

## – Bosnia and Herzegovina and the European Social Charter –

### Signatures, ratifications and accepted provisions

Bosnia and Herzegovina ratified the Revised European Social Charter on 07/10/2008, accepting 51 of its 98 paragraphs.

It has not accepted the system of collective complaints.

### The Charter in domestic law

According to Article III paragraph 3(b) of the Constitution of Bosnia and Herzegovina, general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and its Entities.

### Table of accepted provisions

|      |      |      |      |      |      |       |                            |       |      |      |      |  |
|------|------|------|------|------|------|-------|----------------------------|-------|------|------|------|--|
| 1.1  | 1.2  | 1.3  | 1.4  | 2.1  | 2.2  | 2.3   | 2.4                        | 2.5   | 2.6  | 2.7  | 3.1  |  |
| 3.2  | 3.3  | 3.4  | 4.1  | 4.2  | 4.3  | 4.4   | 4.5                        | 5     | 6.1  | 6.2  | 6.3  |  |
| 6.4  | 7.1  | 7.2  | 7.3  | 7.4  | 7.5  | 7.6   | 7.7                        | 7.8   | 7.9  | 7.10 | 8.1  |  |
| 8.2  | 8.3  | 8.4  | 8.5  | 9    | 10.1 | 10.2  | 10.3                       | 10.4  | 10.5 | 11.1 | 11.2 |  |
| 11.3 | 12.1 | 12.2 | 12.3 | 12.4 | 13.1 | 13.2  | 13.3                       | 13.4  | 14.1 | 14.2 | 15.1 |  |
| 15.2 | 15.3 | 16   | 17.1 | 17.2 | 18.1 | 18.2  | 18.3                       | 18.4  | 19.1 | 19.2 | 19.3 |  |
| 19.4 | 19.5 | 19.6 | 19.7 | 19.8 | 19.9 | 19.10 | 19.11                      | 19.12 | 20   | 21   | 22   |  |
| 23   | 24   | 25   | 26.1 | 26.2 | 27.1 | 27.2  | 27.3                       | 28    | 29   | 30   | 31.1 |  |
| 31.2 | 31.3 |      |      |      |      |       | Grey = accepted provisions |       |      |      |      |  |

### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Bosnia and Herzegovina](#) in 2013 and in 2019.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Bosnia and Herzegovina

Between 2011 and 2022, Bosnia and Herzegovina has submitted 11 reports on the application of the Revised Charter.

The [11<sup>th</sup> report](#), submitted on 16/06/2021, concerns the accepted provisions relating to thematic group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23 and 30).

Conclusions with respect to these provisions have been published in March 2022.

The 12<sup>th</sup> report, which was to be submitted by 31/12/2021, should concern the accepted provisions relating to thematic group 3 "Labour rights", namely:

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).

Conclusions with respect to these provisions will be published in March 2023.

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<sup>1</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently, each provision of the Charter is reported on once every four years.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity<sup>3</sup>

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2020

#### ►Article 1§1 - Right to work - Policy of full employment

Employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

#### ►Article 1§2 - Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

- Nationals of other States Parties do not have access to civil service jobs;
- It has not been established that the national authorities have fulfilled their obligations to prevent forced labour and labour exploitation, to protect victims, to effectively investigate the offences committed, and to punish those responsible for forced labour offences.

#### ►Article 1§4 - Right to work - Vocational guidance, training and rehabilitation

- It has not been established that the right to vocational guidance within the education system and labour market is guaranteed;
- It has not been established that the right to vocational guidance is guaranteed to persons with disabilities.

#### ►Article 9 - Right to vocational guidance

It has not been established that:

- the right to vocational guidance within the education system and labour market is guaranteed;
- the right to vocational guidance within the education system and labour market is guaranteed to persons with disabilities.

#### ►Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

- Women are not permitted to work in all professions which constitutes discrimination based on sex;
- The obligation to ensure pay transparency has not been satisfied;
- The obligation to make measurable progress to reduce the gender pay gap has not been fulfilled.

### Thematic Group 2 "Health, social security and social protection" - Conclusions 2021

#### ►Article 11§2 - Right to protection of health - Advisory and educational facilities

Screening policies are not systematically implemented in the country.

