (*three hours*)

**MATERIALS:** BiH Constitution, **Appendix 1.1.** (notes for payment of compensation to learners/workers); **Appendix 1.2.** (International Covenant on Economic, Social and Cultural Rights, /Article 7/; Article 6, paragraph I/Article 25 of the International Covenant on Civil and Political Rights; the European Social Charter / Article 8; BiH Constitution, Article II / 4), **Appendix 1.3.** (The right to form trade unions; CESCR Article 8, Paragraph 1.a, and The right to strike; Article 8, Paragraph 1. CESCR and Article 5. ESC)

#### DESCRIPTION OF ACTIVITIES



#### Activity 1

Explain the students that during Activity 1, they will act as workers, and that they will be adequately remunerated for their work. Explain them what they should do and allow them to complete all set tasks. When all tasks are carried out, ask them to wait in line so they can receive their salary. Pay them differently according to their age and sex. While you are paying them, talk loudly enough so that all the students can hear you, and know how much each one of them was paid for the same job. Do not allow students to complain, provide them with brief explanation and avoid any discussion.

Some examples of tasks that you can give to the students:

- tell them to walk about slowly around the classroom;
- tell them to take the books out of their bags and position them upright on the table;
- tell them to join tables and sit in a group;
- tell the girls to report all absent students in a loud voice.

Students (boys, girls, older and younger) should all perform the same tasks, but they will be compensated differently – depending on their sex, age, and conditions under which the activities were performed.

The reasons for the differences of salaries may be:

- A poorly executed job
- Some students working in better conditions than the others
- Girls receiving a lot less money than boys;
- Older students getting more money than the younger ones.

## Activity 2

Ask students a list of questions, and then share their answers with the entire class.

- ✓ How did you feel when you got more (or less) money than the other students (workers), although you all performed exactly the same task?
- ✓ Why do you think some students (workers) got more (or less) money than the others?
- ✓ How does it feel to get more money than the others? How does it feel to get less money than the others?
- ✓ Does this kind of discrimination exist in your country?
- ✓ Can the difference of salaries between a man and a woman performing the same task wages be justified? Why or why not?

After the discussion, introduce to the students specific articles of the **International Covenant on Economic, Social and Cultural Rights**, and the **European Social Charter**.

“Workers have the right to fair wages and equal remuneration for work of equal value, without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. Furthermore, all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families. (**Article 7a of the International Covenant on Economic, Social and Cultural Rights** - and **Art. 4 of the European Social Charter - ESC**).

- ✓ **Ask students for their opinion**

**Note to teachers:** According to the European Social Charter, when interpreting the meaning of the term ‘*decent standard of living*’, one must take into account the basic social, economic and cultural needs of workers and their families in relation to the level of development of each country, as well as its economic and social situation. Of course, if one’s salary does not suffice to provide for a decent standard of living, the family’s income should be complemented by benefits under social security scheme (social benefits-child allowance).



**This activity is to be concluded by conversation on compensation based on fair working conditions.**

## Activity 3

- ✓ **Ask students the following questions:**
  - Does your country have a remuneration policy that respects the right to fair and favorable conditions of work? If not, in your opinion, should there be one?
  - How can the implementation of such a policy be justified, in particular regarding youth?
  - What is your opinion on such policy? Is it good? Is it bad? Explain!
  - Open the discussion and seek ask students for their opinion.

**Expected answers:** *The right to work would not make sense unless a worker received a fair remuneration for their work, and unless was performed in healthy work conditions. Therefore, the right to just and favorable conditions of work is inextricably linked to the right to work.*

- ✓ Afterwards, introduce Articles 7b of CESC and Article 2 of the ESC to the students.

The States Parties to the Covenant have an obligation to ensure safe and health working conditions (Article 7b CESC). The European Social Charter provides that the Parties undertake to adopt regulation on occupational safety, occupational health, to monitor their implementation and to consult with workers and employees on improving working conditions (**Article 3 ESC**). One of the most important elements of the right to fair working conditions is reasonable limitation of working hours and periodic holidays, also known as the right to rest and leisure (**Article 7d CESC and Article 2 ESC**). Fair working conditions include, as a minimum, a reasonable limitation of working hours, provision of daily and weekly rest, occasional holiday with pay, and paid public holidays.

#### LESSON USE:

In order to make sure they understood the lesson and achieved the goals that were set at the beginning, the students should be given the following tasks:

- Identify whether Article 7 of the International Covenant on Economic, Social and Cultural Rights, and Articles 7 and 8 of the European Social Charter are incorporated into the BiH Constitution, as well as Article 25 of the International Covenant on Civil and Political Rights.
- List the articles of the BiH constitution referring to them..

**Expected answers:** \*Annex I of the BiH Constitution refers to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as additional agreements to be implemented in BiH.\*

#### Additional activities:

- ✓ **Ask students the following questions:**
- What options do workers have if they are not satisfied with their working conditions?
- What would you do to exercise your rights and obtain satisfying working conditions?

**Expected answers:** In order to exercise their rights, workers have the opportunity to form trade unions.

#### Have students read Article 8, Paragraph 1a. of the International Covenant on Economic, Social and Cultural Rights

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;“ *In case workers are not satisfied with working conditions they have the right to form trade unions. The right to form trade unions implies the right of workers to form and join trade unions. This right also includes the right of trade unions to function freely and the right to establish national federations or confederations.* “ (Article 8, Paragraph 1b and 1c of CESC)

- What happens if an employer fails to meet their requirements?
- How to react if the employer fails to respond to the demands of the workers and the trade union?

When students have no more ideas to share, they should be introduced to the right to strike stipulated in the Article 8, Paragraph 1 of the CESC and Article 5 of the ESC.

#### The right to strike

*The right to strike is separately guaranteed (Article 8, Paragraph 1d, CESC - International Covenant on Economic, Social and Cultural Rights) and ESC (European Social Charter). A strike includes the suspension of employees' work in order to compel their employer to address some of their demands. According to CESC, the right to strike is exercised in conformity with the laws of each country. This provision allows states to regulate the right to strike, which sometimes leads to great limitations of this right by national legislation.. It should also be noted that Article 8 of the CESC shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State (CESC Article 8, Paragraph 2).*

**During this activity, the students could be asked the following questions:**

The right to become a member a trade union is recognized as a human right. How important is this right for workers in your country?

- What would it mean for workers' rights in general if workers were not eligible for trade union membership?
- How many people in your country, entity, community know of the purpose of trade unions? What are these organizations about and what is their mandate?
- Can you estimate the level of effectiveness of a trade union in your country, entity, community?

*CESC (International Covenant on Economic, Social and Cultural Rights)*

*ESC (European Social Charter)*

## Appendix 1.1.



## Appendix 1.2.

### 1. International Covenant on Economic, Social and Cultural Rights

#### Article 7.

„The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.“

#### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his/her living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### 2. European Social Charter

#### Article 8

The right of employed women to protection of maternity.

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;



- to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;



- to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

### 3. BiH Constitution

Prohibition of discrimination Article II/4

### 4. International Covenant on Civil and Political Rights

#### Article 25.

- „Every citizen shall have the right to have access, on general terms of equality, to public service in his/her country“.

#### Appendix 1.3.

#### Right to associate in trade unions

*If workers are not satisfied with their working conditions, they have the right to associate in trade unions. This right is separately regulated as a social right. However, it can also be perceived as part of the right to freedom of association, which is guaranteed as a political right (CESCR Article 8, Paragraph 1).*

*For this reason, the discussion in the handbook shall be limited to the provisions of the CESCR and the ESC addressing this right.*

*The right to associate in trade unions implies the right for workers to form and join trade unions. This right also includes the right of trade unions to function freely as well as to establish national federations or international trade-union organizations.*

#### The right to strike

*The right to strike is separately guaranteed (Article 8, Paragraph 1d, CESCR - International Covenant on Economic, Social and Cultural Rights) and ESC (European Social Charter). A strike includes the suspension of employees' work in order to compel their employer to address some of their demands. According to CESCR, the right to strike is exercised in conformity with the laws of each country. This provision allows states to regulate the right to strike, which sometimes leads to great limitations of this right by national legislation.. It should also be noted that Article 8 of the CESCR shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State (CESCR Article 8, Paragraph 2).*



## 2.4. NEW RIGHTS AND FREEDOMS

The third generation of human rights is based on the increasing awareness of the need for environmental protection and the right to a healthy life. Environmental disasters have showed that a safe and healthy environment is a necessary conditions for all other human rights to be guaranteed, particularly the right to life and the right to health. This right is ever more the center of attention in Bosnia and Herzegovina. In this context, it is important to point out the issue of the protection of flora and fauna, and the prevention of their extinction. One of the most important means of achieving this right is informing the population about the importance of this issue and about the consequences of violating environmental laws. Consequently, the following workshop will be dedicated to environmental issues.

#### Theoretical basis

#### New rights and freedoms

During the second half of the 20th century, after World War II, the need to introduce new rights under the category of human rights appeared. Poverty hitting 'third world' countries, wars, nuclear weapons, environmental disasters, etc., made the need for the expansion of human rights a necessity for the environment and the overall conditions of human life. Environmental protection standards protecting **the right to a healthy environment** are now part of the legal system of modern states. These rights are also called "solidarity rights" and "global rights". The **African Charter on Human and Peoples' Rights (1981)** significantly contributed to defining and regulating these rights on the international level. This Charter puts single individual and collective rights on an equal footing, i.e. it recognizes both individual rights and the rights of individuals and peoples. Individual rights are usually regarded as third generation rights, and they are heavily based on the African Charter and UN conventions. These rights are as follows:

#### The right to equality of peoples

This collective right is derived from fundamental personal rights protected by the Universal Declaration of Human Rights - the right to non-discrimination, liberty, equality, security of persons. It implies that the domination of any nation over another nation violates these fundamental rights.

## The right to self-determination

This right can be seen as an individual right (the right of an individual to participate in the exercise of public authority, and hence affect political and social organization), and as such is derived from the fundamental human right to self-determination. As a collective right, it was initially observed in the context of colonial countries gaining independence. In this regard, states present themselves as holders of this right. In its conventions, the UN has singled out this right as a fundamental right for realization of other political rights and freedoms. In any case, this right **can not be opposed to the right of territorial integrity and sovereignty of the state.**

## The right to peace and international security

The prohibition of war and of the use of violent means of resolution of international disputes constitutes the basis of modern international law. It also relies on individual rights protected by the Universal Declaration of Human Rights: *“Everyone is entitled to social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”*, as well as the principle of the UN Charter which ensures solidarity and friendly relations among nations. The right to peace and security was for the first time explicitly defined as a peoples’ right in the African Charter, and was subsequently defined as the right for every individual and every nation to benefit from resolutions of the UN Commission for Human Rights. In this context, it is important to point out that the mandate of the UN, i.e. the UN Security Council, has to react when peace is being threatened.

## The right to manage national resources

This right resulted from striving for liberation from economic domination and exploitation. It can be perceived as an integral part of the peoples’ right to self-determination, given the significance of the national resources for the countries that broke free from the colonial rule. However, due to the tendency of developed countries to dominate the world’s economy, this right is still restrictively interpreted as a category of human rights.

## The right to sustainable development

This right implies that citizens have the possibility to influence their country’s development, without being imposed standards from outside, while taking into account the specific qualities and potentials of a given society. This right proceeds from human needs and aims at gradually bringing about the most optimal living conditions, taking into account the specific conditions of developing countries.

Regarding “third generation” rights, it is important to refer to the **rights of minorities**, also treated as “the laws in the making”, whose definition, protection and implementation remain rather inconsistent, which results from the political treatment of this issue. These rights stem from the fundamental right to self-determination, and are essentially associated with the right to non-discrimination and the right to equality. The recognition of minority rights that have been recognized aim at protecting their national and cultural identity (including language, education, religion, culture, the right to participate in public and political life, etc.). A number of international conventions have been adopted with the aim to protect these rights, such as the Framework Convention for the Protection of National Minorities of the European Commission (1993, entered into force in 1998), the European Charter for Regional or Minority Languages (1992) of the Council of Europe, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). The Organization for Security and Cooperation in Europe (OSCE) established in 1992 a High Commissioner on National Minorities as “an instrument for conflict prevention at the earliest possible stage.” The BiH Constitution does not define the notion of minority, but in the Preamble it refers to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Law on Protection of BiH National Minorities defines national minorities as *“a part of the population of BiH who does not belong to any of the three constituent peoples,*

*and consists of persons of the same or similar ethnic origin, the same or similar tradition, custom, religion, language, culture and spirituality, and close or related history and other features.”*<sup>23</sup> Despite the existence of a legal framework providing a basis for the protection of minority rights, the reality is such that additional efforts need to be made to attain a satisfactory level of protection.

Within the framework of new rights and freedoms, it is important to draw attention to the issue of protecting **the rights of other vulnerable and marginalized groups** such as children and youth (e.g. juvenile delinquency, drug addicts), **persons with disabilities** (persons with special needs) and the LGBTIQ population.<sup>24</sup> Both women and children can be perceived as vulnerable groups whose rights need to be protected. Most of the time, their rights are considered from a political point of view, i.e. economic and social human rights (the protection of women and children is the subject of many international conventions). In the context of the appearance of new rights and freedoms, they are observed from a broader point of view, and are related to the issue of social exclusion, that affects different population groups. Even though an increasing number of laws aims at protecting their rights, they are rarely applied. For example, a Law on Gender Equality was adopted, but certain groups of the population still do not enjoy an adequate legal protection. Hence, human rights of LGBTIQ citizens of Bosnia and Herzegovina are still viewed as special rights, and there are still debates as to whether the rights of this category of population should be recognized<sup>25</sup>. In practice, the protection of their rights, as well as the rights of other vulnerable and marginalized groups, is mostly carried out with support of NGOs. Consequently, a protocol of cooperation between the police and several NGOs was signed in Sarajevo in mid-2012 with the aim of protecting certain population groups: drug addicts, recidivist prisoners, juvenile delinquents and youth (in the context of the prevention of drug abuse and violent behavior)<sup>26</sup>.

Finally, there is an ongoing discussion on the so-called rights of **“the fourth generation”**, which include the right to a good and effective governance. Some authors consider that the issue of good governance needs to be regulated on the international level in order to effectively deal with the issues caused by globalization.

\* \* \* \* \*

## OBJECTIVES

Students will:

- Familiarize with the environment they live in;
- Conduct research on environmental issues in their community;
- Understand the importance of the development of environmental awareness and youth engagement in the field of environmental protection;
- Actively participate in the preparation and the application of legislative acts related to environmental protection at the local level;
- Discover international conventions and charters dealing with environmental protection.

<sup>23</sup> (Law on the Protection of National Minorities in BiH - basic provisions, Article 3, paragraph 1.)

<sup>24</sup> LGBTIQ stands as an acronym accepted by majority of activist groups, and it consists of the following words: Lesbian, gay, bisexual, transgender, intersex and queer people.

<sup>25</sup> see Vasić, Vladana, Tulić, Sadžida „Do not tolerate intolerance – Familiarise yourself with your rights and exercise them!“ A guide for LGBT persons, Edition Human Rights, Sarajevo Open Center, <http://lgbt-prava.ba/wp-content/uploads/2013/02/Ne-toleransi-netoleranciju-Vodic-za-LGBT-osobe.pdf>

<sup>26</sup> <http://mup.ks.gov.ba/node/6919>

**DURATION:** 135 minutes (*three hours*)

**WORK MATERIAL:** Rio Declaration on Environment and Development; BiH Constitution; RS Law on Local Self-Government; FBiH Law on Local Self-Government; RS Environmental Protection Law; FBiH Environmental Protection Law; papers; flipchart papers; highlighters.

**DESCRIPTION OF ACTIVITIES:**

**Activity 1**

- ✓ Ask students the following question: Do we need environmental studies?  
Or
- ✓ A journalist intercepts you and ask you the following question:
  - Are you familiar with mazout spill into the Bosna River?
  - You take time to answer their question.
  - You don't take time to answer their question.

The students need to answer the teacher's questions briefly.

- ✓ **Then write on the board or on a flipchart the following:**

The following statements describe what could possibly happen in the future in the field of environmental protection:

- *Further degradation of the environment causing serious damage to the planet;*
- *Preventing further environmental degradation and maintaining the status quo;*
- *Reduction of environmental degradation and increase of sustainable development*

Students need to think about what could possibly happen in the future in the field of environmental protection.

- ✓ **Ask students the following question:**
  - Is the third option the only one that can ensure the protection of life on Planet Earth?

Ask students to express their opinion and briefly discuss this topic.

**Activity 2**

- ✓ Divide the students into groups, with an even number of students in each group. Students will need to form pairs in each group during Activity 2.
  - How do you dispose of waste in your street?
  - How do your neighbours dispose of waste? Do they throw it out the window?
  - Have you ever seen someone throwing garbage in an inappropriate place? How did you/ would you react?
  - Do you know where the rubbish dump is located in your city?

