



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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**DRAFT SECOND REPORT
ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN
SOCIAL CHARTER**

BOSNIA AND HERZEGOVINA

Document prepared by the Secretariat

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OPINION

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned, with a view to securing a higher level of acceptance. This review would be done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that Governments tend to overlook that the selective acceptance of the provisions of the Charter should be a temporary phenomenon.

As Bosnia and Herzegovina ratified the Revised Charter on 7 October 2008, the procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the European Committee of Social Rights delegation and representatives of various institutions of Bosnia and Herzegovina in Sarajevo on 26 June 2013.

Following this meeting, the European Committee of Social Rights concluded that, from the point of view of the situation in law and in practice, there were no obstacles to the acceptance of the following provisions: Articles 10 (the right to vocational training), 12§3 and 12§4 (the right to social security), 13§4 (the right to personal assistance), 15 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 24 (the right to protection in cases of termination of employment), 26 (the right to dignity at work), 29 (the right to information and consultation in collective redundancy procedures).

With a view to carrying out the procedure for the second time in 2018, the European Committee of Social Rights decided, at its 293rd session, to invite Bosnia and Herzegovina to organise a second meeting on the non-accepted provisions. Regrettably, the competent authorities of Bosnia and Herzegovina declined this invitation, stating that no additional provision could be accepted, as the current level of implementation and compliance with the accepted provisions required a focus on reducing the number of recommendations and conclusions of non-compliance. In addition, they pointed out that the conditions for accepting additional provisions are not met from the point of view of the situation in law and in practice.

At its 300th session, the European Committee of Social Rights took note of this message but it considered that the procedure should be carried out in view of its purpose which is to discuss with the national authorities the situation in law and in practice in order to assess its level of conformity with the Charter, and bearing in mind Article 22 of the 1961 Charter and the above mentioned decision of the Committee of Ministers. Since the competent authorities have already made an analysis of the non-accepted provisions of the Charter from the point of view of domestic legislation, the Committee has therefore proposed to Bosnia and Herzegovina to provide written information on the situation and, where appropriate, the reasons for the delay in accepting the provisions concerned. It was, however, prepared to hold a meeting in autumn 2018 if this approach was better suited to the authorities of Bosnia and Herzegovina. This second option has been retained by the country.

At its 304th session, the European Committee of Social Rights noted that Bosnia and Herzegovina was finally not ready to organise the meeting. It sincerely regretted that the national authorities had not fulfilled the obligation under the procedure provided for in Article 22 of the 1961 Charter.

Nevertheless, the Committee remains at the disposal of Bosnia and Herzegovina for a dialogue and encourages them to accept additional provisions, in particular those for which it concluded in

2013 that there were no obstacles to acceptance. The Committee also invites Bosnia and Herzegovina to consider the possibility of accepting the collective complaints procedure.

The next examination of the provisions not accepted by Bosnia and Herzegovina will take place in 2023.

APPENDIX I – Situation of Bosnia and Herzegovina with respect to 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 a [report concerning Bosnia and Herzegovina](#) in 2013.

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

Monitoring the implementation of the European Social Charter ¹

I. Reporting system ²

Reports submitted by Bosnia and Herzegovina

Between 2011 and 2017 Bosnia and Herzegovina submitted 7 reports on the application of the Revised Charter.

The [7th report](#), which was submitted on 22 February 2017, concerns the accepted provisions relating to Thematic Group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23, 30 of the Revised Charter).

Conclusions with respect to these provisions will be published in January 2018.

The [8th report](#), which was submitted on 11/12/2017, concerns 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 take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right of 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 January 2019.

¹ 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](#).

² 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 ³

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2016

► *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)*

The federal legislation does not prohibit discrimination in employment on grounds of age and disability.

► *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.

► *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.

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

- The right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of sex is not guaranteed in practice,
- Women are not permitted to work in all professions which constitutes discrimination based on sex;

Thematic Group 2 "Health, social security and social protection" - Conclusions 2017

► *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 effective protection against employment of children subject to compulsory education is ensured in practice.

► *Article 7§8 - Right of children and young persons to protection - Prohibition of night work*

The regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

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

It has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave in the Republika Srpska.

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

It has not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina.

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

Screening policies are not systematically in place in the country.

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

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

It has not been established that measures have been taken to guarantee a healthy environment.

► *Article 12§1 - Right to social security – existence of a social security system*

- it has not been established that the existing social security schemes cover a significant percentage of the active population;
- the minimum duration of payment of unemployment benefit for people who have been insured up to five years is too short;
- it has not been established that the levels of social security benefits are adequate.

► *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*

- 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 services offering advice and assistance to persons without resources.

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

It has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement.

Thematic Group 3 "Labour rights" - Conclusions 2014

► *Article 2§3 - Annual holiday with pay*

During the reference period, the minimum period of paid annual leave was less than four weeks or 20 working days.

► *Article 2§4 - 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§7 - Night work*

During the reference period, a free compulsory medical examination was not provided by law to all workers about to take up night work.

Thematic Group 4 "Children, families, migrants" - Conclusions 2015

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

The legislation does not define or provide a list of dangerous or unhealthy activities prohibited to young workers under 18.

► *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 effective 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*

The limit of 40 hours per week for young workers under the age of 16 is excessive.

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

Young workers' wages are not fair.

► *Article 7§6 - Right of children and young persons to protection - Inclusion of time spent on vocational training in the normal working time*

The legislative framework does not provide for time spent at the training with the consent of employer to be included in normal working time and remunerated as such.

► *Article 7§8 - Right of children and young persons to protection - Prohibition of night work*

It has not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

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

Legislation 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 8§1 - Right of employed women to protection of maternity - Maternity leave*

Maternity benefits are not adequate or not provided for 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 Federation of Bosnia and Herzegovina there is no adequate protection against dismissal of employees during pregnancy or maternity leave;
- in the Republika Srpska, it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave;
- in the District of Brčko, adequate compensation is not provided for in cases of unlawful dismissal during pregnancy or maternity leave.

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

- it has not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina;
- night work of pregnant women, women having recently given birth and women who are nursing their infant is not adequately regulated in the District of Brčko.

► *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 and who are breastfeeding their child.

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

- family benefits do not cover a significant number of families in the Federation of Bosnia and Herzegovina;
- it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement;
- equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working with respect to family benefits is not ensured.

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

All forms of corporal punishment are not prohibited in the home 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"

▶ - - Conclusions 2016

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

- ▶ Article 11§1 - Conclusions 2017
- ▶ Article 13§2 - Conclusions 2017
- ▶ Article 14§1 - Conclusions 2017
- ▶ Article 14§2 - Conclusions 2017
- ▶ Article 23 - Conclusions 2017

▶ Thematic Group 3 "Labour rights"

- ▶ Article 2§2 - Conclusions 2014
- ▶ Article 2§5 - Conclusions 2014
- ▶ Article 2§6 - Conclusions 2014
- ▶ Article 4§3 - Conclusions 2014
- ▶ Article 5 - Conclusions 2014
- ▶ Article 6§1 - Conclusions 2014
- ▶ Article 6§2 - Conclusions 2014
- ▶ Article 6§3 - Conclusions 2014
- ▶ Article 6§4 - Conclusions 2014
- ▶ Article 21 - Conclusions 2014
- ▶ Article 22 - Conclusions 2014
- ▶ Article 28 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§1 - Conclusions 2015
- ▶ Article 17§2 - Conclusions 2015

II. Examples of progress achieved in the implementation of rights under the Charter
(update in progress)

APPENDIX II - Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.