



BOSNIA AND HERZEGOVINA
Ministry for Human Rights and Refugees

**Official statement of the authorities of Bosnia and Herzegovina
on the ratification of unratified articles of the Revised European Social Charter**

On 18th of January 2023, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, as the responsible ministry for monitoring the implementation of the Revised European Social Charter (hereinafter: the Charter) in Bosnia and Herzegovina, received a letter from the Committee for Social Rights of Council of Europe about the unratified articles of the Charter.

Given that Bosnia and Herzegovina is administratively divided into two entities (Federation of Bosnia and Herzegovina and Republika Srpska) and the District of Brčko of Bosnia and Herzegovina, and that both entities and the District have their own governments and jurisdiction in the field of labor and social rights, the Ministry for Human Rights and Refugees addressed all three governments with information about non-ratified articles of the Charter, and with the request to seriously approach the analysis of the real possibilities of ratification and implementation thereof.

The general response of both entities and Brčko District is that **there are currently no conditions for possible acceptance and harmonization of the new provisions of the Charter with the existing legislation in the field of labor and social rights in Bosnia and Herzegovina.**

Specifically, **the Government of the Federation of Bosnia and Herzegovina** explained its position as follows:

„When it comes to the area of protection of persons with disabilities in terms of Article 15 paragraphs (1), (2) and (3) of the Charter, which refer to the right of persons with disabilities to independence, social integration and participation in community life, the Federal Ministry of Labor and Social Policy is in charge of undertaking activities aimed at improving the position and rights of persons with disabilities. It continuously takes action to build a policy in the field of disability that will be established on a human rights and social model, so that the participation of people with disabilities in society is not limited or impossible due to various obstacles of a physical nature, or laws and policies unfavorable to the position of people with disabilities.

The Strategy for advancement of rights and status of persons with disabilities in the Federation of Bosnia and Herzegovina (2016-2021) had the purpose of improving the situation in all areas of importance for the position of persons with disabilities, and which included all departments of importance for their status. The Strategy is harmonized with the most important legal and strategic documents of the United Nations and the European Union and includes the same areas and issues important for improving the rights and status of persons with disabilities in society, such as: harmonization of the legislation; removal of architectural, communication and social barriers; ensuring adequate protection and support; comprehensive inclusion; creation and implementation of prevention programs; education; ensuring the availability of information, up to the implementation of international cooperation. This strategic document aimed to integrate disability issues into the programs of many departments at all levels of government in the Federation of Bosnia and Herzegovina, which until the

adoption of the Convention on the Rights of Persons with Disabilities, the Framework Policy in the Field of Disability in Bosnia and Herzegovina and implementing strategic documents **did not undertake anything within their competence to facilitate and improve the quality of life of persons with disabilities.**

The aforementioned strategic document represents the most comprehensive and harmonized concept of solutions in the field of disability, which sooner or later should be applied if we really want to achieve inclusion and equalization of opportunities for people with disabilities in the Federation of Bosnia and Herzegovina.

Although progress has been established on some issues, the commitment to the fulfillment of obligations by the responsible departments in most cases can be assessed as insufficient, and in some cases completely absent. Bearing in mind that the implementation period of this document has expired, and the common needs and obligations to work and improve the situation in the field of disability still remain, the Federal Ministry of Labor and Social Policy plans to prepare a strategic document in this area for the new period (2023-2028). This already complex and long-lasting process, which includes many departments and efforts of all levels of government, is made even more difficult by the fact that it is a matter of shared jurisdiction of the Federation of Bosnia and Herzegovina and the cantons. **Bearing in mind the above, at this moment it would be unrealistic to predict when the conditions for the ratification of the aforementioned provisions will be met.**

When it comes to the area of work, safety at work and employment, a significant number of ratified articles of the Charter refer to the aforementioned area, namely the thematic groups: "Employment, training and equal opportunities" (Articles 1, 9 and 20) and "Labor rights" (Articles 2, 4, 5, 6, 21, 22 and 28).

Also, for the mentioned part of the Charter that refers to Article 3. "Right to safe and healthy working conditions", most of the provisions are applied through regulations in the field of protection and safety at work. Bearing in mind the above, we believe that for some of the articles of the Charter that have not been ratified, and refer to the field of work, safety at work and employment, **the conditions for their ratification have not yet been met**, given that the above requires an interdepartmental approach, through the drafting of a new legal and by-law legislation, and in accordance with European standards.

Regarding the provisions related to pension and disability insurance, **we inform you that the conditions for their ratification have not yet been met**, since they imply the appropriate amount of social benefits in accordance with European standards."