- Is there a rubbish dump anywhere in your city or nearby?
- What are the regulations in terms of environmental protection?
- Are they adopted at the local level or at another level?
- Does the Constitution of Bosnia and Herzegovina regulate environmental protection? Does it protect the right to a healthy environment?

**Suggestions for work**

This activity is to be realized in pairs. Have the students exchange their ideas and answers. Establish a timeframe for the discussion (not necessarily the same for all questions). Leave room for interaction between the students and have them compare their ideas in order to foster a more complex thinking; it will also allow the students to realize that their ideas are worth sharing. Provide them with the opportunity to pair up so that they can exchange their opinions and answers within each group, in order for the group to be able to write down their answers or to illustrate them with personal examples.

**Activity 3**

**Critical thinking exercise**

- ✓ Keep the groups formed during Activity 2, and make them read a document entitled „Environmental policy“ (Appendix 1 in the working material);
- ✓ Afterwards, have the students discuss this document, and make sure they share their opinion with their classmates.
  - Ask the students to share their thoughts on the EU policy regarding environmental protection.
  - Make the students choose one of the options proposed during Activity 1. bMake sure their choices are based on the impact of these options.
  - What are the advantages and disadvantages of each option?
  - How can environmental protection be dealt with at the local level?
  - What are advantages and disadvantages of such policy?

**COMPREHENSION CHECK**

- ✓ During this activity, the teacher can make sure the students understood everything by asking the following questions:
  - Does the Law on Local Self-Government of the RS and the FBiH contain some of these principles? List them.
  - In what way would you influence the development of environmental awareness and establish concrete actions in your local community?
  - Which objectives concerning environmental protection are regulated by the Law on Environmental Protection of the RS, FBiH and the Brčko District? Outline the relevant articles.
  - In what way would you influence the amendments to the „Law on Environmental Protection of the RS, FBiH and the Brčko District“ and make their application more effective?

## ADDITIONAL ACTIVITIES

- ✓ Read selected articles of the Rio Declaration on Environment and Development (1992), which is a part of the working material, and compare them with other pieces of legislation related to the same issue.
- ✓ Compare the BiH Constitution with the constitution of other states of the region, i.e. Croatia (Constitution of the Republic of Croatia, Article 3).

### Note to teachers:

Familiarize the students with a few contracts and declarations related to environmental protection, and ask them to assess the extent to which the BiH state-level, entity and local level laws contain these elements.

1. European Charter on Environment and Health, 1989
2. UN Declaration on environment and development, 1992
3. Earth Charter, 2000

## APPENDIX: Working material

## Appendix 1

### ENVIRONMENTAL POLICY

(EU policy guide „EU environmental issues and policy guidelines“)

*„Environmental policy is one of the most important and far-reaching policy areas, based on precautionary principle and preventive measures. Since its formation, the EU has adopted six environmental action programs and over 700 legal acts in the environment sector.*

*Environmental policy must not be left to the market, while legal acts should get more attention to be focused on special environmental conditions within municipalities and regions of different countries. Moreover, conditions should be met for different ways to reach joint goals that would stimulate overall development of municipalities, via industrial policy, land use policy and policy of sustainable development programs“.*

*The goals to be achieved are:*

*1. SUBSIDIARITY – ENSURING DECISION MAKING AT THE LOCAL LEVEL – Waste should be managed nearby the place of creation, mostly for the reason that waste transport may have a negative impact on the environment.*

*2. PRECAUTIONARY PRINCIPLE, RESPONSIBILITY AND MORAL PRINCIPLE – If an action can cause serious damage, those who make it (individuals, groups, institutions) are to assume the responsibility of their actions, and the risks they cause.*

*3. „SIT AND WAIT“ PRINCIPLE. This principle leaves room for action taking in the early phase. It is not only about acting after damage occurs, but about taking prevention measures before damage occurs. This principle is more short-term oriented.*

*4. PRINCIPLE OF „SELF-SUFFICIENCY“. It was established by an EU Directive on waste. This principle requires that the majority of waste should be disposed of within the region in which it is created.*

## Appendix 2

### CONSTITUTION OF THE REPUBLIC OF CROATIA

Chapter 3. of the Croatian Constitution proscribes that freedom, equality, national equality and gender equality, peace, social justice, respect for human rights, inviolability of property, protection of nature and environment, rule of law and democratic multi-party system, are the highest values of constitutional order of the Republic of Croatia, and the foundation for understanding the Constitution.

**RIO DECLARATION**

**Principle 1.** Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

**Principle 2.** In accordance with the Charter of the United Nations and the principles of international law, the states have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.

**Principle 3.** The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

**Principle 4.** In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process, and cannot be considered in isolation from it.

**Principle 5.** All states and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease disparities in standards of living and better meet the needs of the majority of the people of the world.

**Principle 6.** Special situation and needs of development countries, in particular the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

**Principle 7.** States shall cooperate in the spirit of global partnership to conserve, protect and restore health and integrity of the Earth's ecosystem. The states have common but differentiated responsibility in the view of different contributions to global environmental degradation. The developed countries acknowledge the responsibility that they bear in pursuit of sustainable global development, in view of the pressures that their society exerts on the global environment and of the technologies and financial resources they command.

**Principle 8.** In order to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption, and promote appropriate demographic policies.

**Principle 9.** The States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchange of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies including new and innovative technologies.

**Principle 10.** Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, every individual shall have adequate access to information on the environment that is held by public authorities, including the information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making process. States shall facilitate and encourage public awareness and participation by making information widely available. They shall provide effective access to judicial and administrative procedures including redress and remedy.

**Principle 11.** States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied in some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular development countries.

**2.5. HUMAN RIGHTS AND MECHANISMS FOR THEIR PROTECTION**

In this workshop, students will have the opportunity to conduct researches on human rights and the fundamental freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the categories of population targeted by the Convention, and on who guarantees the protection of these rights. The students will get acquainted with role of the European Court for Human Rights, as one of the main mechanisms of protection of human rights and fundamental freedoms, as well as with the role of Conventions and the BiH Constitution in this respect.

**Theoretical basis****What we should know about human rights and fundamental freedoms**

The Convention for the Protection of Human Rights and Fundamental Freedoms is the main instrument of the Council of Europe (CoE). It was signed in Rome on 4 November 1950, and it came into force on 3 September 1953.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'The Convention') is the most important European international convention in the area of human rights and fundamental freedoms. The importance of the Convention mostly relies on the implementation of its provisions. **The provisions of the Convention oblige all countries to ensure human rights** to all individuals within their jurisdiction, as stipulated under Article 1 of the Convention. The rights and freedoms protected by the Convention are defined in Section 1. For the past sixty years, the Convention has also been developing through interpretations of the text provided by the European Commission for Human Rights and the European Court for Human Rights, as well as through the Council of Europe's work. Over time, the Council of Europe has amended the text of the Convention by adopting new Protocols, thus adding new provisions to the Convention. Furthermore, the Council of Europe has adopted various resolutions and recommendations with the purpose of developing standards for the CoE member states and imposing sanctions to the member states that do not respect the provisions of the Convention.



The Convention consists of the preamble, the main text and 14 protocols. In the preamble, it is stated that the Convention is founded on the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948. The Section I of the Convention (Article 2-18) defines basic rights and freedoms, Section II (Article 19-51) regulates the functioning of the European Court for Human Rights, while Section III (Article 51-59) regulates procedural issues and competences in relation to signing, ratification, interpretation, publication, and territorial and spatial implementation of the provisions of the Convention.

#### **Fundamental rights and freedoms defined the Convention**

1. Right to life (Art. 2)
2. Prohibition of torture (Art. 3)
3. Prohibition of slavery and forced labor (Art. 4)
4. Right to liberty and security (Art. 5)
5. Right to a fair trial (Art. 6)
6. No punishment without law (Art. 7)
7. Right to respect for private and family life (Art. 8)
8. Freedom of thought, conscience and religion (Art. 9)
9. Freedom of expression (Art. 10)
10. Freedom of assembly and association (Art. 11)
11. Right to marry (Art. 12)
12. Right to an effective remedy (Art. 13)
13. Prohibition of discrimination (Art. 14)

The protocols are legal provisions that act as amendments to the text of the Convention. Upon entry into legal force, the protocols become legally binding parts of the Convention, and they are brought and ratified by the Convention signatories and members of the Council of Europe. The most important among the protocols are Protocol 1, which establishes the right to peaceful enjoyment of property, the right to education and the right to free elections, Protocol 13, which abolishes death penalty in all member states of the Council of Europe, and Protocol 14 that relates to advancing efficiency of court procedures.

#### **European Court for Human Rights**

The Convention defines the content of rights and freedoms, and ensures their protection. It introduces the most comprehensive system of protection of human rights, through procedures before the European Court for Human Rights. In the period between 1959- 1998, the European Court for Human Rights was operating as one of the three institutions of the Council of Europe (the European Commission of Human Rights, the Committee of Ministers of the Council of Europe, and the European Court for Human Rights) to carry out the obligations of the Convention in the states signatories to the Convention. Since November 1998 (adoption of Protocol no. 11), the Court for Human Rights has been a permanent institution within the Council of Europe. All the activities related to particular dispute, from receiving petitions to decision making, have been placed under its jurisdiction. The decisions of the European Court for Human Rights are legally binding for the States they concern. It is also possible for individuals to address the Court, since they are actively legitimate participants in the international legal process. The Human Rights

Court acts upon exhausted legal remedies in the Member States of the Council of Europe. Any person who considers that their human rights have been violated may address the Court, provide they have exhausted all legal remedies in their country. The organization and powers of the Court are regulated by the Convention, while the proceedings before the Tribunal are arranged by the Book of rules, which came into force on 1 November 1998.

The application of the standards of the Convention on Human Rights and Freedoms depends on how they are interpreted. Thus, the interpretation of the text of the Convention by the Court of Human Rights is dynamic process which also monitors social development in the countries of the Council of Europe, because the text is interpreted on the basis of conditions that exist at a given moment in a particular society.

#### **Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms in Bosnia and Herzegovina**

According to Article 2, Paragraph 2 of the BiH Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms applies directly in Bosnia and Herzegovina. As such, the Convention was directly incorporated in the domestic legal system before BiH acceded to the Council of Europe (24 April 2002). The BiH Constitution states that the application of the Convention shall have priority over all other laws, and that international standards must be fully respected by the state of Bosnia and Herzegovina, the BiH Federation, the Republika Srpska and the Brčko District.

The Convention, as a general act, can only be properly applied with full knowledge of the decisions of the European Court, and therefore the text of the Convention must be linked to the jurisprudence of the Court.

Therefore, the application of the Convention obeys the principle of case law, and the decisions of the European Court of Human Rights explain and interpret the text of the Convention. They are binding precedents, and by legal status they represent mandatory legal norms. Hence, once the Convention is ratified, the national authorities of the States Parties (including those with a legal system based on continental law, such as BiH) have to treat judgments of the Court of Human Rights as binding law. However, the responsibility for the protection of the rights defined in the Convention lies on the signatory states, not on the bodies of the Council of Europe. The degree of discretion in applying the law given to each country operates in parallel with the European supervision. The free appraisal of the application of law is applied differently and the level of discretion provided to the states varies depending on the context. States have wide discretionary power in exceptional circumstances (as prescribed by Article 15 of the Convention), while such discretionary power is almost non-existent on some issues (for instance freedom of expression or question of death penalty).<sup>27</sup>

\* \* \* \* \*

<sup>27</sup> McBride, Jeremy, A Guide to the Implementation of Article 5 of the European Convention on Human Rights. Council of Europe, Sarajevo, 2005.

**THE OBJECTIVE** of the workshop is to expand the students' knowledge and their understanding of human rights and freedoms, particularly of the mechanisms available for their protection.

The students will be able to:

- Identify and compare human rights and freedoms under the Convention for the Protection of Human Rights and Fundamental Freedoms, and the rights and freedoms guaranteed by the Constitution of Bosnia and Herzegovina,
- Explain the role of the European Court for Human Rights,
- Explain the mechanism for protection of human rights envisaged in the Constitution of Bosnia and Herzegovina,
- Explain the application of the Convention for the Protection of Human Rights and Fundamental Freedoms in BiH.

**DURATION:** 90 minutes (*two hours*)

**MATERIALS:** BiH Constitution and Constitutions of the two Entities (Republika Srpska and the Federation of BiH), Brčko District BiH Statute; Convention for the Protection of Human Rights and Fundamental Freedoms, journals;

#### **DESCRIPTION OF ACTIVITIES**

Use the given theoretical basis in order for the students to acquire the basic knowledge needed for this workshop.

#### Activity 1

- Divide the students into groups and make them work on the following tasks:
- Develop a list of fundamental rights and freedoms based on the Convention for the Protection of Human Rights and Fundamental Freedoms, and
- Develop a list of fundamental rights and freedoms based on the BiH Constitution
- Compare these lists and draw conclusions

Make each group present its conclusions to the others, and encourage discussion between the students, in order to come up with a joint conclusion at the class level.

#### Activity 2

Based on the same principle as in the previous activity, the groups will conduct researches on the following topics:

- The authorities and the role of the European Court for Human Rights,
- How the BiH Constitution (Constitution of the Entities or Statute of the Brčko District BiH) protects human rights.

Like in Activity 1, make each group present its conclusions to the others, and encourage discussion between the students, in order to come up with a joint conclusion at the class level

*Napomena: Zavisno od broja učenika, svaka grupa može da istražuje jedan od Ustava odnosno Statut.*

It is possible to take notes during the discussion and while students express their opinions.

#### Activity 3

Give the student groups samples (as many different copies as possible) of daily and periodical press in order for them to research cases of violation of human rights in BiH.

The result of this activity should be a list of human rights that are “usually” violated in BiH (or in a particular local community), based on the print media as the source of information.

Draw up a single list based on the group lists.

#### Activity 4

In the final part of this workshop, resulting from our work in the previous three activities, we will develop a list of fundamental rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, a list of rights and freedoms guaranteed by the BiH Constitution, and a list of rights violated in Bosnia and Herzegovina, or in one part of the country, at the level of a local community based on the allegations from reported media.

Each group of students needs to focus on one of the violated rights, which they identified during Activity 3. The students will stage a play to enact a procedure needed for protection of this right, in a way that charges are filed by an individual after having exhausted all legal actions in Bosnia and Herzegovina.

## **2.6. COMPREHENSION CHECK OF THE MODULE 2 CONTENT**

### **Working material 1 – Appendix for students**

#### **Group 1 - Topic: EDUCATION**

1. Which law/laws regulate this topic?
2. What **does this law/do these laws stand for in practice**, and what does/do it/they provide?
3. List an example of:
  - a. an application of this right
  - b. a violation of a law regulating this right?
4. How to react / whom to address in case of a violation of these rights?
5. What knowledge, skills and attributes may help us in case of difficulties in the exercise of these rights?

Refer to the BiH Constitution.

### Group 2 - Topic: POLITICAL PARTICIPATION AND ACTIVITY

1. Which law/laws regulate this topic?
2. What **does this law/do these laws stand for in practice**, and what does/do it/they provide?
3. List an example of:
  - a. an application of this right
  - b. a violation of a law regulating this right?
4. How to react / whom to address in case of a violation of these rights?
5. What knowledge, skills and attributes may help us in case of difficulties in the exercise of these rights?

Refer to the BiH Constitution.

### Group 3 - Topic: WORK

1. Which law/laws regulate this topic?
2. What **does this law/do these laws stand for in practice**, and what does/do it/they provide?
3. List an example of:
  - a. an application of this right
  - b. a violation of a law regulating this right?
4. How to react / whom to address in case of a violation of these rights?
5. What knowledge, skills and attributes may help us in case of difficulties in the exercise of these rights?

Refer to the BiH Constitution.

### Working material 2 – Appendix for teachers

#### Note:

The working material prepared for the students can be used after each workshop within the Module 2, in order to check their level of comprehension and their learning outcomes.

### Topic: EDUCATION

#### 1. WHICH LAW / LAWS REGULATE THIS TOPIC?

Law on the Foundation of the Education System; Law on Primary School; Law on Secondary School; Law on University (and a series of by-laws – books of rules, i.e. on educational qualification of teachers, carrying out of outings, excursions, an outing into the country, pedagogic standards, ...).

#### 2. WHAT DOES THIS LAW/DO THESE LAWS STAND FOR IN PRACTICE, AND WHAT DOES IT/DO THEY PROVIDE?

This law/laws specifies/y requirements for temporary enrollment, secondary school enrollment, rapid advancing of students, changing schools, legalization of diplomas, establishing of students' parliament, students' associations, part-time education, election of directors; it also defines the weight of disciplinary offenses and educational-disciplinary measures, how to organize excursions and their duration....

