



March 2020

## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**BOSNIA AND HERZEGOVINA**

*This text may be subject to editorial revision.*



The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts "decisions".

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.<sup>1</sup>

The European Social Charter (revised) was ratified by Bosnia and Herzegovina on 7 October 2008. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 31 October 2018 and Bosnia and Herzegovina submitted it on 26 February 2019.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Articles 19, 27 and 31.

The reference period was 1 January 2014 to 31 December 2017.

The present chapter on Bosnia and Herzegovina concerns 18 situations and contains:

- 3 conclusions of conformity: Articles 7§6, 7§7 and 8§3;
- 13 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 7§9, 7§10, 8§1, 8§2, 8§4, 8§5, 16 and 17§1.

In respect of the other 2 situations concerning Articles 7§8 and 17§2, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from Bosnia and Herzegovina on the articles in question.

The next report from Bosnia and Herzegovina deals with the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for the report was 31 December 2019.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee previously noted (Conclusions 2015) that in Bosnia and Herzegovina, children under 15 are not permitted to be employed in any work, not even in light work. It further noted that different provisions apply at the state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The current report indicates that according to the provisions of the new Labour Law of the Federation of Bosnia and Herzegovina of 2016, an employment contract cannot be concluded with a person under 15 years of age, nor can such a person be hired for any work. The contract concluded in breach of this provision shall be deemed null and void, and thus shall not produce any legal consequences.

Regarding the Republika Srpska, the report indicates that a new Labour Law was adopted in 2016, according to which the minimum age for the conclusion of an employment contract is 15 years.

In Brčko District, the Labour Law regulates that an employment contract shall not be concluded with a person under 15 years of age. The report indicates that the Labour Law does not provide for exceptions and no possibility of concluding the employment contract with a person under the age of 15 is allowed, including all forms of economic activity and regardless of the worker's status.

In its previous conclusion (Conclusions 2015), the Committee asked for detailed and precise information in the next report on the applicable sanctions in case of non-observance of the prohibition to conclude an employment contract with a person under the age of 15.

In this respect, the report indicates that as for the Federation of Bosnia and Herzegovina, if the employment contract is concluded with a minor or he/she is hired for any type of work, the new Labour Law provides that the employer shall be fined for an offence in the amounts ranging from 1.000 to 3.000 BAM (from EUR 500 to EUR 1.500), which increases to an amount of 5.000 to 10.000 BAM (from EUR 2.500 to EUR 5.000) in case of recidivism.

Regarding the Republika Srpska, in cases of non-compliance with the legislative provisions, the Labour Law provides for fines ranging from 2.000 to 12.000 BAM (from EUR 1.000 to EUR 6.000). If the offence is committed against a worker under the age of 18, the fine shall not be less than 3.000 BAM (EUR 1.500) for an employer (legal person) and over 500 BAM (EUR 250) for an employer (natural person).

In Brčko District, in cases of non-compliance with the Labour Law provisions, the latter provides for fines ranging from 1.000 to 7.000 BAM (from EUR 500 to EUR 3.500); the amounts are doubled if the offence was committed against a minor.

The Committee asks the next report to confirm that the abovementioned sanctions also apply in the case of violation of the prohibition of the employment of children under the age of 15.

In its previous conclusion (Conclusions 2015), the Committee asked the next report to indicate what were the measures taken by the authorities to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract. The Committee further recalled that States are required to monitor the conditions under which work done at home is performed in practice and asked the next report to provide information on how such work was monitored.

The Committee notes that no answers to its questions are provided in the current report. It notes from the report that in Republika Srpska labour laws do not restrict the possibility for children under the age of 15 to perform any work which is not covered by the employment

contract, that is occurring sporadically or spontaneously, without a predetermined organiser, on a voluntary basis and without financial compensation for the purpose of the general social benefit.

The Committee recalls that the prohibition of the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households (Conclusions I (1969), Statement of Interpretation on Article 7§1). It further recalls that the prohibition also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§ 27-28). The Committee reiterates its previous questions and requests the next report to provide the relevant information.

In its previous conclusion (Conclusions 2015) the Committee recalled that the situation in practice should be regularly monitored and asked the next report to provide information on the number and nature of violations detected as well as on sanctions effectively imposed in practice on employers for engaging children under the age of 15 in any economic activities.

The current report indicates that the Labour reports of the Federal Administration for Inspection Affairs of the Federation of Bosnia and Herzegovina and the Labour reports of the Inspectorate of the BiH Brcko District Government do not contain any data on the number and nature of violations detected, as well as on the sanctions imposed on the employers who are hiring minors under the age of 15. Regarding the Republika Srpska, the current report indicates that since persons under the age of 15 are prohibited from concluding an employment contract, there were no cases of employment of persons under the age of 15.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised by the national authorities. Considering the lack of data on monitoring activities, findings of the Labour Inspectorate and the lack of information on measures taken by the authorities to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract, the Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with the Charter on the ground that it has not been established that the legislation prohibiting employment under the age of 15 is effectively implemented.

The Committee refers to its General question on Article 7§1 in the General Introduction.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§1 of the Charter on the ground that it has not been established that the legislation prohibiting employment under the age of 15 is effectively implemented.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee recalls that different provisions apply at state level and to the sub-state level of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee previously noted (Conclusions 2011) that the labour codes in the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District provide that young persons under the age of 18 cannot work in extremely difficult physical work, underground or under water, nor in a position that might pose risk to his/her life and health development and morals, taking into account his/her psychological and physical capacities. According to the labour codes, minors aged from 15 to 18 years old may conclude an employment contract only upon consent of their parents and under the condition of obtaining a medical certificate from the competent healthcare institution.