#### ►Article 11§3 - Right to protection of health - Prevention of diseases and accidents

- Efficient immunisation and epidemiological monitoring programmes are not in place;
- The necessary measures were not taken to ban smoking in public places.

#### ►Article 12§1 - Right to social security – Existence of a social security system

- It has not been established that the personal coverage of social security risks is adequate;
- It has not been established that the minimum levels of social security benefits are adequate;
- The duration of unemployment benefit, for the insurance period of up to 5 years is too short, in all entities.

#### ►Article 12§2 - Right to social security - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

It has not been established that Bosnia and Herzegovina maintains a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

#### ►Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need

- Social assistance is not provided in all Entities to any single person on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means;

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<sup>3</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

- It has not been established that appropriate medical assistance is provided to all persons in need in all Entities.;
- It has not been established that the level of social assistance paid to a single person without resources is adequate.

► *Article 13§3 - Right to social and medical assistance - Prevention, abolition or alleviation of need*

- It has not been established that there are mechanisms in place to ensure that persons in need can benefit from free counselling and personal advice services.
- It has not been established that the competent services and institutions are adequately distributed on a geographical basis.

► *Article 14§1 - Right to benefit from social welfare services - Promotion or provision of social services*

- It has not been established that the quality of social welfare services meets users' needs.
- It has not been established that the monitoring arrangements for guaranteeing the quality of the social services provided by the various providers are adequate and effective.

► *Article 14§2 - Right to benefit from social welfare services - Public participation in the establishment and maintenance of social services*

It has not been established that:

- user involvement in social services is ensured and promoted in legislation, in budget allocations and decision-making at all levels and in the design and delivery of services in practice;
- a mechanism is in place to monitor the quality of services provided by public and private institutions in the different entities;
- dialogue with civil society is ensured with regard to social services.

► *Article 23 - Right of the elderly to social protection*

It has not been established that:

- adequate measures have been taken to combat the abuse of older persons;
- the levels of the minimum pensions are adequate;
- the level of social assistance available to older persons not in receipt of a pension is adequate.

### **Thematic Group 3 "Labour rights" - Conclusions 2018**

► *Article 2§2 - Right to just conditions of work - Public holidays with pay*

Work performed on a public holiday is not adequately compensated.

► *Article 2§3 – Right to just conditions of work - Annual holiday with pay*

The minimum period of paid annual leave is less than four weeks or 20 working days.

► *Article 2§4 - Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

There is no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations.

► *Article 2§6 - Right to just conditions of work – Information on the employment contract*

The Labour Code of the Republika Srpska does not require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract

► *Article 2§7 – Right to just conditions of work - Night work*

A free compulsory medical examination was not provided by law to all workers about to take up night work.

► *Article 6§1 - Right to bargain collectively - Joint consultation*

It has not been established that joint consultation is sufficiently promoted.

► *Article 6§4 - Right to bargain collectively - Collective action*

The sectors in which the right to strike may be restricted are overly extensive and the restrictions do not satisfy the conditions laid down in Article G of the Charter.

► *Article 21 - Right of workers to be informed and consulted*

It has not been established that:

- all workers enjoy the right to information and consultation, and
- the supervision of respect of the right to information and consultation is guaranteed.

► *Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment*

- The right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;
- The right of workers to take part in the determination and improvement of the protection of health and safety is not effectively secured.

► *Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

- The protection granted to workers' representatives in Brčko District is not extended for a reasonable period after the expiration of their mandate,
- It has not been established that facilities afforded to workers' representatives are adequate in all three entities of Bosnia and Herzegovina

#### **Thematic Group 4 "Children, families, migrants" - Conclusions 2019**

► *Article 7§1 - Right of children and young persons to protection- Prohibition of employment under the age of 15*

It has not been established that the legislation prohibiting employment under the age of 15 is effectively implemented.

► *Article 7§2 - Right of children and young persons to protection - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

- In the Federation of Bosnia and Herzegovina (FBiH) and in the the Brčko District the legislation does not define or provide a list of dangerous activities prohibited to young workers under 18;
- It has not been established that the legislation prohibiting employment under the age of 18 for dangerous or unhealthy activities is effectively implemented.