#### 3. LIST EXAMPLES - A. APPLICATION OF A RIGHT- B. VIOLATION OF A LAW REGULATING SUCH RIGHT

A – **A student who** finished first grade of gymnasium abroad, legalized his/her diploma, and enrolled full-time into second grade.

B – A student who was expelled due to a high number of unexcused absences – procedure regulated in the law was not followed - the **student was not gradually punished**.

4. HOW TO REACT / WHOM TO ADDRESS IN CASE OF A VIOLATION OF THESE RIGHTS? File charges to a school board, Ministry of Education, point to failures in observing procedures, address media...

#### 5. WHAT KNOWLEDGE, SKILLS AND ATTRIBUTES CAN HELP US IN CASE OF DIFFICULTIES IN THE EXERCISE OF THESE RIGHTS?

Familiarity with laws and various books of rules that govern particular areas in detail, i.e. Book of Rules on the Type of Educational Qualification of Teachers; Book of Rules on Evaluation; Book of Rules on Excursions; negotiation skills, timely informing; informing other relevant individuals; responsibility; persistency...

### Topic: WORK

#### 1. WHICH LAW / LAWS REGULATE THIS TOPIC?

Law on Work and a series of individual laws that govern particular areas of work, such as Law on Overtime Work in Health Institutions, Law on Work in Governmental Bodies.

#### 2. WHAT DOES THIS LAW/DO THESE LAWS STAND FOR IN PRACTICE, AND WHAT DOES IT/DO THEY PROVIDE?

It defines rights and obligations of workers and employee, criteria for receiving a dismissal slip, for receiving terminal pay as well as compensation, violation of work discipline and consequences of such violation...



3. LIST EXAMPLES - A. APPLICATION OF A RIGHT - B. VIOLATION OF A LAW REGULATING SUCH RIGHT?

A. Dismissal of workers with terminal pay for each year of service

B. Dismissal of a pregnant woman without terminal pay and statement of reasons; non-registered worker; worker without a right to annual leave;

4. HOW TO REACT / WHOM TO ADDRESS IN CASE OF VIOLATION OF THESE RIGHTS?

Address a trade union, media, Employment office; file charges to the court; organize a strike..

5. WHAT KNOWLEDGE, SKILLS AND ATTRIBUTES CAN HELP US IN CASE OF DIFFICULTIES IN THE EXERCISE OF THESE RIGHTS?

Familiarity with legislature and various books of rules that govern in detail certain areas, i.e. corporate contract, trade union rights, being well-informed, responsibility, initiative, organization skills.

## **MODULE 3 – The authorities of Bosnia and Herzegovina**

3.1. Branches of the government (3 hours)

3.2. Levels of government (2 hours)

3.3. Jurisdiction of Institutions of Bosnia and Herzegovina and its Entities (1 hour)

3.4. Relationship between an individual and a government – Constitutional regulation of the rights and freedoms (3 hours)

3.5. Compare and conclude (2 hours)

### 3.1. BRANCHES OF THE GOVERNMENT

Research that will be conducted in the frame of this workshop will allow us to find out how the state of Bosnia and Herzegovina and its Entities operate. We shall learn who has the authority to adopt laws: one or both chambers, or especially elected bodies or citizens. We shall find out who develops draft laws: the citizens, the Parliament or the Government; what the procedure for adoption of a draft law is and how the draft becomes a law; and who decides and monitors whether the laws are in accordance with the constitution and with human rights. We shall research and learn who the citizens should address to resolve the issues of importance to them, who resolves these issues at the local, entity and the state level, and what the distribution of power is. We will try to find the answers to these questions within the activities to follow.

#### **Theoretical framework**

*(The theoretical framework that follows may be utilised for all workshops in this module)*

#### **Features of the state of Bosnia and Herzegovina**

As system of government, Bosnia and Herzegovina is a semi-presidential republic (the head of the state is directly elected; he is a collegial body whose territorial jurisdiction covers the whole territory of Bosnia and Herzegovina). Bosnia and Herzegovina is a complex state. It is divided into two *Entities* – the Republika Srpska and the Federation of Bosnia and Herzegovina. The Federation is divided into 10 Cantons. The Brčko District is jointly administered by both Entities. While the Federation of Bosnia and Herzegovina is decentralized, the Republika Srpska is centralized.

#### ***The political system***

Bosnia and Herzegovina is a democratic state with all necessary elements of formal democracy, such as:

- Division of government into legislative, executive and judicial;
- Prescribed principle of the rule of constitutionality and legality;
- A multi-party system;
- Universal, direct and secret elections;
- Provided political and legal responsibility of political power holders;
- Free media;
- Independent judiciary;

The democratic constitution should provide the fair functioning of a state, and ensure respect for fundamental human rights. Further, the constitution does not prohibit discussion and different points of view, but it defines rules that apply to all citizens, and they relate to solving issues within a state and articulating their own opinion. However, the constitution allows citizens to disagree on everyday issues and laws enacted by the government, and this creates room for citizens' participation and influence in the decision-making process.

Has the BiH Constitution achieved that goal? Reflecting on the constitutions of other countries, the Constitution of Bosnia and Herzegovina should meet the following requirements:

- The government must be controlled in order to avoid the abuse of power; the power given to the state authorities must be divided and distributed to several bodies that are mutually controlled;
- The government needs to be controlled by the people on whose behalf it works; citizens must have the opportunity to participate in decision making, to express their interests without fear of the state power, and to defend their rights, if compromised.

#### ***Political institutions***

**BiH Parliamentary Assembly (PA BiH)** – In line with Article IV of the BiH Constitution, the Parliamentary Assembly is the highest legislative authority of Bosnia and Herzegovina. It is made of two chambers: the House of Representatives and the House of Peoples. All the legislation requires the approval of both chambers of the PA BiH. The PA BiH enacts the legislation, approves a budget and decides upon the sources and amounts of revenues for the operations of BiH's institutions. The PA BiH confirms the nomination of the Chairman and members of the Council of Ministers, decides whether to consent to the ratification of international treaties, and decides on other matters that are necessary to carry out its duties.

The chambers of the PA BiH are responsible for legislative, informative and monitoring activities, and they regulate their internal organization and mode of operation. Each chamber has specific commissions, but there are also joint commissions that address various types of issues. PA BiH has delegates to various international organizations, associations and other parliamentary bodies. Each House has one Chair and two Deputy Chairs (representatives of the constituent peoples). All legislation requires the approval of both chambers of the PA BiH.

**The House of Representatives** is comprised of 42 Members, two-thirds elected from the territory of the Federation, and one-third from the territory of the Republika Srpska. Members are directly elected through general elections. In order for a decision to be adopted in the House of Representatives, it needs to obtain approval of a minimum of two-thirds of the votes, which include at least one half of the votes from territory of each Entity. This is known as the principle of "entity voting" and it states that only 23% of Members is needed to vote to block adoption of a certain piece of legislation.

**The House of Peoples** is comprised of 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). The legislation approved in the House of Representatives, which is declared as, destructive of the vital interest of Bosniac, Croat, or Serb people may be abolished. Entity Constitutions envisage the establishment of legislative bodies at the entity level – the National Assembly of the Republika Srpska, and the FBiH Parliament. The FBiH Constitution envisages the establishment of legislative bodies within 10 Cantons. The Brčko District Constitution also recognizes the Assembly as the legislative body.



**The Presidency of Bosnia and Herzegovina** is the head of state of Bosnia and Herzegovina (this is not the case in states with a presidential system of government, where the head of state is the head of the government). The Presidency of Bosnia and Herzegovina consists of three Members, one from each constitutive peoples, each elected for a rotating 8-month terms as the Chair of the Presidency of Bosnia and Herzegovina, within their 4-year term as a presidency members. They are elected directly by the people: the Federation voters elect both the Bosniak and the Croat presidents, and the Republika Srpska voters elect the Serb president. The member of the Presidency with the highest number of votes is usually elected as the first Chairman.

The Presidency has the responsibility to:

- conduct the foreign policy of Bosnia and Herzegovina,
- appoint ambassadors and other international representatives,
- represent Bosnia and Herzegovina in international organizations and institutions,
- negotiate and ratify international treaties of Bosnia and Herzegovina,
- execute decisions of the Parliamentary Assembly,
- report to the Parliamentary Assembly on the Presidency's expenditures, and propose an annual budget to the Parliamentary Assembly,
- coordinate the bodies' work at the state-level.

The Presidency is also authorized to command the Armed Forces of Bosnia and Herzegovina, since each member of the Presidency, ex officio, performs the function of civil commander of the armed forces. The Presidency has the right to pardon individuals convicted of crimes, as proposed by the BiH Ministry of Justice.

**The Council of Ministers of Bosnia and Herzegovina** is the highest executive authority in Bosnia and Herzegovina, and it represents the state government. It consists of 10 Members: nine ministers and one chair. In line with the Article V, Paragraph 4 of the Constitution, the Chair and the Ministers are responsible for carrying out the policies and decisions of Bosnia and Herzegovina in the fields under the jurisdiction of BiH institutions; its responsibilities also include coordinating between the Entities and performing any additional authorities.

The chair of the Council of Ministers is appointed by the Presidency of Bosnia and Herzegovina, and appoints the other 9 members of the Council of Ministers. The Parliament subsequently confirms and approves the composition of the Council of Ministers. According to the Constitution, no more than two-thirds of all Ministers may be appointed from the territory of the Federation. The Council of Ministers proposed laws to the Parliamentary Assembly, and implements its decisions.

## Constitutionality and legality

### Constitutionality

The concept of constitutionality implies that in one country basic social rules of law are established by the constitution, as the highest legal act of the state, and ensures that the state government is organized and functions objectively. Therefore no one can have more power than it is provided in the constitution. The constitutionality implies the existence of the constitution as the highest legal act, with which all other legal acts must be harmonized. The constitutionality, in broad sense, also represents the realization of basic functions of the constitution within a particular society. In restricted sense, constitutionality means agreement of all individual pieces of legislation, i.e. laws, regulations, decisions, and other general legal acts of lower law, with the constitution.

**Legality, or the principle of legality**, implies that actions of all institutions and state organs are based on, and are in line with, the constitution. Therefore, all legal acts lower than the law (various provisions, decisions, regulations, decrees, formal decisions) need to be in line with the law.

### Basic principles of constitutionality and legality are:

1. the harmonization of laws and other legal acts with the constitution ,
2. greater legal force of law with respect to other legal acts lower than the law,
3. the prohibition of retroactive effect of laws,
4. the right of every citizen to equal protection of rights in the courts and other state authorities,
5. the right of every citizen to compensation if an official person or state agency treats the citizen badly.

### Constitutionality and legality in Bosnia and Herzegovina

The legal system of Bosnia and Herzegovina is regulated by the principles of the rule of constitutionality and legality. **The constitutionality** in BiH actually represents an obligation according to which the Entity constitutions must not be in opposition to the BiH Constitution, and the Cantonal constitutions must not be in opposition to the BiH Constitution and the Federation of Bosnia and Herzegovina Constitution. BiH Constitution norms are in effect throughout the territory of Bosnia and Herzegovina, the norms of the Entity constitutions are in force on the territory of the two Entities, while the norms of the Cantonal constitutions are in effect at the cantonal territories. Moreover, the Entity and State laws and regulations must not be in conflict with the Constitution of BiH.

*The principle of legality* obliges the executive and administrative authority to act solely on the basis of laws and other lower types of regulations. Hence, administrative authorities are bound by laws, which must be of certain quality. Laws need to be accessible, understandable and predictable. The laws and regulations, which are in accordance with the formal principle of legality shall be adopted only by the competent authorities (state, entity, cantonal and municipal), in line with prescribed procedure and in the appropriate format. Material legality puts under obligation that all lower laws and by-laws (state, entity, cantonal and municipal) must be content-wise harmonized with constitutional norms, and governs the content in the same way as it is regulated in the constitution.

## The judicial system of Bosnia and Herzegovina

Complexity of the structure and a high number of judicial institutions are some of the features of the judicial system in Bosnia and Herzegovina. In BiH, there are four separate judicial systems - at the State level, at the Entities' level, and at the Brčko District level.

**The Constitutional Court of Bosnia and Herzegovina operates at the level of BiH. Its establishment, composition, powers and election, are defined by the BiH Constitution and the Rules of the BiH Constitutional Court.** The Constitutional Court's authorities are prescribed by the BiH Constitution, and cannot be changed by any law. Among other responsibilities, the Constitutional Court **has jurisdiction to decide whether any provision of an Entity's constitution or law is consistent with this Constitution.** Furthermore, the Constitutional Court **has appellate jurisdiction** over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina. In this way, **an individual may address the Court for protection of his/her rights guaranteed by the Constitution** if he/she deems that his/her rights have been infringed by a final decision of a court.

Even though the BiH Constitution envisages that final (unappealable) judgment of a court can be refuted, the BiH Constitutional Court took a position that **an individual may ask for protection when he/she holds that a proceeding before a court has lasted unreasonably long, so a sentence can not be passed within reasonable deadline as ordered by the European Convention for Human Rights and Fundamental Freedoms. The Constitutional Court may also decide on a provisional measure in a specific case...In line with the BiH Constitution, decisions of the Constitutional Court are final and binding.** Anyone with legal interest may seek to have the ruling of the BiH Constitutional Court implemented. BiH Criminal Code stipulates that non-implementation of an executive decision of the BiH Constitutional Court is a criminal offence. The Constitutional Court has exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. The Constitutional Court also decides on the cases referred by any court in Bosnia and Herzegovina.

**The Court of Bosnia and Herzegovina was established at the level of BiH, as the only regular court at the state level. The Court was established with the goal of effective exercise of the jurisdiction of Bosnia and Herzegovina, and respect for human rights and the rule of law in Bosnia and Herzegovina.** The Court was established by the Law on the Court of Bosnia and Herzegovina. Although the Constitution of BiH does not contain provisions on the BiH Court, the existence of the constitutional basis was established by the BiH Constitutional Court's decisions. These decisions, among others, underline that the establishment of the State Court is an important element in ensuring that the institutions of BiH act in accordance with the rule of law, and that BiH, already functioning as a democratic state, is entitled to

establish additional institutions in the areas within its jurisdiction. The organization and the jurisdiction of the BiH Court are prescribed in the law. In accordance with the law, BiH Court has criminal, administrative and appellate jurisdiction.

**BiH Prosecutor's Office** was established at the state level, on the basis of the Law on the Prosecutor's Office of Bosnia and Herzegovina, as an independent body primarily responsible for conducting investigations for offenses under the jurisdiction of the Court of BiH. The Office brings criminal charges against offenders before the Court of Bosnia and Herzegovina, in accordance with the Criminal Procedure Code of BiH and other relevant laws.

**The judicial power of the Federation of Bosnia and Herzegovina** is divided between the Federation, cantons and municipalities. In accordance with the constitutional provision, the judicial function in the Federation is conducted by the courts of the Federation, which are organized on three levels - the Constitutional Court and **the Supreme Court, cantonal courts and municipal courts.** The organization, jurisdiction, funding, administration of justice and other issues of importance to the organization and functioning of the municipal courts, cantonal courts and the Supreme Court of the Federation, are regulated by **Law on Courts in the Federation BiH.** Municipal courts in the Federation BiH have jurisdiction over the territory of one or more municipalities in a single canton. Cantonal courts exercise first and second instance jurisdiction over the territory of one canton, while the Supreme Court of FBiH is the highest appeal court in the Federation, and it is responsible for the territory of the Federation of Bosnia and Herzegovina.



**The Constitution of the Republika Srpska (RS)** contains general provisions that, by law, define the establishment and the authority of institutions, and the proceedings in court. The RS Constitution explicitly prescribes the existence of the Supreme Court of the Republic as the highest court in the Republic, which “ensures uniform enforcement of law”<sup>28</sup>. Chapter IX defines the responsibilities, the composition and other issues related to the functioning of the RS Constitutional Court. **The law on RS’ Courts defines the organization, responsibilities and functioning of basic courts, district courts and the Constitutional Court of the RS.** Hence, the basic courts are established for the territory of one or more municipalities, district courts for the area of two or more basic courts, while the Supreme Court is the highest appellate court in RS. A Senior Commercial Court was also established, as a court of second instance for economic courts of the RS.

**The Supreme Court of the Federation, i.e. the Supreme Court of the Republika Srpska** have jurisdiction over deciding on: routine legal remedies against decisions of the cantonal/district courts, on special legal remedies against legally valid court decisions, and on legal remedies against decisions by their councils. It resolves turf wars and it decides on the transfer of territorial jurisdiction; it also conducts other tasks, as long as these are not within the jurisdiction of the entity constitutional courts. The constitution of the Federation of Bosnia and Herzegovina and the RS Constitution contain provisions that affirm courts’ independence and autonomy from the executive and the legislative branches.