In its previous conclusion (Conclusions 2015), the Committee concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 7§2 of the Charter on the ground that the legislation does not define or provide a list of dangerous or unhealthy activities prohibited to young workers under 18.

As regards the Federation of Bosnia and Herzegovina (FBiH), the current report indicates that the Law on Occupational Safety and the “Rulebook on Determination of Special Working Conditions and Medical Examinations of Workers” provide for general occupational safety rules and measures for a list of risks at workplaces with “special working conditions”. The minimum age for performing such works shall be 18. The Committee notes from another source (Observation (CEACR) – adopted 2017, published 107<sup>th</sup> ILC session (2018), Minimum Age, Convention, 1973 (No. 138), Bosnia and Herzegovina) that pursuant to section 57 of the new Labour Law of the FBiH an underage person may not be assigned to any physically demanding work, underground or underwater work, or any other work likely to create a hazard or increased risk to their life, health, development or morale, taking into account their mental and physical characteristics. According to the same source, a by-law shall be adopted to define the types of work referred to in section 57, but it has not yet been adopted. The Committee asks information in the next report on any progress made in this regard.

With regard to Republika Srpska, the current report indicates that during the reference period an Ordinance on works which cannot be performed by young workers has been adopted. The Committee notes from another source (Observation (CEACR) – adopted 2017, published 107<sup>th</sup> ILC session (2018), Minimum Age, Convention, 1973 (No. 138), Bosnia and Herzegovina) that the regulation entered into force on 18 October 2016. In particular, the Ordinance prohibits young workers to works that are objectively above their physical or psychological capabilities; works that represent an increased risk of harmful exposure to physical, chemical and biological hazards; works that can have a detrimental effect on their psychological development, education and moral. The Ordinance further lists eleven categories of specific tasks that cannot be assigned to young workers. The Committee takes note of the list and concludes that the situation in the Republika Srpska is in conformity with the Charter on this point.

As for the Brčko District, the Committee previously noted (Conclusions 2015) that the types of work or types of risks that would represent a risk or an unhealthy influence on the young person are not explicitly listed. The Committee notes that there have been no changes to the situation which it has previously been assessed.

The Committee recalls that in application of Article 7§2 of the Charter, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or

unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). Considering that in the Federation of Bosnia and Herzegovina and in the Brčko District the legislation does not define or provide a list of dangerous activities prohibited to young workers under 18, the Committee reiterates its previous finding of non-conformity on this point.

In its previous conclusion (Conclusions 2015), the Committee noted that the report did not provide any information on the monitoring activities of the Labour Inspection. It recalled that the situation in practice should be regularly monitored and asked the next report to provide information on the monitoring activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied in practice. The Committee pointed out that should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§2 of the Charter.

In this respect, the current report indicates that the Federal Labour Inspection of the Federation of Bosnia and Herzegovina and the Labour Inspection of the Brčko District do not have recorded any cases of violation of the legislation on work of young people in dangerous working conditions. As for the Republika Srpska, the report does not provide any information on this point.

The Committee recalls that the effective protection of the rights guaranteed by Article 7 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised by the national authorities. Considering the lack of data on monitoring activities and findings of the Labour Inspectorate with regard to the prohibition of the employment under the age of 18 for dangerous or unhealthy activities, the Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§2 of the Charter on the ground that it has not been established that the legislation prohibiting employment under the age of 18 for dangerous or unhealthy activities is effectively implemented.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§2 of the Charter on the grounds that:

- 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 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee previously noted (Conclusions 2011) that as of June 2013, the age of completion of compulsory education is 15. The Committee noted that the age of completion of compulsory education coincides with the minimum age of employment and referred to its observations on light work under its conclusion on Article 7§1.

The Committee previously noted (Conclusions 2015) that in Bosnia and Herzegovina there are no legal provisions regulating work during holidays of children subject to compulsory education since there is a general ban on employment of children under the age of 15. It further noted that there was no data indicating the employment of children under 15 years of age and no statistics from the labour inspection demonstrating that children who are still subject to compulsory education do not perform work which prevent them to fully benefit from their education. The Committee asked the next report to provide the relevant information and concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice (Conclusions 2015).

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Bosnia and Herzegovina was invited to report by 31 October 2016 on the conclusion of non-conformity for repeated lack of information in Conclusions 2015. The Committee noted (Conclusions 2017) that the report submitted by Bosnia and Herzegovina contained no new information in response to its conclusion of non-conformity. In the absence of the requested information, the Committee reiterated its finding of non-conformity and concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice (Conclusions 2017).

The current report indicates that the Federal Labour Inspection of the Federation of Bosnia and Herzegovina, the Labour Inspector of the Republika Srpska and the Labour Inspector of the Brčko District did not record any cases of employments of children under the age of 15, nor have recorded measures taken and sanctions imposed in this regard.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised by the national authorities. Considering the repeated lack of information on the monitoring activities and findings of the authorities and the repeated lack of data demonstrating that children who are still subject to compulsory education do not perform work which prevent them to fully benefit from their education, the Committee reiterates its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the protection against employment of children subject to compulsory education is ensured in practice.



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee recalls that different provisions apply at state level and to the sub-state level of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

In its previous conclusion (Conclusions 2015), the Committee concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 7§4 on the ground that the limit of 40 hours' work per week for young workers under the age of 16 is excessive.

The current report indicates that during the reference period the relevant legislation has been amended and the new Labour Laws of the Federation of Bosnia and Herzegovina and the Republika Srpska provide for a limit of 35 hours of work per week for young workers under 18. The Committee asks the next report to indicate what is the duration of the daily working time young workers under the age of 18 are allowed to perform.