► *Article 7§3 - Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education*

It has not been established that the protection against employment of children subject to compulsory education is ensured in practice.

► *Article 7§4 - Right of children and young persons to protection - Working time for young persons under 18*

- In the Brčko District the limit of 40 hours' work per week for young workers under the age of 16 is excessive;
- It has not been established that the regulations regarding the working time for young workers under the age of 18 who are no longer subject to compulsory schooling are effectively implemented.

► *Article 7§5 - Right of children and young persons to protection - Fair pay*

Young workers' wages are not fair.

► *Article 7§9 - Right of children and young persons to protection - Regular medical examination*

The legislation in the Brčko District, does not provide for compulsory regular medical examinations for young workers under 18 years of age employed in occupations prescribed by national laws or regulations.

► *Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers*

- Not all acts of sexual exploitation of children (persons under 18 years of age) are criminalised;
- It has not been established that adequate measures are taken to protect children against the misuse of information technologies.

► *Article 8§1 – Right of employed women to protection of maternity - Maternity leave*

Maternity benefits are inadequate in certain parts of the country.

► *Article 8§2 - Right of employed women to protection of maternity - Illegality of dismissal during maternity leave*

In the Brčko District, compensation awarded in cases of unlawful dismissal during pregnancy or maternity leave is inadequate.

► *Article 8§4 - Right of employed women to protection of maternity - Regulation of night work*

Night work of pregnant women, women having recently given birth and women who are nursing their infant is not adequately regulated in the Brčko District.

► *Article 8§5 - Right of employed women to protection of maternity - Prohibition of dangerous, unhealthy or arduous work*

There are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant.

► *Article 16 - Right of the family to social, legal and economic protection*

- It has not been established that women are ensured adequate protection, in law and in practice, against domestic violence;
- Equal treatment of nationals of other States Parties lawfully resident in the territory is not ensured with regard to family benefits due to an excessive length of residence requirement;
- It has not been established that there is adequate legal protection for families threatened by eviction.

► *Article 17§1 - Right of children and young persons to social, legal and economic protection - Assistance, education and training*

Not all forms of corporal punishment are prohibited in all settings in the Federation of Bosnia and Herzegovina and the Brčko District.

**The Committee has been unable to assess compliance with the following rights and has invited the Government of Bosnia and Herzegovina to provide more information in the next report in respect of the following provisions:**

**Thematic Group 1 "Employment, training and equal opportunities"**

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**Thematic Group 2 "Health, social security and social protection"**

- ▶ Article 11§1 - Conclusions 2021

**Thematic Group 3 "Labour rights"**

- ▶ Article 2§1 - Conclusions 2018
- ▶ Article 2§5 - Conclusions 2018
- ▶ Article 4§3 - Conclusions 2018
- ▶ Article 5 - Conclusions 2018
- ▶ Article 6§2 - Conclusions 2018
- ▶ Article 6§3 - Conclusions 2018

**Thematic Group 4 "Children, families, migrants"**

- ▶ Article 7§8 - Conclusions 2019
- ▶ Article 17§2 - Conclusions 2019

## **II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

### **Thematic Group 1 "Employment, training and equal opportunities"**

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### **Thematic Group 2 "Health, social security and social protection"**

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### **Thematic Group 3 "Labour rights"**

► Federation of Bosnia and Herzegovina – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days [of annual holiday with pay], which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. Employees may not waive their right to annual leave, or be denied that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code).

► In the Republika Srpska, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days.

### **Thematic Group 4 "Children, families, migrants"**

► In accordance with the Council of Minister's decision, as of 29 September 2010 all employees of the Bosnia and Herzegovina State Institutions, regardless of their place of residence, are entitled to maternity benefits in the amount of the average net salary earned in the last three months before the maternity leave.

► Article 45 of the Brčko District (Bosnia and Herzegovina) Labour Law had been amended on 23 August 2014 and a Decision on the Conditions and Manners of Payment of Compensation of Salary during Maternity Leave (No. 34-000890/13 of 15 January 2014) had come into force on 22 January 2014. During maternity leave, employees are entitled to salary compensation equal to the average net wage earned over the last six months prior to maternity leave (and not 12 months).