**Under Article 8 of the Statute of the Brčko District of Bosnia and Herzegovina**, „judicial and legal services“ are situated strictly within authority of the Brčko District. Article 66 prescribes that „Judicial system is independent and impartial, and it consists of Basic Court and Appellate Court“, and that „Establishment, organization and competence of the courts in the District are provided by the law“. **Law on Courts in the Brčko District BiH** regulates the general competence, organization of courts, internal organization, authorities, waiver of judges and servants, publicity of work, financing of courts and other issues of importance for the functioning of the courts in Brčko District BiH. Courts in the Brčko District BiH are **Basic Court and Appellate Court which** are founded for the territory of the Brčko District in line with the Statute.

The law established the High Judicial and Prosecutorial Council of Bosnia and Herzegovina at the state level, based on transfer of responsibility from the BiH Entities. HJPC has jurisdiction over all courts and prosecution authorities. HJPC nominates and dismissed judges and prosecutors at all levels, but it does not nominate judges of the constitutional courts, although it has the authority to conduct proceedings of appointment of candidates for judges at the entity constitutional courts, and submit a list of candidates to the authorized bodies for appointment. HJPC also has the authority to initiate the legislation in the field of justice, and to conduct supervision in the field of training of judges and prosecutors. In Bosnia and Herzegovina, structural dialogue is currently ongoing on the judicial reform. Under this structural dialogue, activities are ongoing on the issue of the reform and improvement of the judicial system in Bosnia and Herzegovina.<sup>29</sup>

<sup>28</sup> Constitution of the Republika Srpska, Article 123

<sup>29</sup> In June 2012, the European Commission for Democracy through law (Venice Commission) adopted a document entitled “Opinion on the legal security and independence of the judiciary in Bosnia and Herzegovina”. In this Opinion, among other things, it is stated that the general state of the judiciary in BiH gives cause for concern in terms of legal certainty with regard to the independence of the judiciary. One of the conclusions in the Opinion points out the following: “Existence of several legal systems and judicial fragmentation hinders BiH’s fulfillment of the requirements for consistency, accuracy, stability and finality of its legislation and case law, as well as fulfilling various aspects of institutional and individual independence of the judiciary.” [http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/integracije/Misljenje%20VK%20-%20BJ.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/integracije/Misljenje%20VK%20-%20BJ.pdf)

## Constitutional jurisprudence

The term „constitutional jurisprudence“ implicitly refers to a judicial authority that protects the implementation of the constitution of a certain state. The constitutional jurisprudence applies to interrelations among various state organs, administrative units and different levels of government, as well as relations between the country and the individual citizen, all of which are regulated in the constitution.

## Constitutional courts

Constitutional courts in Europe have been developing for the past hundred years as institutions that control of constitutionality and legality. Generally, these courts assess whether a law or other regulation is in accordance with the constitution of the state. Constitutional courts have a very important role in implementing the principle of the rule of law in modern democratic societies. In different countries there are different systems of appointing judges of the constitutional court. They may be appointed by the highest legislative body, the president of the state, or any other government body. Apart from deciding on the constitutionality of laws and regulations, constitutional courts also decide on the conflict of jurisdiction between different branches of the state government, and on the protection of the constitutional rights of individuals. There are three constitutional courts in Bosnia and Herzegovina: the Constitutional Court of Bosnia and Herzegovina, the Constitutional Court of the Federation of Bosnia and Herzegovina, and the Constitutional Court of the Republika Srpska.

**The constitutional Court of Bosnia and Herzegovina** - The institution of the Constitutional Court was founded based on the Article VI of the BiH Constitution, which regulates its jurisdiction, its organization and its procedures, as well as the finality and importance of the Constitutional Court rulings. This court is foreseen as a guardian of the Constitution and a guarantee of protection of human rights and fundamental freedoms set forth in the Constitution and international instruments listed in Annex 1 to the Constitution. According to the BiH Constitution, the Constitutional Court acts as an independent body. The Constitutional Court adopts the rules of the Constitutional Court of BiH by majority vote of all judges. Hence, alongside the BiH Constitution, these rules represent the fundamental act of the organization and functioning of the Constitutional Court.<sup>30</sup>

The jurisdiction of the BiH Constitutional Court is prescribed in the BiH Constitution and cannot be changed by a special law. The Constitutional Court, among other things, decides on:

- Whether any provision of an Entity’s or a State’s constitution or law is consistent with the BiH Constitution, including constitutionality of the provisions of an Entity’s constitution;
- Any dispute that arises under the Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina.
- The issues contained in the Constitution of Bosnia and Herzegovina when they become a subject of dispute because of any final judgment of a court. (This is called the appellate jurisdiction of the Constitutional Court, which provides that an individual can ask for protection of his/her rights guaranteed by the Constitution if it he/she considered these to have been infringed by a final decision of any other court. Appeal may be filed to the Constitutional Court when all other legal remedies in the national courts have been exhausted. Even though the BiH Constitution envisages that final (unappealable) judgment of a court can be refuted, the BiH Constitutional Court took a position that an individual may ask for protection when he/she holds that a proceeding before a court has lasted unreasonably long. It must be noted that the greatest number of cases of the Constitutional Court comes from this kind of responsibility and that the Court is simply overcommitted with the appeals of unsatisfied citizens);

<sup>30</sup> The Constitutional Court of Bosnia and Herzegovina consists of nine judges; six judges are selected by the Entity Parliaments (the House of Representatives of the Federation of Bosnia and Herzegovina selects four judges, and two judges are selected by the Assembly of Republika Srpska), while three judges are selected by the President of the European Court of Human Rights. Appointed judges have a right to serve until age 70, unless they resign or are removed for cause by consensus of other judges

- The issues of protection of vital national interest of the constituent peoples;
- the so-called constitutional questions presented by any court in Bosnia and Herzegovina, which appear in the course of proceedings in that court, and which relate to whether a law is in accordance with the Constitution, European Convention for Human Rights, or the BiH laws.

In accordance with the BiH Constitution, decisions of the BiH Constitutional Court are final and binding. Anyone who has a legal interest may seek to have the decision of the BiH Constitutional Court effectuated. The BiH Criminal Code stipulates that non-implementation of an executive decisions of the Constitutional Court is a criminal offense.

**The Constitutional Court of the Federation of Bosnia and Herzegovina** exercises its authority on the basis of the Constitution of FBiH, Law on the Procedure before the Constitutional Court of the Federation of Bosnia and Herzegovina, and the Rules of Procedure of the FBiH Constitutional Court<sup>31</sup>. The jurisdiction of the FBiH Constitutional Court is as follows:

- To resolve disputes between any Cantons, between any Canton and the Federation Government, between any municipality and any city, between any municipality and its Canton or the Federation Government, and between or within any of the institution of the Federation Government;
- To determine whether any proposed law that has been adopted by one of the Houses of Legislature, or any law that has been adopted by each House of the Legislature, is in accord with the FBiH Constitution;
- To determine whether the Cantonal Constitution and any amendments thereto, proposed law or the law adopted by the legislative body, is in accord with the FBiH Constitution;
- To determine whether any regulation enacted or proposed to be enacted by any organ of the Federation, Cantonal, City or Municipal Government is in accord with the FBiH Constitution;
- To protect the right to local self-government;
- To decide on the constitutional questions that arise from the law that government immunity;
- To decide on the questions presented by the Supreme Court or a Cantonal court that arise in the course of a proceeding currently pending before that Court (a constitutional issue). Whenever the Supreme Court or a Cantonal Court should consider, in the course of a proceeding currently pending before such court, that an applicable law is not in accord with this Constitution, it shall stay the proceeding and present the question to the Constitutional Court for decision.

**The Constitutional Court of Republika Srpska** exercises its jurisdiction on the basis of the RS Constitution, Law on the Constitutional Court of the RS, and the Rules of Procedure of the Constitutional Court of Republika Srpska<sup>32</sup>. Functions of the Constitutional Court of the RS are defined in the Article 115 of the Constitution, as follows:

<sup>31</sup> The Court consists of nine judges, of whom at least two come from all three constituent people each and one from the group of Others. The judges of the Constitutional Court are nominated by the President of the Federation with the concurrence of the Vice-Presidents, and shall require for appointment the approval of the majority of the present and voting members of the House of Peoples. The Judges of the Constitutional Court serve until 70 years of age, unless they resign or they are removed for cause by consensus of the Judges of the same Court.

<sup>32</sup> RS Constitutional Court consists of nine judges, including the President of the Court, who shall be nominated in accordance with the Constitution and law. Judges are nominated by the National Assembly of the Republika Srpska and the National Council.



Ustavni sud RS-a:

- Conformity of laws, other regulations and general enactments with the Constitution;
- Conformity of regulations and general enactments with the law;
- Resolution of conflict of jurisdictions between bodies of legislative, executive and judicial branch;
- Resolution of conflict of jurisdictions between agencies of the Republic, city and municipality;
- Decides on conformity of programmes, statutes and other general enactments of political organizations with the Constitution and the law;
- Decides on conformity of programmes, statutes and other general enactments of political organizations with the Constitution and law;
- Decides whether laws, other regulation and general enactments of the National Assembly are in accord with provisions of the Constitution on protection of vital national interest of constitutive peoples;
- Decides on the issue of immunity, which stem from the law that governs immunity in Republika Srpska.

Decisions of the Constitutional Court are universally binding and enforceable in the territory of the Republic. The execution of the decisions of the Constitutional Court shall be ensured by the Government.

The Constitutional Court also has general monitoring, guiding and preventive jurisdiction. Namely, the Court monitors events of interest for the achievement of constitutionality and legality, and informs the highest constitutional bodies of the Republic on the status and problems in that area, offering them opinions and proposals for adopting laws and undertaking other measures for the purpose of ensuring constitutionality and legality, as well as the protection of freedoms and rights of citizens.

\* \* \* \* \*

## OBJECTIVES

Students will:

- Be able to explain the importance of power-sharing at all levels;
- Assume the consequences of lack of division of powers into three branches at all levels;
- Define responsibilities of each branch of the government;
- Identify examples and explain the need for balance and control between the branches of the government;
- Argue their attitude on the citizens' need to be familiar with the competence of individual branches of government.

**DURATION** - 135 minutes (3 hours)

**MATERIALS** - Theoretical basis of the lesson; BiH Constitution; Constitution of the Entities and the Brčko District BiH Statute; Handout 1; Handout 2 – Worksheets; Working Paper 3 - Schematic representation of the government in BiH, the Entities and the Brčko District; board;

## DESCRIPTION OF ACTIVITIES

**Activity 1** - In order to focus on the topic, the workshop should be opened with the following question:

➤ **What is necessary for enactment of a basketball game?**

Record students' responses in a conspicuous place.

**Expected answers:** *players, coaches, judges, audience, medical support, massage therapists, physical therapists, etc.* If no one remembers an answer, it is necessary to remind students of basketball institutions, such as FIBA, ABC League, because they make the rules.

It is necessary to distinguish between those elements **that are not essential**, without which the game can be played, and **those that are necessary** for playing a match.

*(For instance, the match can be played without an audience and certain players in reserve, assistant coach, but not without a minimum of players, a referee, minimum requirements for the game, a scorer, delegates, correct lights, clock, etc ...)*

Comment with students on necessary conditions for enacting of a basketball match, argue responses and justify the necessity of those conditions. Direct discussion towards students' understanding that each condition for playing a basketball match has its role and importance. Existence of different rules and various roles of "necessary conditions" for enacting a basketball match is inevitable in order for one basketball game to be played out.

- The teacher points out similarities and differences between necessary conditions for enactment of a basketball game and organization of government.



It is possible to cite other examples that point to division of roles and responsibilities, and existence of rules, and encourage students to outline some of the examples (for instance, the rules in traffic, the rules at school, etc.)

Draw a parallel between some examples of division of roles and responsibilities on the one hand, and division of power within a state on the other hand.

**Activity 2** Divide students into three groups and ask them to look at the organization chart of the BiH government. The teacher initiates a discussion on the competences of individual branches of government, and asks students what is their view of the competences. Provide students with a theoretical framework for this lesson<sup>33</sup>. Supplement discussion by answers and explanations of some branches of government and their functions (theoretical framework and Handout 2 - Worksheets). Pay particular attention to the mechanisms of mutual control of individual branches of government.

Groups of students are "specialized" for one of the three branches of government, and given a task to define obligations of a particular branch of the government, in order for them to be able to improvise balancing of power in the frame of theatrical play that will be staged during the next activity.

Finalize this activity with adoption of the following conclusions:

- What are the key responsibilities of each branch of the government?
- What does the balance of power stand for, and why is the balance of power important?
- What problems can occur if there is no check and balance within the government?

Examples (at least three examples) of the BiH Constitution, which address the balance of power between three branches of the government.

You may display schemes of the government structure instead of the worksheets.

<sup>33</sup> Given that the theoretical framework for this lesson is also important for other lessons in this Module, and is more comprehensive than usual, it is possible to share with students this theoretical framework during previous lesson, and instruct them to read it until the next lesson, since students will need information contained in this theoretical framework in order to properly participate in activities. In this case, they will need less time to read and understand the theoretical framework for this lesson.



### Activity 3

Divide students into groups of four, and give each group a specific card (Attachment: Working material 1) with instruction to read the text written on the card. Afterwards familiarize them with the content of the Activity 3.

**For instance, “Parliament / Assembly passed the Law on Employment. However, the government failed to effectuate the law. Think about the problem presented in the working material that you were provided with, and then we shall improvise a session that is held one year after the adoption of the law. “**

Bring together two groups in the center of the classroom. The groups will represent the members of the parliament and the government. They will hold a public session in order to exchange arguments on the Law on Employment. The Parliament asks the Government to provide an explanation as to why it has not adopted relevant by-laws. The Prime Minister claims that the Law is unconstitutional. Representatives of the Constitutional Court and the citizens (the two remaining groups of students in the classroom) follow the discussion.

After both groups presented their arguments, the teacher will interrupt the session and announce that now is the turn of the Constitutional Court to issue an order, since the Prime Minister claims that the Law is unconstitutional. While the court is in session, citizens have the opportunity to say something about this problem. When the activity resumes, the Constitutional Court is called upon to announce their order.

In the **final part of the activity**, the teacher emphasizes that this activity was only one example of all three branches of government declaring themselves on the same problem, while the public also spoke on the same issue. Note how people at various positions hold different opinions, and differently explain themselves on the same issue.

For this reason it is important that different branches of government independently decide within their jurisdiction, and that they mutually control each other.

#### Comprehension check and ability to apply what has been learned in practice

- Could the state function without the separation of powers?
- What is the purpose of the separation of powers?
- How do you assess various degrees of realization of competences of the branches of government in BiH?

Groups of students can come up with questions on this theme, which will be used in organizing a quiz.

#### Additional activity for comprehension check

Each student is given a piece of paper that was previously split into three parts, and on each part of the paper you wrote down:

**LEGISLATIVE BRANCH** **L**

**JUDICIARY** **J**

**EXECUTIVE BRANCH** **E**

The teacher reads statements and questions, and students match particular competences with a particular branch of the government, aided by a folded paper, turning it to appropriate side of the paper.

*Alternative way to proceed is to ask students to write down (besides a tag of particular branch of the government) number of the question that refers to jurisdiction of a particular branch of the government.*

1. Who enacts the laws? \_\_\_\_\_
2. Who defines the budget of the judicial institutions? \_\_\_\_\_
3. Who makes decisions that are final and binding? \_\_\_\_\_
4. Who implements decisions adopted by the Parliamentary Assembly?  
\_\_\_\_\_
5. Who ratifies international treaties? \_\_\_\_\_

#### APPENDIX: Working material



**Appendix 1.1.****YOU ARE A PARLIAMENTARIAN**

You enacted a Law on Employment that contains the following articles:

**Article 51**

All candidates must pass a state board examination upon admission to work.

**Article 52**

Those candidates who have not passed a state board examination are obliged to attend courses and lectures, and to pass the examination within one year from the date of enactment of this law.

**Article 53**

Upon expiration of the deadline provided in the Article 52, no person that has not passed a specialist exam will be able to compete and be employed, since passing of the exam is minimum requirement and qualification for employment.

A year later, a session of the Assembly / Parliament is held, attended by the members of government. The government did not enact laws, and the expertise of the candidates has become an issue. You are requesting that respective ministers (Minister of Work and Minister of Education) resign, while the most radical parliamentarians even request the government to resign. Your task is to prepare for the session.

What to tell to minister and government members on their work?

Why do you think that they should resign?

Your key argument is that the government must implement the laws, and this one too.

Since the government will not keep silent you should prepare some responses.

**YOU ARE THE GOVERNMENT**

You are familiar with the Law on Employment adopted by the Parliament / Assembly, which provides inter alia:

**Article 51**

All candidates must pass a state board examination upon admission to work.