As for the sanctions imposed on the employer in cases of violations of the provisions of the Labour Law, the Committee refers to its conclusion under Article 7§1.

As for the Brčko District, the current report indicates that the Labour Law provides for 40 working hours a week and does not provide for exceptions for persons under the age of 18.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice (Conclusions 2006, Albania). The Committee further recalls that for persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article (Conclusions XI-1 (1991). However, for persons over 16 years of age, the same limits are in conformity with the article (Conclusions 2002, Italy).

Considering that in the Brčko District young workers between the age of 15 and 18 are allowed to perform work up to 40 hours' per week, the Committee reiterates its previous findings of non-conformity.

In its previous conclusion (Conclusions 2015), the Committee noted that the report did not provide any information on the situation in practice and asked the next report to provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the working time for young workers under the age of 18 who are no longer subject to compulsory schooling.

The current report does not provide any information in this respect. The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised by the national authorities. Considering the repeated lack of information on the monitoring activities and findings of the authorities, the Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§4 of the Charter on the ground that 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.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§4 of the Charter on the grounds that:

- 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 - Right of children and young persons to protection**

### *Paragraph 5 - Fair pay*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

#### ***Young workers***

The report indicates that in the Federation of Bosnia and Herzegovina (FBiH) there is no difference between the amount of young persons' wage and adults' wage. The amount of the minimum wage in FBiH ceased in 2018 to be established by the General Collective Agreement. The lowest gross and net hourly wage are not laid down in the Labour Law.

A phrase "the lowest wage" is used in the Labour Law in the sense that Article 78 stipulates that the lowest wage shall be determined on the basis of the lowest labour cost determined by the collective agreement and labour bylaws. The Law stipulates that the employer cannot calculate and pay the wage less than the wage determined by the collective agreement and labour bylaws.

Amended Article 78 of this Law stipulates that the Government of the Federation... shall determine the lowest wage after consultation with the Economic and Social Council adopt a regulation laying down the methodology for calculating and adjusting the minimum wage referred to in this Article.

The average net wage in 2017 was of 875 BAM (447 €) compared to 369.60 BAM (189€) which was the lowest pre-tax net wage. The Committee notes that the lowest net wage represents only 42% of the net average wage in the Federation of Bosnia and Herzegovina.

In Republika Srpska, young workers are paid at the same level as adults. The lowest net salary was of 440 BAM (224 €) in 2018, while the average net monthly salary was 849 BAM (413 €) in 2018. The Committee notes that the lowest net wage represents 51% of the net average wage in Republika Srpska.

With regard to Brčko District, the report provides information on the average net salary of the period 2015-2018, with the average net salary amounting to 843 BAM (430 €) in 2017. However, the report does not provide information on the lowest net salary and so it is not possible for the Committee to estimate the percentage of the lowest net wage compared to the average net wage in the Brčko District. In this regard, the Committee requests in the next report information is provided on both the lowest net wage and the average net wage in the Brčko District.

In the present case, since Bosnia and Herzegovina has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage/lowest wage and net average wage is taken into account. The Committee notes that the monthly minimum wage corresponds to less than 50% of the average wage in the Federation of Bosnia and Herzegovina which is too low to secure a decent standard of living. Therefore, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself (the minimum wage of adult workers) is too low to secure a decent standard of living.

#### ***Apprentices***

In the Federation of Bosnia and Herzegovina the law stipulates that, during the traineeship period, the trainee shall be entitled to 70% of the wage set for the works for which he/she is trained. In addition, the Law provides that the employer and the trainee can agree on a higher amount of the wage.

As regards to Republika Srpska, according to the previous conclusion, the Labour Law provides that an apprentice is entitled to 80% of the salary of an adult worker who performs

the same work (Section 29 (2)). Wages for minors shall be calculated in the same way as for other workers, depending on the posts for which the employment contract is concluded and the coefficient applicable to that post depending on the complexity of tasks and the professional qualification degree and certain skills that are required for the relevant post. The wage shall not be paid in the amount lower than the amount laid down in the collective agreement, labour bylaws and the employment contract

In the Brčko District, the rights of trainees and volunteers are also regulated in the Law. In course of traineeship, a trainee shall be entitled to salary in the minimum amount of 80% before taking a professional examination.

In its previous conclusion the Committee asked how the labour inspectorate monitors the situation with regard to the apprentices' allowances in practice. The report provided no information on the matter and the Committee reiterates its question.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§5 of the Charter on the ground that young workers' wages are not fair.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 7§6 of the Charter on the ground that the legislative framework did not provide for time spent at the training with the consent of employer, to be included in normal working time and remunerated as such.

The Committee notes from the information provided in the report that there has been a change in the legislative framework in Bosnia and Herzegovina concerning for time spent at the training with the consent of employer to be included in normal working time and remunerated as such.

According to the report In the Federation of Bosnia and Herzegovina, the new Labour Law stipulates that an employer may, in accordance with the needs of business, facilitate education, vocational training, and professional development of employees. Also, the employer shall be obliged to ensure education, vocational training, and professional development to an employee when introducing changes or new methods or organization of work. Trainings shall be included in the regular working hours of the employee for which he/she is paid.

In Republika Srpska, the new Labour Law provides for education, vocational training and professional development during the employment, when the employer refers the employee to additional training on handling the equipment and applying safety measures at work if necessary for safe handling of the equipment and means of protection at work. The Law lays down that the costs of education, vocational training and professional development are provided from the employer's funds and other resources, in accordance with the Law and the general act. In the event that an employee terminates education, vocational training or professional development, he or she shall be obliged to compensate the employer for the costs unless the termination is justified. The time spent on additional training for handling of equipment and means of protection at work if it is necessary for the safe handling of such equipment and their intended use shall be considered as the time spent at work. During the period of vocational training and professional development, an employee shall be entitled to a wage in the full amount which would have been paid for the regular work.