In the Republika Srpska, the Ministry for European Integration and International Cooperation acted in accordance with its competences, coordinated communication with the competent institutions of the Republika Srpska, and submitted a response that: "The competent institutions of the Republika Srpska consider that **there are currently no conditions for the ratification** of the 47 provisions of the Charter that have not yet been ratified."

In the Brčko District of Bosnia and Herzegovina, legal experts who analyzed the possibilities of ratification of the new articles of the Charter concluded that **there are currently no conditions for their ratification, respecting the same position of both entities.**

Taking into account all of the above, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina adds the following:

Bosnia and Herzegovina, according to the current situation, has ratified a total of 19 articles of the Charter with 43 Paragraphs, as follows:

- Group I – „Employment, training and equal opportunities“ (Articles 1, 9 and 20);
- Group II – „Health, social security and social protection“ (Articles 11, 12, 13, 14 and 23);
- Group III – „Labor Rights“ (Articles 2, 4, 5, 6, 21, 22 i 28);
- Group IV – „Children, families and migrants“ (7, 8, 16 i 17).

From all the above mentioned articles, and within the thirteen reports prepared and submitted so far by Bosnia and Herzegovina, the Committee for Social Rights of the Council of Europe evaluated through its Conclusions that Bosnia and Herzegovina is in compliance with only 5 articles of the Charter, namely with regard to the application of Article 1 paragraph 3 „Right to work – Free employment services“; Article 2 paragraph 6 „The right to just conditions of work – Information on the employment contract“; Article 7 paragraph 7 „The right of children and young persons to protection – Paid annual leave“ and Article 8 paragraph 3 „The right of employed women to protection of maternity – Time off for nursing mothers“.

The Committee for Social Rights of the Council of Europe decided to defer the adoption of a conclusion until the receipt of new information in 8 cases, regarding the implementation of Article 11 paragraph 1 "Right to protection of health - Removal of cause of ill-health"; Article 13 paragraph 2 "Right to social and medical assistance - Prohibition of discrimination in exercising social and political rights"; Article 14 paragraph. 1 "Right to benefit from social welfare services - Promotion or providing social services"; Article 14 paragraph 2 "The right to benefit from social welfare services - Public participation in establishing and maintaining social protection services"; Article 23 "The right of the elderly to social protection"; Article 5 "Right to organize"; Article 7 paragraph 8 "The right of children and young persons to protection - Prohibition of night work for persons under 18 years of age", and Article 17. paragraph 2 "The right of children and young persons to social, legal and economic protection - Free primary and secondary education - regular attendance at school ".

Looking at the overall situation and the conclusions of the Committee for Social Rights, it is easy to conclude that Bosnia and Herzegovina has a long period of non-conformity in the implementation of most of the ratified articles of the Charter, and the main reason for this lies in the decentralized form of government, i.e. the fact that competence in the field of labor, social policy, health and education are shared by the entities of the Federation of Bosnia and Herzegovina and Republika Srpska. To that should be added the fact that in the Federation of Bosnia and Herzegovina, jurisdiction is shared between a total of ten cantons, as well the existence of the Brčko District of Bosnia and Herzegovina as an independent administrative unit with separate legal regulations.

Analyzing the conclusions of the Committee for Social Rights of the Council of Europe, the competent institutions in Bosnia and Herzegovina often get the impression that the Committee decides to assess "non-conformity" even in situations where we are convinced that we have detailed and clear legal regulations in a certain area in both entities and the District, and it is often concluded that we are unsuccessfully explaining the situation in Bosnia and Herzegovina on a hundred or more pages of the annual report, when much of what has been written is not taken into account and assessed as insufficient for the harmonization of the situation.

All of the above makes a complicated system of monitoring the implementation of the Charter, and according to the explanation given by both entities and Brčko District, it is concluded that at this moment the ratification of new articles would only bring an additional burden for the competent institutions at all the listed levels of government.

Also, it should be taken into account the fact that the Ministry for Human Rights and Refugees of Bosnia and Herzegovina has no mechanism to "force", "persuade" or "order" the governments of both entities and Brčko District to accede to ratification. The responsibilities of this Ministry are such that, from the state level, it coordinates the process of gathering information from all levels of government in Bosnia and Herzegovina in the requested areas of implementation of the Charter, and presents them to the Committee through the focal point. Therefore, we ask you to respect the position of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina, whose experts in the field of labor and social rights seriously approached the analysis and the possibility of ratification, and **decided not to ratify the new and additional articles of the Revised European Social Charter at this time.**

With respect,

In Sarajevo, on 16 June 2023