**Article 52**

Those candidates who have not passed a state board examination are obliged to attend courses and lectures, and to pass the examination within one year from the date of enactment of this law.

**Article 53**

Upon expiration of the deadline provided in the Article 52, no person that has not passed a specialist exam will be able to compete and be employed, since passing of the exam is minimum requirement and qualification for employment.

You as a government, in particular your ministries, have undertaken all measures to ensure that all civil servants pass a specialist exam within given deadline. You designed a programme and organized courses. However, it turned out that this is a big issue since the candidates neither want to study nor attend training for lack of time for study. You are well aware that you will be criticized at the scheduled session, since you failed to implement a program, i.e. implement the enacted Law.

Prepare defense by stating that you have done all that was in your power and within your jurisdiction. During activity implementation, you run into a number of obstacles, and it is not your fault that a significant number of candidates were turned down. You hold that the Law violates basic human rights, that is the right to work, and you ask that constitutionality of the Law be assessed. Afterwards, request amendment to the Law on employment, that is, Article 52, where the deadline for professional upgrading would be extended for another year.

**YOU ARE CITIZENS**

You follow on the media what is going on, in particular what the government is doing. You are familiar with the Law on Employment adopted by the Parliament / Assembly, that, among other things, provides:

**Article 51**

All candidates must pass a state board examination upon admission to work.

**Article 52**

Those candidates who have not passed a state board examination are obliged to attend courses and lectures, and to pass the examination within one year from the date of enactment of this law.

**Article 53**

Upon expiration of the deadline provided in the Article 52, no person that has not passed a specialist exam will be able to compete and be employed, since passing of the exam is minimum requirement and qualification for employment.

You are familiar with the government decision on minimum requirements that you need to fulfill, and it is expertise.

Many of you can not get a job for lack of expertise in performing the job. A year later, a session of the Assembly and the Government is held, and you will watch the broadcast of the session.

As you watch the session, analyze the problem from your point of view, and be ready to present your attitude on this issue.

**YOU ARE THE CONSTITUTIONAL COURT**

You are familiar with the Law on Employment adopted by the Parliament / Assembly, that, among other things, provides:

**Article 51**

All candidates must pass a state board examination upon admission to work.

**Article 52**

Those candidates who have not passed a state board examination are obliged to attend courses and lectures, and to pass the examination within one year from the date of enactment of this law.

**Article 53**

Upon expiration of the deadline provided in the Article 52, no person that has not passed a specialist exam will be able to compete and be employed, since passing of the exam is minimum requirement and qualification for employment.

You are familiar with the fact that the government has failed to realize a training programme for candidates for the job.

You got the initiative to assess constitutionality of the law, in which it is stated that the Law on Employment is unconstitutional, that it violates human rights, that it denies the right to work, that it makes the right to work a condition of expertise, and that it violates constitutional principle of equality of citizens. You are in session and you stick to your jurisdiction. You do not take notice of remarks of the members of government and parliament, nor do you arbitrate between them. You rather assess whether the law is constitutional or not. Take into consideration that you must not exceed your authority.

Worksheet 1

**Jurisdiction of the BiH government**

JURISDICTION OF THE LEGISLATIVE, EXECUTIVE  
AND JUDICIAL AUTHORITIES

**Worksheet – Appendix 1.1.**

**Competences of the legislative government (BiH Parliamentary Assembly, BiH House of Representatives, BiH House of Peoples) are:**

- enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under the Constitution;
- deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina;
- approving the budget for the institutions of Bosnia and Herzegovina;
- deciding on ratification of treaties and agreements;
- other matters as are necessary to carry out its duties of as are assigned to it by mutual agreement of the Entities.

**Worksheet - Appendix 1.2.**

**Competencies of the executive government are:**

**BiH Presidency is responsible for:**

- Conducting the foreign policy;
- Appointing ambassadors and other international representatives;
- Representing Bosnia and Herzegovina in European and international organizations and institutions;
- Negotiating and ratifying treaties of Bosnia and Herzegovina;
- Executing decisions of the Parliamentary Assembly;
- Reporting as requested, but no less than annually, to the Parliamentary Assembly on expenditures by the Presidency;
- Coordinate work of the government bodies at the state level.
- The Council of Ministers is responsible for carrying out the policies and decisions in the following fields:
  - The responsibility of the institutions of BiH;
  - cooperation between the Entities;
  - additional responsibilities.

**Competencies of the judicial government (Higher Judicial and Prosecutorial Council, BiH Constitutional Court) are<sup>34</sup>,**

**BiH Constitutional Court:**

- To decide on any issues that arise under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina,
- The Court has appellate jurisdiction over the issues from the Constitution arising out of a judgment of any other court in Bosnia and Herzegovina,
- The court has jurisdiction over issues referred by any other court in Bosnia and Herzegovina,
- Decides on compatibility of the constitution of Entities, laws and other regulations with the Constitution (monitoring of the regulations of legislative and executive government),
- Interprets the constitution.

**Court of BiH has:**

- Criminal jurisdiction,
- Administrative jurisdiction,
- Appellate jurisdiction.

**High Judicial and Prosecutorial Council is tasked:**

- To ensure independent, impartial and professional judiciary in Bosnia and Herzegovina,
- To appoint and acquit holders of judicial functions of all courts and prosecutor's offices (except judges of constitutional courts in relation to which it conducts proceedings on selection of candidates),
- To supervise professional trainings, etc.

**At the level of Bosnia and Herzegovina additionally operate Prosecutor's Office of Bosnia and Herzegovina and BiH Ombudsmen.**

<sup>34</sup> 7 Constitutional jurisprudence is separate domain within the judiciary, different from the ordinary judiciary. The Constitution of Bosnia and Herzegovina contains explicit provisions only on the Constitutional Court of Bosnia and Herzegovina

## Worksheet 2

### Institutions of government of Republika Srpska and Federation of Bosnia and Herzegovina

#### INSTITUTIONS OF LEGISLATIVE, EXECUTIVE AND JUDICIAL AUTHORITIES

Government structure of the Entities includes the following institutions:

- Legislative authority: in the Federation of Bosnia and Herzegovina – Parliament of the Federation BiH (the House of Representatives and the House of Peoples); in the Republika Srpska: RS National Assembly and RS Council of Peoples)
- Executive authority: in the Federation of Bosnia and Herzegovina – the President and the Vice-President, the Government of the Federation of Bosnia and Herzegovina, ministries and other administrative bodies; in the Republika Srpska – The President and the vice-presidents of the RS, the RS Government, ministries and other administrative bodies;
- Constitutional Court of the Federation of Bosnia and Herzegovina; Constitutional Court of the Republika Srpska;
- Judicial authorities in the Federation of Bosnia and Herzegovina: the Supreme Court of the Federation BiH, Federal Prosecutor's Office; in the Republika Srpska (Constitutional Court of the RS; Prosecutor's Office of the Republika Srpska; Special prosecutor's office of Republika Srpska (Remark: prosecutor's offices are situated in the justice system, but they are not judicial authority). Office of Attorney General of FBiH, Office of Attorney General of the RS, and legal profession;
- Other institutions: various agencies, public services and other independent institutions (Ombudsmen of the Federation of Bosnia and Herzegovina; (RS Ombudsmen).

## Worksheet 3

### Mechanism of checks and balances on power

The separation of authorities creates balance between the three branches of the government. Each branch of the government has its own jurisdiction, which is defined in the constitution, and it must not take over and interfere with authorities of the other branches of the government. It also has an obligation to defend its area of jurisdiction from attempts by other two branches of the government to adopt them. This means that each branch inspects and controls other government branches, thus ensuring their mutual restriction.

A constitutional court represents a special form of exercising control over government through court's jurisdictions. This court is authorized to control all decisions of all other governmental bodies in respect to their accordance with the constitution and laws. In such a way, the court keeps them within boundaries of their jurisdiction. However, even though all branches of government have separate responsibilities and are opposing each other, the three branches of the government perform together the function of governing the country.

### Working material 3

**Schematic view of the structure of government:** in Bosnia and Herzegovina, the Republic of Srpska, Federation of Bosnia and Herzegovina, and the Brčko District  
<http://www.dei.gov.ba/dokumenti/default.aspx?id=9456&langTag=bs-BA>  
[http://ndcsarajevo.org/moj\\_ustav/mojustav.html](http://ndcsarajevo.org/moj_ustav/mojustav.html)

## 3.2. LEVELS OF GOVERNMENT IN BOSNIA AND HERZEGOVINA

Power is present in all the spheres of our lives. It exerts either direct or indirect impact on our daily lives, in different ways, whether we realize it or not. In order to understand the importance and inevitability of the impact of the government on our lives, it is necessary to familiarize oneself with jurisdictions, i.e. the system of obligations that the government has in a particular area. In this way, we shall understand the way in which the BiH state functions, as well as familiarize ourselves with levels of government, and its responsibilities at each level as these are regulated by the Constitution. Furthermore, we will be able to assess the effectiveness of individual levels of government.

### Theoretical framework

Each state must fulfill its various functions and tasks, which are divided into specific areas. These areas must be regulated by law. The executive branch of the government plays an important role in performing state functions, while the courts resolve disputes arising out of certain areas. Thus, all three branches of government are involved in carrying out the functions of the state. The particular jurisdictions performed by particular state authorities are divided according to the area of regulation; this division is called "functional" (or "horizontal"). However, complex states, such as Bosnia and Herzegovina, need to have a regulated division of responsibilities and functions at the level of administrative and territorial authorities. This type of division of responsibilities between different levels of government is in the theory called "vertical" division.

Bosnia and Herzegovina is a state with strict separation of responsibilities between the State and the Entities, and such division encompasses both "horizontal" and "vertical" jurisdiction. In other complex states, such as federations consisting of several federal units, the key issue within the division of authorities is on which side lies the "original" jurisdiction, whether at the level of federal units, or at the federal level. As for Bosnia and Herzegovina (which is not defined as a federation, but consists of Entities as a separate unit, and the Brčko District), the BiH Constitution explicitly implies that jurisdiction sits with the Entities, the Entities having jurisdiction over functions and authorities that are not bestowed by the Constitution to institutions of the BiH state.

### The responsibilities of the BiH Institutions

Article III of the BiH Constitution determines the authorities of the BiH institutions and the Entities. Paragraph 1 of this Article lists key material and legal areas that are within the jurisdiction of the state. According to Article III/1 of the BiH Constitution the Entities are authorized only if certain area of responsibility does not belong to the state.

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- a) Foreign policy
- b) Foreign trade policy,
- c) Customs policy,
- d) Monetary policy,
- e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina,
- f) Immigration, refugee, and asylum policy and regulation,
- g) International and inter-Entity criminal law enforcement, including relations with Interpol,
- h) Establishment and operation of common and international communications facilities,
- i) Regulation of inter-Entity transportation,
- j) Air traffic control.

It should be pointed out that the listed responsibilities of the state do not automatically regulate the exclusive authority of BiH in all cases. For instance, the responsibility of maintaining special parallel relations with neighboring states falls within the domain of „foreign policy“, but in the Article III, Paragraph 2 of the Constitution, this authority is put in the hands of the Entities. Hence, when it comes to distribution of authority between the State and the Entities there are some exceptions from the basic rules.

#### Responsibilities of the entities

Article III/2 of the BiH Constitution prescribes Entities' responsibilities in the following way:

- a) The Entities shall have the right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.
- b) Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honor the international obligations of Bosnia and Herzegovina....
- c) The Entities shall provide safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies, that will operate in accordance with internationally recognized standards, and with respect for the internationally recognized human rights and fundamental freedoms referred to in Article II above, and by taking such other measures as appropriate.
- d) Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly....

#### The Brčko District

**The Brčko District** has a local self-government and sends its representatives to Bosnia and Herzegovina state bodies. The jurisdiction of the Brčko District administration is equal to the jurisdiction of the local and Entity governments, except for the right to establish special relationships with the neighboring states.

#### The jurisdiction of the local level of government

The local level may represent the level of city government or the level of municipal administration in the Federation and the Republika Srpska alike. Jurisdiction of the local level of government is regulated by the constitutions of the Entities, cantons/counties, a law on local self-government, and municipal statutes. In the rare case of existence of the city government, responsibilities of the municipal government listed below are shared between the two levels. In case there is no city government, the most important responsibilities of the municipality are the following:

1. programme of development, urban planning, budget and final budget;
2. public services;
3. insurance and regulation of land for building of office space;
4. culture, education, health care, information and tourism;
5. laws, regulations and general acts for the local level;
6. municipal police and other control authorities;
7. organization of municipal services;
8. other things at the local level.

#### Changes in jurisdiction

According to the BiH Constitution, the listed jurisdiction of the Entities and the State is not an immutable category. In fact, in line with the Article III Paragraph 5 of the BiH Constitution, Bosnia and Herzegovina shall assume responsibility for such other matters as these are: agreed by the Entities, provided for in Annexes 5 through 8 to the General Framework Agreement, or necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina.

Based on the above provisions of the Constitution, the Entities have so far reached three agreements on the transfer of responsibility to the state, as follows:

#### 1) Agreement in the field of indirect taxation

In 2003, the Entities agreed that the competence in the field of indirect taxation be entrusted to the state level. Based on this agreement, the Law of Indirect Taxation was adopted at the end of 2003. This Law established the Indirect Taxation Authority as an independent institution at the state level.

#### 2) Establishment of a single High Judicial and Prosecutorial Council at the level of BiH

In 2004, Bosnia and Herzegovina established a single High Judicial and Prosecutorial Council of Bosnia and Herzegovina. HJPC was established as an independent body by the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, upon transfer of powers from the Entities in accordance with their respective constitutional powers. Responsibilities of HJPC, as the state institution, relate to all levels of the State of Bosnia and Herzegovina, including the Brčko District, and all courts and prosecutors' offices, with certain restrictions when it comes to constitutional courts.

#### 3) Establishment of the Armed Forces of Bosnia and Herzegovina

The Entities also entered into an agreement on the establishment of the Armed Forces of Bosnia and Herzegovina. This agreement preceded adoption of the Law on Defense of Bosnia and Herzegovina in 2005. The Law defined the armed forces as a professional, single military force organized and controlled by Bosnia and Herzegovina. It should be noted that the BiH Constitution only provides transfer of jurisdiction from the Entities to the State, while reverse transfer of jurisdiction (from the State to the Entity) is not envisaged in constitutional provisions.

\*\*\*\*\*

## OBJECTIVE

Students will be able to:

- Identify different levels of the government;
- List responsibilities of each level of the government;
- Determine whether there is protection and respect of human rights at all levels of the government;
- Note that government is present in all spheres of life;
- Identify what levels of government are regulated by the BiH Constitution and in what way the Constitution of BiH regulates authority;
- Be able to assess the effectiveness of different levels of the government;
- Take a stance and argue proper attitude on the transfer of authority.

**DURATION** – 90 minutes (2 hours)

**MATERIALS:** Worksheets, the BiH Constitution, the Constitutions of the Entities, the Brčko District Statute; schematic views of the government levels; newspapers.

## DESCRIPTION OF ACTIVITY

### Activity 1 - Focus

Ask students to reflect on the role of the government, and stimulate discussion by some of the proposed questions.

- Who is responsible for garbage collection in our city?
- Who gives us a permission to build our business building?
- Who organized a concert in our city?
- Who ensures that we get to work on time?
- Who determines the amount of salary for our work?
- Whether there are some things we do that are not directly related to the functioning of the government?

*„There are few things we do that are not related to the functioning of the government. In order to respond to our needs and the needs of society, and to serve its purpose, the government should be organized so that it is effective.“*

### Activity 2

Divide students into four groups and give each group a schematic representation that refers to jurisdiction of one level of government: State, Entities, Cantons / Counties, or local levels of government.

Within groups, students should exchange views and become experts on a given topic. Each group should present the material and express their opinion, as well as answer the following questions:

- What is a jurisdiction and how is it defined?
- Identify specific responsibilities of the state, entity, cantonal and local government in your midst?

### Activity 3

Display to students schematic representation of the levels of government:

- ✓ State level
- ✓ Entity level
- ✓ Cantonal-county level
- ✓ Local level

#### > Which level of the government has jurisdiction in a given situation?

Sovereignty and territorial integrity.....?

Parallel relations with other countries .....

Garbage collection and snow .....

Organization of concerts in our city .....

- Underline situations for which it is difficult to determine which level is in power?

#### Critical thinking exercise:

Present to student the following text:

*“According to the BiH Constitution, jurisdiction of the Entities and the State is not immutable category. In fact, in line with the Article III Paragraph 5 of the BiH Constitution, Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities“*

Seek the opinion of students on quotations from the text.