In the Brčko District, under the Labour Law of the Brčko District and in accordance with the business needs, the employer may ensure education, vocational training, and professional development to an employee. Employees shall undergo education, vocational training and/or professional development commensurate with their capacities and the business needs at the expense of the employer.

The Committee notes that it is not clear if the legislative framework in the Brčko District provides for time spent at the training with the consent of employer to be included in normal working time and remunerated as such. In this regard it is asked for this issue to be clarified in the next report.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 7§6 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

According to the report in **the Federation of Bosnia and Herzegovina**, the new Labour Law lays down that an employee shall be entitled to paid annual leave lasting at least 20 working days, however no longer than 30 working days. A minor worker shall be entitled to an annual leave in duration of at least 24 working days.

The period of temporary inability to work, the time of non-working holidays, or other leave of absence recognized for the purposes of pension coverage shall not be included in the duration of annual leave. When these circumstances cease to exist, the employee will be able to use the remaining part of the annual leave.

All statutory provisions prohibiting the employer from renouncing or waiving the right to paid annual leave, as well as paying compensation instead of using the annual leave, shall apply to minors in terms of their rights to annual leave. A minor worker, just like other workers, shall not be able to waive their entitlement to annual leave. Also, employees cannot be deprived of their right to annual leave nor can compensation be paid to them in lieu of annual leave, except in the event of the employment contract termination when the employer is obliged to pay compensation in lieu of annual leave used to the employee who has not used his annual leave, or part of his annual leave, in the amount he would have received if he had used his entire annual leave, or the remaining part of it, if he did not use his annual leave or part of it through the employer's fault.

In **Republika Srpska**, the new Labour Law stipulates that employees shall not be able to waive their entitlement to annual leave nor shall they be deprived of that right.

In the context of the annual leave use, the Law makes no distinction between employees of different ages, but it introduces a general prohibition of denying the right to annual leave and prohibition of waiving the right to annual leave.

According to the new Labour Law of Republika Srpska, an employee shall have the right to annual leave in each calendar year for the duration determined by the general act and the employment contract, of at least four working weeks or at least 20 working days. Annual leave shall be increased based on the years of service and other grounds in accordance with the collective agreement.

An employee who is working at a post with special working conditions shall be entitled to an annual leave of at least 30 working days, which shall be increased in accordance with the years of service.

The Law stipulates that annual leave does not include periods of absence from work on other grounds, and therefore, the use of annual leave shall be terminated. In case that annual leave is terminated in this sense, the employee shall use the remaining part of the annual leave in agreement with the employer.

Given above and considering the prohibition of renouncing the right to annual leave and the prohibition of renouncing of the right to annual leave, and after the absence from work on other grounds during the annual leave, an employee shall, upon agreement with the employer, be entitled and obliged to use of the rest of the annual leave.

A person entering employment for the first time or whose employment was terminated for more than 30 working days shall be entitled to use annual leave after six months of continuous work for the employer, including the time of temporary inability to work in terms of regulations on health insurance and absence from work with payment of the salary.

The above-mentioned statutory provisions shall apply to minor workers.

In the **Brčko District**, according to the Labour Law of the Brčko District of Bosnia and Herzegovina, an employee shall be entitled to paid annual leave lasting for at least eighteen working days. A minor worker shall be entitled to an annual leave in duration of at least twenty-four working days. Employees who are working at posts where they are exposed to adverse effects shall be entitled to annual leave of at least 30 working days.

The period of temporary inability to work, the time of non-working holidays, or other leave of absence recognized for the purposes of pension coverage shall not be included in the duration of annual leave.

Absence from work due to illness, injury, maternity leave or similar leave which was not of the employee's own will shall not be considered a termination of employment.

Employees cannot be deprived of their right to annual leave nor can compensation be paid to them in lieu of annual leave.

In the event of termination of an employment contract, the employer may pay compensation to the employee for an unused annual leave if the employer and the employee so agree.

The Committee noted in its previous conclusion that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. In this regard, the Committee requested that the report should provide information on the monitoring activities and findings of the Labour Inspectorate for the respective reference period in relation to the paid annual holidays of young workers under 18 years of age, including the nature and number of violations detected and sanctions applied in practice.

The report does not contain information on the monitoring activities and findings of the Labour Inspectorate and so the Committee requests the next report to provide information on the monitoring activities and findings of the Labour Inspectorate for the respective reference period in relation to the paid annual holidays of young workers under 18 years of age, including the nature and number of violations detected and sanctions applied in practice.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 7§7 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

According to the report, in the **Federation of Bosnia and Herzegovina**, the new Labour Law prohibits night work by minor workers, noting that work in the period between 7.00 p.m. and 7.00 a.m. is considered night work for minors working in the industry. The period between 8.00 p.m. and 6.00 a.m. is considered night work for minors who are not working in the industry. Exceptionally, minor workers may temporarily be exempted from the prohibition of night work in case of major breakdowns, force majeure and protection of interests of the Federation based on the approval by the Canton Labour Inspectorate.

The Federal Labour Inspector performs direct inspection in business companies, enterprises and other institutions. An employee, a trade union, an employer and a council of employees may submit a request to the labour inspector for carrying out inspection.

The reports on the work of the Federal Administration for Inspection do not contain any information on the number and nature of the detected offences, as well as on the measures taken or penalties imposed on employers when it comes to the prohibition on the night work by minors.

In **Republika Srpska**, there is no information on violation of the night work prohibition.

Work in the period between 10.00 p.m. and 6.00 a.m. is considered a night work, while for employees under the age of 18, the work in the period between 7.00 p.m. and 6.00 a.m. is considered night work. Employees work at night due to the needs of working processes, type of profession the employee is engaged in or the regime of working in shifts. The employees who work at night shall be entitled to an increase in salary on that ground.

According to the new Labour Law, employees under the age of 18 are prohibited from working at night. Exceptionally, workers under the age of 18 may temporarily be exempted from the prohibition of night work in case of major breakdowns, force majeure and protection of interests of Republika Srpska based on the approval by the competent labour inspector. This approval by the competent labour inspector shall be intended for security by special measures of occupational safety and health of persons under the age of 18.

In the **Brčko District** of Bosnia and Herzegovina, the Labour Law prohibits night work by minor workers, noting that work in the period between 7.00 p.m. and 7.00 a.m. is considered night work for minors working in the industry. The period between 8.00 p.m. and 6.00 a.m. is considered night work for all other minor workers. Exceptionally, minor workers may temporarily be exempted from the prohibition of night work in case of major breakdowns, force majeure and protection of interests of the District based on the approval by the labour inspector.

According to the report, no cases of violation of the aforementioned provisions were recorded by the Labour Inspection.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). In the absence of any data on the supervision activity of the Labour Inspectorate, the Committee considers that the situation is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the regulations regarding prohibition of night work of young persons under 18 years of age are implemented in practice.



The Committee asks that the next report provide information on the activities and findings of the Labour Inspectorate for the respective reference period in relation to the prohibition of night work for young workers under the age of 18, including the nature and number of violations detected and sanctions applied.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

The Committee recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.

The report indicates that in the **Federation of Bosnia and Herzegovina**, under a new Labour Law, a minor employee shall be entitled to medical examinations at least once in two years, with a view to protecting his/her health and psychological and physical development. Costs of medical examinations shall be borne by the employer. Should the employer fail to ensure a medical examination of a minor employee at least once in two years, he/she may be fined for the violation in the amount ranging from BAM 1.000,00 to BAM 3.000,00, (511 to 1,533 EUR) and in case of a repeated violation, in the amount ranging from BAM 5.000,00 to BAM 10.000,00. (2,556 to 5113 EUR)

In **Republika Srpska**, new Labour Law lays down the obligation of regular work ability assessment for workers under the age of 18.

Full-time working hours for a worker under the age of 18 cannot exceed 35 hours a week, i.e. eight hours a day.

The Employer shall be obliged to, at least once a year and at its own expense, refer the workers under the age of 18 to the competent healthcare institution for assessment of their fitness to work. Fitness to work, i.e. impact of the tasks performed by the worker on his/her life, health and psychological and physical development, is assessed during a medical examination by the competent healthcare institution. Should the employer fail to ensure a medical examination of a minor employee, he/she may be fined for the violation in the amount ranging from BAM 2.000,00 to BAM 12.000,00 (1,022 to 6,135 EUR).

In the **Brčko District**, according to the Labour Law of the Brčko District of Bosnia and Herzegovina, a minor shall not be hired if the condition that the authorized doctor or the competent healthcare institution has issued a certificate demonstrating that the minor has been examined and that he/she is physically and mentally capable of performing the tasks required by such post is not fulfilled. Also, one or both parents or a legal guardian of the minor have to give their consent for his/her employment. In practice, there were no submitted requests for regular medical examination of minor employees in the Public Healthcare Institution "Medical Centre Brčko".

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§9 of the Charter on the ground that 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 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Protection against sexual exploitation***

According to the report, on 31 August 2016 the Council of Ministers adopted the 2015-2018 Action Plan for Children as a continuation of the previous Plan. The Council of Ministers adopts annual reports containing detailed information on the trafficking in human beings in Bosnia and Herzegovina. The Committee asks the next report to provide information on the implementation and results of the 2015-2018 Plan and any new Action Plans adopted during the relevant reference period regarding the sexual exploitation of children.

In its previous conclusion (Conclusions 2015) the Committee asked whether the criminal codes of all of the entities criminalise all acts of sexual exploitation of children (i.e. persons below 18 years of age), including simple possession of child pornography.

According to the report, the Criminal Code of Bosnia and Herzegovina criminalises offences related to the sexual exploitation of children

The Entity criminal codes and the Brčko District Criminal Code, cover a wide range of criminal offences that contain elements of sexual abuse and exploitation of children (persons under 14 years of age) or minors (persons under 18 years of age), including: rape, sexual intercourse with a child, sexual intercourse by abuse of power, inducement into prostitution, trafficking in minors, exploitation of a child or a minor for pornography, production, possession and distribution of child pornography, exposing a child to pornography.

The Committee notes from the report that according to the criminal codes in force in Bosnia and Herzegovina, a child is a person who is under 14 years of age and a minor is a person who is under 18 years of age. It appears that only children under 14 are protected against the « possession and distribution of child pornography » and « exposing a child to pornography ». The same provision appears in the Criminal Code and the law on Protection and Treatment of Children and Juveniles in the Criminal Procedure of the Federation of Bosnia and Herzegovina.

It also recalls that Article 7§10 requires that all acts of sexual exploitation be criminalised. States Parties must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. It considers that the situation in Bosnia and Herzegovina is not in conformity with the Charter on this point because not all acts of sexual exploitation of children (persons under 18 years of age) are criminalised.

### ***Protection against the misuse of information technologies***

The report states that a sustainable system of data collection on children's rights in the context of protection against the misuse of information technologies has not yet been established in Bosnia and Herzegovina.