- Can jurisdiction be transferred?
- Under what conditions?
- Does such change require consent of the entities, and under what conditions?  
(Suggest to students to find the explanation in the BiH Constitution - Article III, Paragraph 5)

## Activity 4

Divide students into three groups and give them worksheets concerning jurisdictional changes that relate to: Agreement in the area of indirect taxation, establishment of a single High Judicial and Prosecutorial Council at the BiH level, and establishment of Armed Forces of Bosnia and Herzegovina.

Seek the opinion of students on these examples of change of jurisdiction and organize a discussion using the following questions:

1. Are the entity-level agreements adopted pursuant to the Article III, Paragraph 5 of the Constitution of Bosnia and Herzegovina?
2. The Constitution of Bosnia and Herzegovina provides for transfer of jurisdiction from the Entities to the State. What about the transfer of responsibilities from the State to the Entity?

### Comprehension check

Ask students the following questions:

1. What levels of government are there in Bosnia and Herzegovina? List three responsibilities for each level of government! (Use the BiH Constitution)
2. Using the newspaper, identify examples that demonstrate activities of the local, entity and state level government!
3. Is it possible to transfer jurisdiction from the Entity to the State with consent of the Entities, and from the State to the Entities with consent of the State? Explain and list examples.

**APPENDIX:** Working material

### WORKSHEETS

#### Worksheet 1

##### Agreement in the field of indirect taxation

In 2003, the Entities agreed that the competence in the field of indirect taxation be entrusted to the state level. Based on this agreement, the Law of Indirect Taxation was adopted at the end of 2003. This Law established the Indirect Taxation Authority as an independent institution at the state level.

#### Worksheet 2

##### Establishment of a single High Judicial and Prosecutorial Council at the level of BiH

In 2004, Bosnia and Herzegovina established a single High Judicial and Prosecutorial Council of Bosnia and Herzegovina. HJPC was established as an independent body by the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, upon transfer of powers from the Entities in accordance with their respective constitutional powers. Responsibilities of HJPC, as the state institution, relate to all levels of the State of Bosnia and Herzegovina, including the Brčko District, and all courts and prosecutors' offices, with certain restrictions when it comes to constitutional courts.

#### Worksheet 3

##### Establishment of the Armed Forces of Bosnia and Herzegovina

The Entities also entered into an agreement on the establishment of the Armed Forces of Bosnia and Herzegovina. This agreement preceded adoption of the Law on Defense of Bosnia and Herzegovina in 2005. The Law defined the armed forces as a professional, single military force organized and controlled by Bosnia and Herzegovina.

**SCHEMATIC VIEW OF THE LEVELS OF GOVERNMENT**– <http://www.dei.gov.ba/dokumenti/default.aspx?id=9456&langTag=bs-BA>  
[http://ndcsarajevo.org/moj\\_ustav/mojustav.html](http://ndcsarajevo.org/moj_ustav/mojustav.html)

## 3.3. THE JURISDICTION OF BIH INSTITUTIONS AND ENTITIES

The Constitution provides rules that govern a state's organization, functioning and power sharing. The Constitution also defines the authorities and responsibilities of the government. Due to complex organization of Bosnia and Herzegovina, it is necessary to investigate the jurisdiction of the state and entity level authorities, and derive conclusions on the structure of the divided government in Bosnia and Herzegovina.

In this workshop, which may be implemented separately or together with activities from the previous workshops, the students will explore and analyze the Constitution of BiH and the Entity constitutions.

This workshop aims to expand and deepen the knowledge and understanding of the way BiH government functions. Students will be able to:

- Explain the term “jurisdiction”, and, in such context, the term “jurisdiction of the institutions”,
- Differentiate between jurisdiction of the state and state institutions, and responsibilities of the entity governments,
- Explain the “change in jurisdiction” and the reasons behind it, and list examples of changes to jurisdiction,
- To represent and defend / argument their standpoint.

**MATERIALS:** The Constitution of Bosnia and Herzegovina and the Entity Constitutions (The Constitution of Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina), Text: *Jurisdiction of institutions of Bosnia and Herzegovina and its Entities*; Schematic representation of authorities in BiH; **Worksheet 1** - Distribution and jurisdiction of the State and Entity authorities; **Worksheet 2** - Whose business is that?

**DURATION:** 45 minutes (one hour)

## DESCRIPTION OF ACTIVITIES

During the previous lesson, the students were given a task to have a look at schematic representation of the government in Bosnia and Herzegovina, since they will need this information for the workshop on „Jurisdiction of the institutions of BiH and the Entities“.

### Introduction

During the introduction of the workshop, define the term “jurisdiction”, and based on this term, come up with an answer on what the term “jurisdiction of institutions“ stands for. It is possible to divide students into groups and give them two minutes to collectively define the term “jurisdiction”.

The alternative way to proceed is to ask each student to define the meaning of this term, on a sticker or a piece of paper, and then to present it. This way, each student is given a chance to speak their mind, with room for them to state that their vision coincides with what their colleagues have previously notified. Students should be encouraged to share explanations as precise as possible.

After reaching an agreement with the students on the meaning of the term “jurisdiction”, initiate a discussion about what the term “jurisdiction of institutions” stands for. It is necessary to encourage discussion by sub-questions, such as: - *Does jurisdiction need to be prescribed by something? – Does it have to be precisely defined? - Does prescribing jurisdiction of certain institutions only imply specifying their responsibilities and obligations, or, more precisely, prescribing some things that fall outside the institution’s obligations and responsibilities? Perhaps certain restrictions to the institution’s mandate? Why would such a thing be positive or negative?* and other similar matters.

Afterwards, familiarize the students with the objective of the workshop and the material to be used, and direct them to the analysis of the three constitutions.

**Activity 1:** Give the students a task to fill in a Worksheet – Division and jurisdiction of the State and Entity authorities with the help of the Constitution, workshop working material, and previously acquired knowledge.

**Worksheet 1** - Distribution and jurisdiction of the State and the Entity authorities

Jurisdiction of the State	Jurisdiction of the Entities

Facilitate the exchange of results.

**Activity 2:** Students (individually or in pairs) fill in the **Worksheet 2** - Whose business is that?

Whose business is that?

(S- State or E - Entities)

Regulation of inter-Entity transportation.

Customs policy.

Establishment of parallel relationships with neighboring states.

Foreign policy

Implementation of Human Rights and Freedoms

Monetary Policy

Deciding on disputes that arise between the Entities of Bosnia and Herzegovina, or the institutions

International and inter-Entity criminal law enforcement, including relations with Interpol

**Activity 3:** As the final activity of this workshop, organize a discussion (debate) about the fact that the Constitution of BiH provides only for transfer of jurisdiction from the Entities to the State, while reverse transfer (from the State to the Entities) is not prescribed in the constitutional provisions.

One group of students may develop arguments in favor of this claim, while another group may come up with arguments that challenge this statement.

### APPENDIX: Working material





<b>Worksheet 1 – Division of jurisdiction of the State and the Entity governments</b>	
<b>Jurisdiction of the State</b>	<b>Jurisdiction of the Entities</b>

- (S – State ili E - Entities)
- Regulation of inter-Entity transportation
  - Customs policy
  - Establishing parallel relations with the neighbouring states
  - Foreign policy
  - Implementation of Human Rights and Freedoms
  - Monetary Policy
  - Deciding on disputes that arise between the entities of Bosnia and Herzegovina, the State, or the institutions
  - International and inter-Entity criminal law enforcement, including relations with Interpol





### 3.4. RELATIONSHIP BETWEEN INDIVIDUALS AND THE GOVERNMENT

#### – Constitutional regulation of rights and freedoms

Rule of law, i.e. the legal system that guarantees equal rights for all individuals, is one of the fundamental principles of democracy. Accordingly, the backbone of the Constitution, as the highest legal act of a state, consists of the protection of human rights and freedoms. The role of the constitution is to regulate the issue of rights and freedoms in a way that not only promotes the rights and freedoms of the individual, but also to provide a mechanism for their realization and to sanction their violations. In this workshop, the students will address the issue of regulation of the constitutional rights and freedoms. They will be introduced to the notions of individual and collective rights, and will be able to draw conclusions about the way these issues are regulated in the Constitution of Bosnia and Herzegovina.

#### Theoretical framework

##### Constitutional regulation of rights and freedoms

The establishment of a system with rule of law as the backbone of society implies a legal system which guarantees equal rights for all individuals. The aim of such a system is to primarily protect the “natural and inalienable rights and freedoms of man”, that constitute a basis of overall social order. Bearing in mind that the constitution, being “the supreme law of the state”, originated as the expression of citizens’ will, it is self-explanatory that its main role is to guarantee protection of human rights and freedoms as one of the most important factors in the development of an individual and a community alike. The task of the constitution and the overall constitutional matter is to govern the question of guaranteed rights and freedoms in such a way that not only promotes the rights and freedoms of individuals in declaratory way, but also provides a mechanism for their concrete realization and protection against their violation. In this respect, when it comes to human rights and freedoms, the subject of constitutional regulation is first of all to regulate the relationship between individuals, the government, and the system which limits the state power in relation to the rights and freedoms of individuals.”

Modern constitutional law and political theory hold that the most important factor in determining a system’s features is the position of a human being within such system. i.e, the way the relationship between an individual and a government

is defined. Consequently, one of the main objectives of the constitutional matter is to protect individual human rights, i.e. the rights of each individual in relation to the state, as well as certain collective rights – that is, to guarantee the protection of the rights of certain population groups. In any case, the concept of human rights is based on the idea that every individual has inalienable rights, regardless of whether they belong to a particular group. These rights include the right to life, liberty, the right to presumed innocence in criminal proceedings, the right to a fair and impartial trial in all legal proceedings, and in front of all governmental authorities, the right to privacy, the right to property, etc. **The Constitution of Bosnia and Herzegovina provides the conditions for the effectuation of individual rights by establishing direct application of the European Convention on Fundamental Rights and Freedoms (ECHR), including its protocols, and its priority over other laws.**

Collective rights are those are recognized for certain group of people. These rights are derived from traditional individual rights. Namely, in order to respect liberal values reflected in the principles of equality, justice and freedom for all, special collective rights can be recognized to certain population groups, or rights that eventually serve individuals as members of certain group. In this sense, the rights related to the protection of particularly vulnerable groups, for instance children, can be considered as collective rights. The groups that are the most often associated with the notion of collective rights are racial, ethnic, religious or linguistic minorities. According to this definition, collective rights support individual human rights. Furthermore, when it comes to special rights of minority groups, collective rights represent a certificate of recognition of diversity. Diversity is the result of individual rights: in a truly democratic society, every individual has the right to decide on their identity and to belong to a specific group. A majority of authors consider the right of peoples to self-determination as an example of a collective right. Minority rights and economic, social and cultural rights can also be perceived as collective rights. Typically, these rights are not protected by the ECHR, but they are addressed by other international conventions (International Covenant on Civil and Political Rights, etc.). Annex I of the BiH Constitution lists the international conventions related to collective rights that are applicable in Bosnia and Herzegovina. In this context, it is important to mention that Article II, Paragraph 4 of the Constitution of BiH establishes an obligation of “non-discrimination”. Furthermore, Article II, Paragraph 5 of the Constitution of BiH explicitly addresses the special rights of refugees and displaced persons and defined them as particularly protected population categories. It is presumed that collective rights are also those rights tied to specificity of a certain group, which does not necessarily represent a minority group in society, such as majority ethnic group, i.e. the nation with recognized special rights. Thus, the Constitution of Bosnia and Herzegovina recognizes collective rights to the constituent peoples<sup>35</sup>, which are exercised in mutual respect of the constituent peoples.

##### The rule of law and legal state

The terms “rule of law” and “legal state” essentially express the same political and philosophical idea that the power of the state, as the most important power in a particular society, must be restricted. Both these concepts encompass the restriction of the government’s arbitrary power through the legal system and its legitimate application.

Regarding the question of whether there are substantial differences between the meanings of the terms “rule of law” and “legal state”, it should be noted that without some form of law, no social life can be secured. For this reason, the syntagm “rule of law” can be misinterpreted, since the term may also encompass the situation of states with a formally developed but undemocratic legal system, due to the violation of human rights, or racial, sexual or religious segregation. For instance, the Nazi regime in Germany or the Soviet Union under Stalin’s reign had fully developed legal systems which both served criminal ideologies. Therefore, the term “rule of law” needs to be understood in a substantive, material sense, rather than in a literal and formalistic way. Moreover, it would be more rational to use the term “legal state”, which in theory is not identical to “rule of law”, but expresses the same values and principles as a tendency of the legal system of every modern state.

<sup>35</sup> The Constitutional Court established that “the constitutional principle of collective equality of the constituent peoples, ..... prohibits any privileges for one or two of these peoples ...” The Constitutional Court, in 5/98, Partial decision III, Item 57

## Legal state

The basic principle of “legal state” implies that all legally adopted rules that have entered into force have an equal effect on all citizens. The ideal “legal state” does not exist in reality, because it is an ideal state whose principles have not been fully met by any country throughout history.

Understanding “the rule of law” in continental European law includes formal and material aspects<sup>36</sup>:

- formally, a legal state is characterized by the separation of powers and is governed by the principle that human rights and freedoms may only be restricted by law;
- the material (i.e. content-wise) component of a legal state is made up of material principles, including the obligation to respect human rights and freedoms. A state that respects these rights is the opposite of a police state.

### Elements of a legal state:

- Restrictions of the power of the government - usually through a constitution as the highest legal act;
- An organization of powers is divided into legislative, executive and judicial authorities;
- Laws must be specific, public and fair, and must not have retroactive effect;
- Procedural guarantees which protect personal liberty and prevent arbitrary arrest and detention;
- An appropriate court or administrative procedure that provides for solution of disputes;
- An independent and impartial judiciary system.

### Bosnia and Herzegovina as a legal state

According to Article I, Paragraph 3 of the Constitution of Bosnia and Herzegovina, BiH is a legal state. This provision defines BiH as a democratic state “which functions according to the rule of law”. Although the wording of this provision introduces the principle of “the rule of law” (as the Constitution in its original English text uses the Anglo-Saxon term “the rule of law”), it would still be more appropriate to name this principle “legal state”. Bosnia and Herzegovina is certainly not a “legal state” in the true sense of the word, since its legal system and practice of state authorities in respect to protection of fundamental principles of the rule of law has serious flaws. However, positive steps have been taken in this direction

### Legal certainty

A legal state such as Bosnia and Herzegovina has to guarantee legal certainty to its citizens. Namely, the state should be based on the general principle that its overall activity can be predicted. Legal certainty can only exist in a state in which all citizens are equal before the law, are informed about the government’s mandate and area of responsibility, and are aware of what is required, permitted or forbidden by the state. Legal certainty means that every citizen can rely on the predictability of state regulation, and benefit from the rights and obligations it creates. The principle that no one can be convicted without legal basis is also an element of legal certainty.

Even though the legal certainty of an individual can sometimes enter into conflict with public interest, individuals should not be disproportionately damaged by having their previously acquired rights taken away through subsequent amendments

<sup>36</sup> <http://www.ustavnareforma.ba/files/articles/20100101/284/bs.clan%201.2010.pdf>

to the law in an inappropriate manner. Furthermore, judiciary authorities and judicial practice are to show some consistency, i.e. that the court’s decisions are not made arbitrarily. Therefore, the courts must consolidate jurisprudence and refer to the practice of the European Court for Human Rights. In this process, a citizen must be able to expect that courts and administrative bodies reach identical solutions to identical disputes.

### International conventions and human rights protection

Human rights protection has become one of the most important objectives of the international community in the aftermath of World War II. The issue of human rights started to be addressed by numerous international charters, declarations, resolutions, conventions and treaties, whose principles were transformed into national constitutions and laws.

Although the issue of human rights has often been dealt with at the universal level, the concrete realization of these rights is secured through several mechanisms within each state. Therefore, when it comes to securing the human rights mentioned by numerous international conventions, it is necessary to consider the possibility of their international monitoring and protection. Regardless of the fact that states accept their principles and commit themselves to securing the conditions for their implementation by ratifying and signing international conventions, there are differences on how human rights are protected by those states. It should first be noted that states themselves decide which international conventions to ratify, and thereby, by expressing their reserves, they may exclude certain provisions, thus limiting the impact of the convention. Furthermore, since the concrete implementation of the content of these conventions is the responsibility of each given state, it appears very important to establish an effective mechanism of control of human rights protection at the international level.

*“The weaknesses in the international protection of human rights stem from the fact that human rights and fundamental freedoms are directly related to the relationship between individuals and the state under whose jurisdiction they are, ... in any case the government is responsible for the human rights situation. Since individuals are subjects of international law, each individual that speaks of the protection of human rights at the international level faces constraints that imply sovereignty and legal personality of the state”<sup>37</sup>.*

Nowadays, the respect and the protection of human rights are regulated by international conventions at the global and regional level.