The 2015-2018 Action Plan for Children aims to prevent violence against children through information and communications technologies and to prevent child abuse through the use of information and communication technologies.

The Committee recalls that Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers,

in particular, the protection of children against all forms of exploitation and against the misuse of information technologies.

With a view to combating sexual exploitation of children through the use of information technologies States Parties must adopt measures in law and in practice, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.). Internet services providers should be under an obligation to remove or prevent accessibility to illegal material to which they have knowledge and internet safety hotlines should be set up through which illegal material could be reported.

The Committee requests that the next report provide information on the implementation and results of the Action Plan 2015-2018 and any new action plans in this context, as well as on progress towards the establishment of mechanisms for data collection on the status of children's rights in the context of protection against the misuse of information technologies.

In the light of the information provided, the Committee considers that it has not been established that adequate measures are taken to protect children against the misuse of information technologies.

### ***Protection from other forms of exploitation***

As regards child victims of trafficking the Committee notes from the GRETA report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings of 31 March 2017 that the majority of identified victims of trafficking in Bosnia and Herzegovina have been children. The Committee asks the next report to provide information on the detection and assistance given to child victims of trafficking.

In its previous conclusion (Conclusions 2015), the Committee requested to be kept informed of the number of children identified as living in a street situation and the measures taken to address this phenomenon so as to ensure that the rights of the Charter are guaranteed for such children.

According to the report, 6 day-care centres for children found begging operate in Bosnia and Herzegovina. These centres are funded by the State and/or local budgets, as well as foreign donors, and offer assistance to children living and working on the streets. Day-care centres offer in particular services for physical care (bathing, food, clothing), mental and social treatment, counselling for children and families, educational activities and legal assistance.

In the absence of day-care centres, social welfare centres, in cooperation with police stations, are responsible for preventing the presence and work of children on the street and for providing mental and social assistance to children and their families.

The Committee notes from the GRETA report of 31 March 2017 concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina that officials of social welfare centres do not always react appropriately to cases of forced begging in the Roma community, which they tend to consider as part of Roma custom, and return children to their families even when the parents have been involved in the exploitation of the child.

In 2015, UNICEF published a comprehensive study on child begging and other child street work in the country. The study showed that children in street situations are mostly younger than 14, that boys and girls are equally represented amongst such children, and that all communities of the country are affected (albeit that the Roma community is the most affected). Most of the children work in support of their families. The study concluded that these children are very vulnerable and exposed to abuse and while some cases of street-working children can be described as trafficking, many cases would be better described as parental abuse or neglect.

The Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child, which has been ratified by Bosnia and Herzegovina.

The Committee requests to be informed of the measures taken to improve the protection of and to assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§10 of the Charter on the grounds that:

- 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 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and at the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Right to maternity leave***

As regards the provisions applying to the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District, the Committee noted previously that they all provided for an overall pregnancy, maternity and parental leave of 12 consecutive months, which could be extended to 18 months in the event of multiple births. They included a compulsory postnatal leave of 42 days in the Federation of Bosnia and Herzegovina and Brčko District and 60 days in Republika Srpska (Conclusions 2011). The situation is still in conformity with Article 8§1 of the Charter on this point.

### ***Right to maternity benefits***

In its previous conclusion (Conclusions 2015), the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 8§1 of the Charter on the grounds that maternity benefits were not adequate or not provided for in certain parts of the country. It required updated information on this point in the next report and clarification on the conditions for entitlement to benefits in the different cantons, on the basis on which they were calculated and on their level in relation to the employee's previous salary and to 50% of the median equivalised income.

The Committee notes from the report that in the **Federation of Bosnia and Herzegovina**, a new Labour Law came into force on 14 April 2016. It provides that during their maternity leave, employees are entitled to a benefit payment under the Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children. The conditions, calculation methods, procedures, powers and funding arrangements applicable to the benefits referred to in Article 89§2 of this law are governed by cantonal legislation, and the payment of maternity benefits depends on the funding dedicated to this in cantonal budgets. The situation of employees in the private sector is determined by the legislation in force in the various cantons and entities.

The Committee takes note of the conditions for entitlement to benefit in the various cantons (generally workers need to have been employed for at least six months, although there are slight variations from canton to canton), their basis for calculation and their level. It notes that maternity benefits of less than 70% of the minimum wage are paid in some cantons (Una-Sana, Central Bosnia, Sarajevo, Herzegovina-Neretva; 40% to 100% of the wage depending on the financial capacity of the cantons). Accordingly, the Committee reiterates its findings of non-conformity with Article 8§1 of the Charter. It requires information in the next report on the level of maternity benefits compared to 50% of the equivalised median income.

With regard to **Republika Srpska**, the Committee requested for information on the conditions for entitlement to maternity benefits. It asked under what circumstances, if any, salary compensation corresponding to 50% of the employee's average salary could be paid in respect of maternity benefits. It also asked if the minimum amount of maternity benefits corresponded to at least 50% of the equivalised median income. According to the report, the new Labour Law (No. 1/16) was adopted and came into force during the reference period. During maternity leave, women are entitled to maternity benefits equivalent to the average wage earned in the last twelve months preceding the beginning of maternity leave. If they have

not been in salaried employment for twelve months, the amount will be equal to the average wage earned before maternity leave.

In its previous conclusion, the Committee noted that Article 45 of the **Brčko District** Labour Law had been amended on 23 August 2014 and that 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. It requested information on the conditions for entitlement to salary compensation during maternity leave, in particular the required length of the contributory period. It asked whether interruptions in the employment record were taken into account and whether the salary compensation was calculated on the basis of the average salary of the employee during the last three months, or the last twelve months, prior to maternity leave. It also inquired whether the minimum rate of maternity benefit corresponded to at least 50% of the equivalised median income. The report states that 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. The calculation of wages, the payment of contributions and payment of compensation are carried out by the employer. The Committee notes that the report only partly answers its earlier questions, so it repeats them. It asks in particular if interruptions in the employment record are taken into account when determining maternity benefits.

The Committee requires that the next report should provide information regarding the right to any kind of benefits for the employed women who do not qualify for maternity benefit during maternity leave.

Regarding employees in the State public service, the Committee asked in its previous conclusion what conditions were required to be entitled to maternity benefits and to what extent interruptions in the employment record were taken into account. It also asked whether the minimum amount of maternity benefits corresponded to at least 50% of the equivalised median income. In reply, the report states that the applicable legislation at state level relates to public employees of Bosnia and Herzegovina's institutions. Maternity benefits paid to women employees in the public service amount to 70% of their pay.

The Committee notes that the report does not contain any information on the level of maternity benefits compared to 50% of the equivalised median income, so it repeats its questions.

The Committee recalls that, under Article 8§1, the minimum amount of income-replacement benefits should be fixed so as to stand in reasonable proportion to the previous salary (these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage) and it should never fall below 50% of the median equivalised income (Statement of Interpretation on Article 8§1, Conclusions 2015). If the benefit in question stands between 40% and 50% of the median equivalised income, other benefits, including social assistance and housing, will be taken into account. On the other, if the level of the benefit is below 40% of the median equivalised income, it is manifestly inadequate and its combination with other benefits cannot bring the situation into conformity with Article 8§1.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are inadequate in certain parts of the country.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and at the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD).

It already examined the situation with regard to the illegality of dismissal during maternity leave (prohibition of dismissal and redress in case of unlawful dismissal) in its previous conclusions (Conclusions 2011, 2015 and 2017). It will therefore only consider recent developments and additional information.

### ***Prohibition of dismissal***

The Committee recalls that the Labour Law in the Institutions of Bosnia and Herzegovina, Section 4, sub-paragraph a) regulates the protection of women and maternity in public institutions, public enterprises, associations and foundations, cross-entity corporations and other institutions assuming additional responsibilities conferred on Bosnia and Herzegovina. In conformity with Article 45 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, the same rules apply to civil servants in ministries, independent administrative organisations and administrative departments within ministries, as well as other institutions established by special laws or entrusted with the functioning of the administration by special laws. In its previous conclusion (Conclusions 2015), the Committee asked whether employees in the institutions of Bosnia and Herzegovina were adequately protected against dismissal during pregnancy and maternity leave under the Labour Code applicable to the institutions of Bosnia and Herzegovina, the Law on the Civil Service in the institutions of Bosnia and Herzegovina or any other relevant legislation, and whether any exceptions to this protection were allowed. In response, the report states that pursuant to the Labour Code applicable in the institutions of Bosnia and Herzegovina, employers may not terminate an employment contract on account of an employee's pregnancy and during the whole period when she is breastfeeding (certified by a registered doctor).

In its previous conclusion (Conclusions 2015), the Committee found that in the **Federation of Bosnia and Herzegovina**, the dismissal of a pregnant employee was prohibited (Article 53 of the Labour Code) when it is related to the employee's pregnancy, but was allowed on such grounds as economic, technical or organisational ones, or when the employee was responsible for serious misconduct or gross violation of her obligations under the employment contract. Consequently, the Committee concluded that the situation was not in conformity with Article 8§2 of the Charter on the ground that there was no adequate protection against the dismissal of employees during their pregnancy or maternity leave. It asked for clarification of the circumstances under which a pregnant employee could be dismissed and whether the same rules applied to all employees in both the private and public sectors.

The Committee notes from the report that, in the Federation of Bosnia and Herzegovina, a new Labour Code entered into force on 14 April 2016. Article 60(1) of that Code provides that an employer may not refuse to employ a woman on account of her pregnancy. Nor can the employer terminate an employment contract during an employee's pregnancy or maternity leave, during the period when she may exercise her right to part-time work from the end of her maternity leave until the child has turned three years of age, or during the period when she is absent for the purpose of breastfeeding. The same rules apply to all employees, in both the public and private sectors. The Committee finds that this situation is now in conformity with Article 8§2 of the Charter.

In its previous conclusion (Conclusions 2015), the Committee found that the situation in the **Republika Srpska** was in conformity with Article 8§2 of the Charter on this point. The report



states that the new Labour Code (No. 1/16) which entered into force during the reference period, prohibits the dismissal of female employees, in both the public and private sectors, during pregnancy and maternity leave. Employers may not terminate an employment contract for economic, organisational or technical reasons, during pregnancy, maternity leave, parental leave, or part-time work to take care of a child.

As regards the **Brčko District**, the Committee previously noted that employees were protected against dismissal during pregnancy until the end of maternity leave. It asked whether the legislation specifically prohibited the termination of an employee's work contract during her pregnancy or maternity leave. It also asked to be informed of the circumstances under which it was possible to dismiss an employee during her pregnancy or maternity leave. In response, the report states that the Labour Code explicitly provides that employers may not terminate an employment contract on account of an employee's pregnancy or absence on maternity leave. However, it does not clarify under what circumstances an employee may be dismissed during her pregnancy or maternity leave. The report states that the same rules apply to all employees, in both the public and private sectors.