**At the global level**, the largest contribution to human rights protection has been made by the United Nations, through the adoption of a number of declarations, conventions, treaties and recommendations, which elaborated the principles contained in **the Charter of the United Nations** adopted on June 25, 1945. The Charter is a fundamental act setting the principles, goals and objectives of the UN. The Charter does not exclusively refer to human rights, but rather integrates their protection in the main objectives of the UN, which includes peace-keeping, promotion of human rights, and economic and social progress. The adoption of **the Universal Declaration of Human Rights in 1948**, was followed by the adoption of conventions that would be binding for the States Signatories of the Declaration. For instance, the UN General Assembly adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 16 December, 1966. They came into force in 1976, upon ratification by 35 States. They represent the concretization of the formally unbinding principles contained in the Universal Declaration of Human Rights. These documents have the character of an international treaty and they are of binding character for the States Parties.

<sup>37</sup> Jasna Bakšić-Muftić, System of human rights, MAGISTRATE, Sarajevo, 2002, page no. 269

**The International Covenant on Civil and Political Rights** specifically addresses civil and political human rights. States parties to the Covenant ought to guarantee these rights to all citizens without discrimination, and to create favorable conditions for their implementation, including the right to legal remedy in case of violation of recognized rights. However, the Covenant provides States Parties with the possibility to restrict certain provisions, but this restriction may be only be implemented in order to attain public interest, and only through a procedure prescribed by the law. The importance of this Covenant lies in the fact that, in 1966, the First Optional Protocol to the Covenant was adopted, establishing the Human Rights Committee, which allows individuals to complain about violations of the Covenant. The Second Optional Protocol to the Covenant was adopted in 1989, with to the aim tp abolish death penalty.

**The International Covenant on Economic, Social and Cultural Rights** is an international treaty that lists the individual and collective economic, social and cultural rights “of all men and women”. The Covenant also describes the measures that should be taken for their achievement. Namely, in contrast with the International Covenant on Civil and Political Rights, which is to be unconditionally implemented by the States Parties, the International Covenant on Economic, Social and Cultural Rights leaves room for gradual implementation: it obliges the states to implement its provisions within the maximum limits of available resources, since it is necessary to provide the needed financial and technical resources for implementation of the rights prescribed in the present Covenant. In any case, the Covenant is to be implemented without any kind of discrimination (race, color, sex, language, religion, political or other opinion, national or social origin, property, gender or any other status). However, it does not create a body similar to the Human Rights Committee established by the International Covenant on Civil and Political Rights.

Having established a generally accepted objective - to guarantee the protection of the rights defined in these covenants, the United Nations performs a continuous monitoring of the recognized rights in the States Parties through its permanent bodies (committees), as well as specialized agencies. For this purpose, the information on the status of these rights is collected in each state, through the reports of the states themselves, and through the reports of non-governmental organizations dealing with the issue of human rights. This kind of information may also be obtained from the individuals whose rights have been violated. In most cases, the information provided by victims or by NGOs is more relevant than the reports issued by the States Parties. States generally tend to hide the violations of laws on their territory, which leads to a distortion of the real picture of the human rights situation. Although the UN can resort to several sanctions if human rights are violated within a given state, the mechanisms of protection are more of a political than a legal nature, and it comes down to political pressure on states by UN bodies.

In order to reaffirm the commitment of the international community to the promotion and the protection of human rights, the World Conference on Human Rights was held in Vienna in 1993, under the slogan “All human rights for all”. On this occasion, the Vienna Declaration was adopted by 171 countries. It confirms the universal nature of human rights and emphasizes women’s rights as an integral part of human rights. The UN High Commissioner for Human Rights was established during the Conference.

**The main UN conventions on human rights are the following:**

- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Declaration on the Rights of the Child
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The UN Standard Minimum Rules for the Administration of Juvenile Justice - Beijing Rules
- The UN Guidelines for the Prevention of Juvenile Delinquency - Riyadh Guidelines
- The UN Rules for the Protection of Juveniles Deprived of their Liberty
- The UNESCO Convention against Discrimination in Education
- The Convention of the International Labor Organization (ILO).

Among regional level conventions, the significant ones are the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, adopted by the members of the Council of Europe in 1950 in Rome; **the American Convention on Human Rights**, adopted at the Conference of the Organization of American States in San Jose in 1969; **the African Charter on Human and Peoples’ Rights**, adopted by the Assembly of the countries of the Organization of African Unity in Nairobi in 1981, and the **Arab Charter on Human Rights**, adopted in 1994 by the Arab League.

A fairly effective mechanism of monitoring and protection of human rights, especially in terms of individual recourse in case of infringement, was established within the Council of Europe. The list of rights and freedoms protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms was subsequently supplemented by the adoption Protocols to the Convention. Furthermore, other conventions of the Council of Europe govern the human rights issue, and some of the most important are: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the Framework Convention for the Protection of National Minorities; the European Charter for Regional or Minority Languages; the Revised European Social Charter; the European Convention on the Exercise of Children’s Rights, etc.

In addition to Conventions of the Council of Europe, the Helsinki Final Act is an important agreement in the field of human rights. The Act was adopted at the Summit of the Conference on European Security and Cooperation held in Helsinki in 1975. The importance of this act lies in the fact that, during the Cold War, it was the only act that sought to link peace and security with for the protection of human rights. Later on, in 1994, this Conference grew into the Organization for European Security and Cooperation (OSCE). The most important conventions adopted by the OSCE are the following: the Hague Recommendations regarding the Education Rights of National Minorities; the Lund Recommendations on the Effective Participation of National Minorities in Public Life; the Oslo Recommendations Regarding the Linguistic Rights of National minorities, and the Charter of Paris for a New Europe from 1990. All these conventions are significant because they established bodies for monitoring regional cooperation in the field of human rights protection.

Finally, it is important to mention the European Union Charter of Fundamental Rights, which was elaborated on 7 December 2000, but obtained full legal effect only when the Lisbon Treaty came into force in 2009. This Charter reaffirms the civil and political rights contained the European Convention for Protection of Human Rights and Fundamental Freedoms, and promotes an extensive mechanism of protection of the rights guaranteed within the EU member states. Moreover, the Charter states that EU regulations will be adopted in the spirit of the Charter, and that the European Court of Justice will apply and interpret these regulations in the spirit of the rights protected by the Charter.

\* \* \* \* \*

The **objective** of this workshop is for students to draw conclusions on how rule of law, - one of the key principles of democracy - is reflected in the BiH Constitution. The students will be able to:

- Explain the relationship between individual and collective rights,
- List the international conventions regulating rights and freedoms,
- Define these questions for purpose of comprehension check of the topic.

**DURATION** - 135 minutes (3 hours)

**MATERIALS:** BiH Constitution, **Worksheet:** Index cards for groups for defining questions

**Worksheet:** Index cards for groups for defining questions

<p><b>Individual and collective rights in the Constitution of BiH</b></p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>- <b>International conventions for the protection of human rights and freedoms that are applied in BiH</b></p> <p>1.</p> <p>2.</p> <p>3.</p>
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**DESCRIPTION OF ACTIVITIES**

After familiarizing the students with the objective, content and duration the workshop, allow them to familiarize themselves with the theoretical basis.

**Activity 1**

Divide students into small groups of three to four students, and have them prepare index cards with questions for the other groups. The cards should contain two to three questions for each group of students on the following topics:

- **Individual and collective rights in the Constitution of Bosnia and Herzegovina;**
- **International conventions for the protection of human rights and freedoms that are applied in BiH.**

For example, if you divided the students into four groups, each group will come up with questions on both topics for the other three groups of students. The questions should be different for each group. At the end of the activity, each group of students should have written three cards with questions on the aforementioned topics.

The questions asked by the students will be the basis of the discussion that will take place during the next lesson.

**Tell the students** that it is important to ask as many different questions on a given topic as possible. Not only should the questions aim at checking the students' familiarity with the facts evoked during the activity: they should also allow them to express their point of view, The selected questions should identify the contradictions in the proposed solutions, point out the positive aspects of constitutional arrangements, and raise questions that could lead to solutions for improving the regulation and protection of the rights and freedoms in BiH.

During the final part of the lesson, the groups will mutually share the cards on which they wrote their questions. Make all groups have the same number of cards.

At the end of the lesson, classify the questions asked by the students under different categories (Individual and collective rights in the Constitution of Bosnia and Herzegovina; International instruments for protection of human rights and freedoms which are applied in BiH). Comment on the list of questions with the students, and allow them to seek clarification on certain questions (the teacher can ask for clarification on some of the questions, in order to encourage students to do the same), and make the grouping of questions possible to help stimulate discussion during the next lesson.

## Activity 2

Start the next lesson with a list of questions on a given theme. Afterwards, give the students time to harmonize their answers to the questions, on the basis of the research conducted in the period of time between the two classes, as well as on the basis of the theoretical basis provided during the first lesson and the text of the BiH Constitution. Give the students 30 minutes to perform this activity.

It is important that the teacher monitors the way groups harmonize their opinions on certain issues. Tell the students that they can refer to the theoretical basis they were provided with if necessary, as well as to the Constitution, and that they are allowed to freely express their opinion on certain issues. Some members of the groups may have diverging opinions: they do not have to agree with the opinions of the other members. In that case, the group will tell the other groups about their different ideas during the discussion.

## Activity 3

After to the students have answered the questions written on the index cards, the teacher will present them to the class so that the students can discuss them. It is particularly important to leave time for discussion, as it is the only way to reach conclusions that will reflect the students' views on the issue of constitutional governance of rights and freedoms in BiH.

It is possible to list conclusions<sup>38</sup> (in dashes) below the list of questions.

You may ask the student who show some interest in the discussion to write an essay on a related topic, and have them read it to the rest of the class during one of the following lessons.

Essay topics:

- The relationship between individual and collective rights in the Constitution of Bosnia and Herzegovina
- The relationship between an individual and a government - Constitutional regulation of the rights and freedoms.

### 3.5. COMPARE AND CONCLUDE

During this workshop, the students will explore and analyze the Constitution of Bosnia and Herzegovina, as well as the Constitutions of the Republic Srpska and the Federation of Bosnia and Herzegovina, in order to learn about the solutions that these Constitutions provide for particular issues. These constitutions have a lot in common, but there are some differences between them.

Based on their findings, the students will be able to draw a conclusion on the similarities and the differences between the three branches of government in Bosnia and Herzegovina, as well as on the state institutions and their responsibilities.

<sup>38</sup> A conclusion does not need to be just a stand that all students agree on. On the contrary, the conclusion may be that students offered diametrically opposite views of certain issues, and that they used arguments to support their views.

**THE OBJECTIVE** of the workshop is for students to learn more about the solutions provided by the afore mentioned constitutions to particular issues, with a special focus on the issues of structure and organization of the government in BiH, of the structure and responsibilities of executive, legislative and judicial authorities in Bosnia and Herzegovina and its entities. The students will be able to:

- Explain the structure and powers of the three branches of government,
- Identify governmental institutions,
- Identify similarities and differences in the constitutional arrangements,
- Frame questions for their peers regarding similarities and differences in the constitutional arrangements.

**DURATION** - 90 minutes (*two hours*)

**MATERIALS:** The Constitution of Bosnia and Herzegovina, the Entity Constitutions - the Constitution of the Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina; **Worksheet 1** - Framework for similarities in the Preambles of the Constitutions; **Worksheet 2** - Structure, composition and responsibilities of the regulatory body / bodies; **Worksheet 3** - Executive authority, institutions of the executive authority and their responsibilities; **Worksheet 4** - Institutions of judiciary and their responsibilities; **Worksheet 5** - Issue of vital interest; **Worksheet 6** - Local self-government.

### DESCRIPTION OF ACTIVITIES

During the introduction, familiarize the students with the goal of the lesson, and inform them that, through the study of the constitutional solutions to specific issues (the Constitution of Bosnia and Herzegovina and the Constitutions of the Republika Srpska and of the Federation of Bosnia and Herzegovina), their analysis and comparison, they will be able to draw conclusions on the similarities and the differences between the solutions offered in the three constitutions for particular issues.

**Activity 1:** During Activity 1, ask the students to compare the three Preambles from the three Constitutions, and to draw conclusions on their similarities using **Worksheet 1**. The students will perform this activity in groups or in pairs (depending on the number of students). Each group should inform the other on their results.

**Worksheet 1** – Framework for similarities among the Preambles of the Constitutions

BiH Constitution	Constitution of the Federation of Bosnia and Herzegovina	Constitution of the Republika Srpska

**Activity 2:** During this activity, the students will explore the structure and composition of the legislative bodies and authorities in Bosnia and Herzegovina and its Entities, and their responsibilities and authority using *Worksheet 2*

This activity is to be performed by all groups or pairs of students. Afterwards, half of the groups will work on identifying the differences in the structure and composition of the legislative bodies, while the other half will identify similarities between them.

Afterwards, both groups – the one that identified similarities in structure, composition and responsibilities of the legislative bodies in BiH and the Entities, and the other group that identified differences between these bodies – will share among their conclusions. Discussion between the groups should be encouraged.

**Worksheet 2** - Structure, composition and responsibilities of the regulatory body / bodies

BiH Constitution	Constitution of the FBiH	Constitution of the Republika Srpska
<u>Similarities</u>		<u>Differences</u>

The students should follow the same principle to conduct researches on the issues of the executive and judicial authorities in Bosnia and Herzegovina and its Entities.

**Worksheet 3** – Executive authorities and institutions and their responsibilities

BiH Constitution	Constitution of the FBiH	Constitution of the Republika Srpska
<u>Similarities</u>		<u>Differences</u>

Use Worksheet 4 as a framework for conducting research on the similarities and differences between the judiciary institutions of the BiH and the Entities

**Worksheet 4** – Judiciary institutions and their responsibilities

Similarities	Differences

**Note:** Since it will not be possible for Activity 1 and Activity 2 to take place during the same lesson, the students may conduct researches on the questions listed in Worksheet 3 and Worksheet 4 at home, before the second lesson. The students will be given assignments, noting that the results of these assignments will be used in the course of the next lesson. The assumption is that students have now gained certain knowledge, and that the focus of these activities lies on the similarities and differences between the constitutional solutions.

This activity should be finalized during the following lesson, and should be immediately followed by a discussion based on the results noted down in the worksheets.

**Activity 3:** This activity is focused on the research on the similarities and the differences of some other constitutional provisions, such as, for instance, the issues of vital interest and the issue of local self-government. The groups of students may be assigned to conduct some researches on how the constitutions address these issues, while the other students may identify additional similarities among the Constitution of Bosnia and Herzegovina and its Entities, or identify differences in constitutional solutions to certain issues.

**Worksheet 5** – Issue of vital interest

BiH Constitution	Constitution of the FBiH	Constitution of the Republika Srpska

**Worksheet 6** – Local self-government

BiH Constitution	Constitution of the FBiH	Constitution of the Republika Srpska

For the purpose of activity wrap-up, offer students the opportunity to:

a) Ask questions that would serve as an instrument to check if the objectives have been fulfilled

b) Determine a question for the research regarding the differences and similarities (in constitutional solutions); the students interested in this subject may write an essay on this question.

<b>Worksheet 1 – Framework for similarities in the Preambles of the Constitutions</b>		
<b>Constitution of Bosnia and Herzegovina</b>	<b>Constitution of the FBiH</b>	<b>Constitution of the RS</b>

<b>Worksheet 2 – Structure, composition and responsibilities of the regulatory bodies</b>		
<b>Constitution of Bosnia and Herzegovina</b>	<b>Constitution of the FBiH</b>	<b>Constitution of the RS</b>
<b><u>Similarities</u></b>		<b><u>Differences</u></b>



Worksheet 3 – Executive authorities and institutions and their responsibilities		
Constitution of Bosnia and Herzegovina	Constitution of the FBiH	Constitution of the RS
<u>Similarities</u>		<u>Differences</u>

Worksheet 4 – Judiciary institutions in Bosnia and Herzegovina and the Entities, and their responsibilities	
<u>Similarities</u>	<u>Differences</u>

<b>Worksheet 5 – The issue of vital interest</b>		
<b>Constitution of Bosnia and Herzegovina</b>	<b>Constitution of the FBiH</b>	<b>Constitution of the RS</b>

<b>Worksheet 6 – Local self-government</b>		
<b>Constitution of Bosnia and Herzegovina</b>	<b>Constitution of the FBiH</b>	<b>Constitution of the RS</b>

# Interesting Articles

- 4.1. Case study – An example from the practice of the BiH Constitutional Court
- 4.2. Constitutional reform – Iceland
- 4.3. Examples of the case law of the European Court for Human Rights

## 4.1 CASE STUDY - An example from the practice of the BiH Constitutional Court

The goal of the case study is for students to familiarize with the jurisdiction of the Constitutional Court and the example of positive jurisprudence. The students will be able to define the characteristics of the Constitutional Court and the conditions that need to be met in order for the Constitutional Court to play its role.

**An example of best practice** – An example of appeal to the Constitutional Court against the decision of the Supreme Court

### Introduction

- Violation of Article II, Paragraph 4 of the Constitution of BiH is identified
- The offender is ordered to immediately carry out this decision in accordance with the judgment
- ✓ This is an example of the Constitutional Court recalling the decision of the lower instance court (the Supreme Court).

### Overview and analysis

1. An appellant challenged a verdict of the Supreme Court, alleging that she was employed on a full time basis, and that she was permanently filling in a vacancy. A school headmaster had not issued a decision on her indeterminate employment, even though he was required to do so by the Law. He justified his negligence by referring to the state of war in the country.

2. The appellant claims that the school headmaster gave her an unlawful notice of termination, and that her position was filled by another person without administrative competition. The appellant states that the headmaster hired another person for their party affiliation, as well as for material motives. Furthermore, the appellant claims that the headmaster discriminated the school employees and students because of their national affiliation. She asserts that she was employed by the school for an undetermined period of time.

3. The appellant states that the Supreme Court acted in a subjective manner and that its decision was a political act that deprived her of the right to work at a rather unfavorable age. Furthermore, the Court deprived her of the right to compensation **for unpaid wages** and precluded effectuation of all other employment related rights. The appellant holds that the Supreme Court, by its decision, violated her personal and civil rights, i.e. the right to work protected by the Constitution of Bosnia and Herzegovina. She states that she did not affiliate with any political party, believing that differences based on racial, religious, ethnic and political grounds would not be taken into account by the Court.

### A situation report

In line with the Article VI, Paragraph 3 of the Constitution of BiH, “The Constitutional Court has appellate jurisdiction over issues contained in this Constitution, when they become a subject of dispute due to the ruling of any court in Bosnia and Herzegovina”.

In accordance with Section II, Article 16 of the Rules of the Constitutional Court, “The Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time limit of 60 days as from the date on which the decision on the last effective remedy used by the appellant was issued to them”.

In this specific case, the appellant had exhausted all effective remedies. The final decision is the decision of the Supreme Court. What follows is that the appeal is admissible.

### Case problem

Within the appellate jurisdiction defined in Article VI, Paragraph 3 of the BiH Constitution, the Constitutional Court shall also have appellate jurisdiction to decide whether a decision issued by any court has violated the rights protected by the Constitution of Bosnia and Herzegovina, the European Convention for Human Rights and Fundamental Freedoms, and the international agreements listed in the Annex I of the Constitution.



### 1. BiH Constitution

Non-discrimination - Article II, Paragraph 4

The appellant's complaint is related to a discrimination preventing her from enjoying her right to work and to employment in the civil service under general conditions of employment that provide equal employment opportunity. Her appeal also relates to discrimination of her right to equality before Law, in respect of her right to work.

2. Article 6, Paragraph 1 of the **International Covenant on Economic Social and Cultural Rights**

3. Article 7 - **International Covenant on Economic, Social and Cultural Rights**

4. Article 25 - **International Covenant on Economic, Social and Cultural Rights**

In addition, the Constitutional Court emphasizes Article 14 of the European Convention on the Human Rights and Fundamental Freedoms as relevant to the appeal.

### Conclusion:

In line with the aforementioned legal provisions, the Constitutional Court ruled that the appellant suffered discrimination in the enjoyment of her right to be employed in the civil service, under general and equal conditions, and, hence, suffered discrimination in the field of individual rights at work. Therefore, the Constitutional Court rules that a violation of the appellant's rights did occur. They are defined by the following provisions:

Article II, Paragraph 4 of the BiH Constitution

Article 6, Paragraph 1

Article 7 of the International Covenant on Economic, Social and Cultural Rights, and

Article 25 of the International Covenant on Civil and Political Rights Pursuant to the Article VI, Paragraph 4 of the Constitution of BiH, the Constitutional Court's rulings are final and binding.

### Remark for teachers:

Familiarize students with the Case analysis and ask them to voice their comments on this example, on the conditions that had to be fulfilled in order to for the appeal to be examined by the Court, and the legal conventions and constitutions that were used by the Constitutional Court in the decision-making process.



## 4.2. CONSTITUTIONAL REFORM – Iceland

### HOW DID ICELAND FIND A WAY OUT OF THE CRISIS?

#### Iceland three years ago ...

*Three years ago, Iceland was heading into the abyss, and was facing total bankruptcy. All the state money deposited on bank accounts had disappeared, and the banks collapsed in a single day. On top of that, the Icelanders had to provide compensation for the damage to the British and the Dutch, whose economy was also affected by Viking “genius” boys from the banking sector playing their little games. They refused to pay their debts, which amounted to 3.8 billion Euros (each Icelander was supposed to ensure an additional amount of 20,000 Euros to settle the English and Dutch) and ousted the government that was responsible for this situation; people rioted, protested until their requirements were met (creation of a new government, new Governor of the Central Bank and the Council that manages the banks), and then they devoted themselves completely to the job. The Icelandic crown was devaluated, and the country became more attractive for investors. Tourism flourished, and Icelandic rescuers – the fishermen – again emerged from the sea.*

#### And now ....

*Three years later, Iceland is no longer “on the way to find its road,”: it has found it. Island has borrowed two billion dollars from the IMF, and managed to get the economy back on its feet in three years. All the privatized banks that had incurred debts went back to state ownership. Contrary to the recipe - “Privatize, privatize!”, they followed the recipe - “Nationalize”, which proved to be a key step to success. The concept of a free, neoliberal market collapsed in Iceland, demonstrating its severity. Interventionism, economic socialism, whatever that was, brought Iceland out of the crisis. Combined with strong exports, particularly in the fishery sector, and backed by tourism and aluminum production, it saved the banks from collapsing, at the same time saving the very state and the states’ economy. The state proved to be a better master than the private sector.*

**Yet, none of this would have been possible without a model of civil involvement in the constitutional reform**

## • Brief sketch on Iceland

➤ Following the economic crisis, Iceland adopted a participatory process for the development of a draft constitution. The themes and ideas were generated by citizen panels elected through arbitral award. Small and densely concentrated population groups held public meetings and used social media to contribute to the development of a constitutional draft, to share information, and to provide support during the drafting process. This approach allowed for a high degree of transparency and accessibility of the constitutional reform.

➤ In order to avoid injustice, the constitutional reform process included the direct participation of 25 ordinary citizens. The condition for them to be able to take part in the reform was that they should not be affiliated to any political party, and they had to be recommended by 30 other citizens. The Icelandic state has shown its respect for family traditions and principles. In hard times we stick together!

➤ Fishery is Iceland’s top industrial sector and one of the main reasons why it refuses to join the European Union. Joining the EU would mean the destruction of their own fishing quota. They would also have to face the concurrency of European fishermen, especially from Britain.

➤ The artist Haraldur Jonsson also challenges nature by swimming every day in the ocean. To him, art is a therapy, as are all other forms of creative expression.

➤ Icelandic people are spontaneous, friendly, inviting you to visit their home. There is no protocol or fanfare about it. Iceland is a country with no high-end fashion houses, where nobody wears Chanel. People leave doors of their houses and cars unlocked, since theft occurs very rarely.

➤ There is no gender discrimination in Iceland. For example, during a job interview, no one asks a woman whether she plans to have children. Both men and women are entitled to maternity leave. Mothers are entitled to a minimum six months, and fathers to three months, with a possible extension of another three months.

➤ Katrin Ingjaldsdottir, the mother of a two-month old son, works in the tourism sector. She works on renting apartments to tourists in Reykjavik. She started her business during the crisis in 2003. The crisis stimulated their economy since the devaluation of the Icelandic crown made the country cheaper for foreigners.

➤ Iceland's collectivity was tested in the harshest way possible. Still, this crisis brought people closer together, and also made them turn to music. One of the beloved bands from Iceland, Dikta, was filling clubs in times of crisis. However, music stars in Iceland can live a very peaceful life.

➤ Hordur Torfasson, an actor and a musician from Iceland, was the first person to publicly come out as gay in 1975, at 30 years of age. He naturally appeared as the leader of a movement calling for more justice in the society, providing Iceland with the necessary conditions for a revolution. He was evicted from Island. He was not exactly thrown into the ocean, but he had experienced so many threats that he had to leave the country. He moved to Denmark and almost committed suicide. Still, he did not want to give up so easily and returned to Iceland. Today, he is an Icelandic icon. Two weeks ago, around 100,000 visitors gathered at the Gay Pride parade in Reykjavik. The Prime Minister of Iceland is a lesbian, but she never discusses her private life in public. The only thing that has been revealed about her private life is that she is in a relationship with a former journalist and writer.

➤ During the reform of the Constitution of Iceland, Birgitta Jonsdottir, a down-to-earth anarchist, joined the Parliament. In Iceland, the Parliament, just like all institutions, has no police protection. We walked into the Parliament as if we were walking into someone's home. Ms. Jonsdottir holds that those who think that the Constitution should be carved in stone are wrong. On the contrary, each generation should be able to bring changes to it. She used to live below the poverty line (the Icelandic poverty line being higher than in other countries), and she used to collect food in the workers kitchen – while her son still prefers to dress at the Red Cross. She adds that now she was given this large megaphone and is in the position to advocate for people. She did not receive any special privilege, except for a parking spot near the Parliament.

➤ Icelandic members of the Parliament do not have a secretary or a staff, nor official cars. They travel in economy class and their salaries falls in the same range as the salary of a university professor. When consulted on the issue of accession to the EU, they point out that it is still not proper time to join the EU, since there are many more issues to address before starting to even think about the accession.

## • CONSTITUTIONAL REFORM – THE “ICELANDIC MODEL”

➤ *After the financial collapse of Iceland, the citizens initiated a constructive process of constitutional reform. Anyone could join this constitutional process, or more precisely, this process of creation of the new constitution of Iceland, by providing feedback via social networks.*

- Anyone could join the constitutional process – or more precisely, the process of creation of a new constitution of Iceland, by providing feedback via social networks like Facebook and Twitter (a Facebook page with the citizens' proposals can be found at the following link: **Stjórnlagaráð**). This website is still active, and today Facebook users all over the world leave messages of support to the courageous Icelanders and their attempt to resist the entire banking system).



- A Constitution proposal was developed after numerous consultations. A referendum was held in November 2008, and although the turnout was lower than 50%, 66.3% of the voters supported the new Constitution of Iceland.
  - The referendum was approved, and today's results speak for themselves. In 2012, a national increase of 3.1% was registered, while in 2013 an increase of 2.7% is expected. In the meantime, there was an estimate of increase of 0,2% in the countries of the EU in 2012. In 2012 the unemployment rate was 7%, and the inflation rate was below 5%.
  - Before the Icelandic model of constitutional reform was created in 2009 and 2010, Iceland recorded a total decline in economic growth by 10%. According to all aforementioned data, the state has quickly recovered from the economic crises that has hit her.
  - The way in which Iceland responded to the crisis was censored in the U.S. and the European media. Maybe this is due to the fact that the Icelandic example showed how democracy really needs to function.
  - However, the subject was much discussed on social networks, and it resulted in an agreement on six questions that were asked to the voters during the referendum. Citizens were invited to give either an affirmative or a negative answer to the six questions, among which there were questions on the use of natural resources of the country or the national church.
- The current Constitution of Iceland came into force in 1944, when Iceland formally became an independent republic.
- *Between April-July 2011, a group of 25 citizens worked on the project of editing the Constitution. The draft constitution they elaborated was posted on the internet..*
  - Citizens were able to speak their mind, and edit the text, and hundreds of citizens did so.
  - *The new constitution project was submitted to the Parliament at the end of July 2011. In May 2012, Icelandic Members of the Parliament decided to hold a referendum about the new Constitution.*

A constitutional non-binding Referendum was held on October 20, 2012. Voters were asked whether they approved of six proposals included in the new draft constitution, developed by the Constituent Council of Iceland. The voters voted 'yes' to all six questions.

The following questions were submitted to the voters during the referendum:

1. Do you agree that the proposal of the Constituent Council of Iceland represents the basis for the development of a new draft Constitution?
2. Do you think that all the natural resources that are not privately owned should be declared national property in the new Constitution?
3. Would you like the new Constitution to include provisions on the national church of Iceland?
4. Would you like the new Constitution to include provisions authorizing the election of certain individuals to the Parliament, more than is currently the case?
5. Would you like the new Constitution to include provisions giving equal value to the votes in all parts of the country?
6. Would you like the new Constitution to include a provision stipulating that a certain share of the electorate is given the possibility to request that certain questions be addressed at the Referendum?

#### ***ABOUT THE REFERENDUM***

- ✓ Voters on the electoral roll: 236,911. Valid votes: 114,570
- ✓ On November 12, 2012 a group of legal experts was given the task to draft a Constitution proposal based on the proposals of the Constituent Council
- ✓ On November 16, 2012, the majority of the members of the Commission for Constitutional Affairs and Monitoring submitted their Constitution proposal to the Parliament (the first reading of the proposal began on November 20, 2012).
- ✓ On December 12, 2012, an opinion was requested by the Venice Commission of the Council of Europe, with a translated Constitution proposal submitted along with excerpts from the explanation section.
- ✓ The second reading began on January 20, 2013.

You may find a compilation of documents related to constitutional issues on the website of the Parliament of Iceland.

#### ***ABOUT THE REFERENDUM***

THE STORY OF THE CONSTITUTIONAL REFORMS ON ICELAND HAS NOT YET BEEN COMPLETED. YOU MAY KEEP TRACK OF THE RELATED EVENTS THANKS TO THE FOLLOWING E-LINKS – WEB ADDRESSES.

### **4.3. Examples of the case law of the European Court for Human Rights**

- ✓ Examples of the case law of the European Court for Human Rights are listed with the aim of illustrating how the case law of this Court represents a source of law.
- ✓ The illustrated example will offer multiple opportunities for students and teachers alike to understand the subject.

#### ***Article 9 European Conventions – Freedom of Thought, Conscience and Religion***

*Article 9*, Paragraph 1

Article 9, Paragraph 1 prescribes the following:

Everyone has the right to freedom of thought, conscience and religion: this right includes the freedom of changing one's religion or conviction, and, whether individually or collectively, expressing one's religion or conviction, through rituals, preaching or performing religious duties.

The first part of Article 9, Paragraph 1 generally protects freedom of thought, conscience and religion. The second part of the same paragraph specifically protects the freedom to change one's religion or conviction. The second part also guarantees the freedom of expression of religious beliefs. Here, each term is explained at different levels, and this paragraph provides specific information on the various ways of practicing one's "religion" in the sense of "rituals" (...)

#### ***1. The significance and content of the freedom of thought, conscience and religion***

According to Article 9, the freedom of thought, conscience and religion is one of the foundations of a "democratic society". In its religious dimension, it is one of the vital elements a believer's identity and conception of life. It is also important for atheists, agnostics, skeptics and the unconcerned. Pluralism is an inseparable part of the democratic nature of a society.

Even though religious freedom is primarily a matter of individual conscience, it implicitly includes, among other things, the right to "manifest one's religion". The existence of religious beliefs is directly associated with statements substantiated by words and acts.

According to Article 9, the freedom of expression of religion is provided not only in the community, in public, and among the circle of those who share the same beliefs, but it may also be performed "alone in private".

### *Case law examples*

In the case of *Arrowsmith v. United Kingdom*, an applicant was prosecuted for distributing pacifist pamphlets to members of the armed forces. The content of the pamphlets was related to the activities of the British Army in Northern Ireland. The Commission declared the case inadmissible on the basis that these activities did not constitute a manifestation of one's belief in its true sense. The Commission noticed (...) that the term "practice", as used in Article 9, Paragraph 1, does not include each activity that is motivated or influenced by one's religion or beliefs.

It is true that public statements advocating pacifism and seeking commitment to non-violent action may be considered normal and recognized expression of pacifist beliefs. However, when one's activities do not express a given belief, they can not be considered as protected by Article 9, Paragraph 1, even when motivated by or under influence of such belief.

The pamphlet in question begins by quoting two former soldiers, one of whom reported: "I am not against being a soldier. I would be ready to fight and defend this country from external attackers – I would be ready to fight in what I believe in. However, what is happening in Ireland is wrong".

Even though this is the individual's opinion, it does not necessarily reflect the attitude of the organization that issued the pamphlet. It merely shows that the authors of the leaflet agree with this statement. For this reason, one cannot conclude that the leaflet expresses the idea that one should never, under any circumstances, defend political goals – or goals of another nature- by the use of violence, not even as a response to the use of force. It is evident from the content of the leaflet that its authors were against the British policy in Northern Ireland.

The Commission concluded that there was no manifestation of beliefs, and accordingly, that there was no breach of Article 9. The only Article that could have been taken into consideration was Article 10 on the freedom of expression.