### ***Redress in case of unlawful dismissal***

In its previous conclusion (Conclusions 2015), the Committee asked whether **employees in the institutions of Bosnia and Herzegovina** had adequate means of redress in cases of unlawful dismissal during pregnancy and maternity leave, whether reinstatement of the employee was the rule and, if reinstatement was not possible, whether the employee in question could claim not only compensation for pecuniary damage related to the loss of salary, but also compensation for the non-pecuniary damage suffered, without any upper limit. In response, the report states that the employee has one year in which to challenge her dismissal. If the court finds that the dismissal was unlawful, it can order the employer to reinstate the employee and pay her compensation for loss of salary during the period when she was not working and for the damage suffered. If this is not possible, the court can order the employer to pay the employee compensation for loss of salary during the period of unemployment, compensation for the damage suffered, severance pay and any other benefits to which the employee would be entitled, pursuant to labour legislation or the employment contract.

In its previous conclusion (Conclusions 2015), the Committee asked whether there was a ceiling on the level of compensation for unlawful dismissal in the **Federation of Bosnia and Herzegovina**. If such was the case, it asked whether the compensation paid covered both pecuniary and non-pecuniary damage, or whether the victim could also claim compensation (for which there was no upper limit) for non-pecuniary damage through other legal avenues (for example, under anti-discrimination legislation). It also asked whether both types of compensation were awarded by the same courts and how long on average it took courts to make their ruling. It further asked whether the same rules applied to all employees, in both the public and private sectors.

In response, the report states that there is no upper limit to compensation and that both types can be awarded by the same court. The court is free to choose the most appropriate form of redress for the case in question. No specific duration is laid down for this type of dispute. The Committee asks for the next report to provide relevant case-law examples in cases concerning compensation for unlawful dismissal of an employee during her maternity leave.

In its previous conclusions (Conclusions 2015 and 2017), the Committee concluded that the situation in the **Republika Srpska** was not in conformity with Article 8§2 of the Charter on the ground that it had not been established that adequate compensation was provided in cases of unlawful dismissal during pregnancy or maternity leave. The report states that the Labour Code provides that employees who consider that there has been an infringement of their rights in this matter can bring an action before the courts. The employee may ask the employer to guarantee the exercise of her rights, but this does not preclude also bringing an action before

the Agency for the Peaceful Settlement of Labour Disputes or the competent court. Employees may file a proposal for a peaceful settlement of the dispute within 30 days of being notified of the violation and no later than three months from the actual date of the violation. The employee may bring an action for protection of her rights no later than six months following notification of the violation or the actual date of the violation. In any dispute before the competent authority the burden of proof shall fall on the employer. Should the court find that the dismissal was unlawful, it may order the employer to reinstate the dismissed employee and to pay the latter compensation for her professional skills, the damage suffered in terms of loss of salary and any other remuneration to which she would be entitled in accordance with the legislation or her employment contract. An employee may initiate proceedings for damages before the competent court for any type of discrimination. The amount of compensation for non-material damage varies on a case-by-case basis. It is dependent on the length of time during which the employee was not working, seniority in the post, the age of the employee in question and the number of dependents. Where the court decides to award compensation for non-pecuniary damage, its decision must be made within the scope of the claim. In other words, the amount awarded cannot be higher than the one claimed by the employee. However, it may award a lower amount than the one claimed if it considers it is justified in the particular case. The report states that on average, it takes approximately 18 months until the labour dispute is finally settled. The report states that the same rules apply to all employees, in both the public and private sectors.

In its previous conclusion (Conclusions 2015), the Committee found that in the **Brčko District**, compensation awarded in cases of unlawful dismissal during pregnancy or maternity leave was inadequate. The Committee notes that, in the light of the information provided in the report, there has been no change to the situation in the reference period. Accordingly, it reiterates its finding of non-conformity on the ground that compensation awarded in cases of unlawful dismissal during pregnancy or maternity leave is inadequate.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§2 of the Charter on the ground that, in the Brčko District, compensation awarded in cases of unlawful dismissal during pregnancy or maternity leave is inadequate.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with the Charter and asked a number of questions.

According to the report, the Labour Code of the **Federation of Bosnia and Herzegovina** came into force on 14 April 2016. It still contains a provision giving women working full-time after their maternity leave the right to two one-hour nursing breaks a day until the child is one year old. These breaks are counted as working time. The Committee asks to confirm that the legislation still provides for paid nursing breaks for women employed in the public sector.

In **Republika Srpska**, the new Labour Law No. 1/16 came into force during the reference period, provides for one one-hour nursing break per day if a woman returns to work before the end of her maternity leave (i.e. before her child is one year old). These breaks are counted as working time. The Committee asks to confirm that the legislation still provides for paid nursing breaks for women employed in the public sector.

As to the **Brčko District**, the Committee noted previously that women working full-time after their maternity leave were entitled to two one-hour paid nursing breaks a day until their child turned one. The same rules apply to women employed in the public sector.

In its previous conclusion (Conclusions 2015), the Committee asked whether the same rules applied to women employed in the public sector at State level (Bosnia and Herzegovina), in the Federation of Bosnia and Herzegovina and Republika Srpska. It also asked what rules applied to women working part-time. Since there is no information in the report on this point, the Committee reiterates its request. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Bosnia and Herzegovina is in conformity with Article 8§3 of the Charter in this respect.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 8§3 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusions, the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 8§4 of the Charter on the grounds that it had not been established that night work of pregnant women, women having recently given birth and women nursing their infant was adequately regulated in the Federation of Bosnia and Herzegovina (Conclusions 2017 and 2015) and that night work of pregnant women, women having recently given birth and women nursing their infant was not adequately regulated in the District of Brčko (Conclusions 2015 and 2011).

The report indicates that in **Bosnia and Herzegovina** women employed in the private and public sectors are equally protected with regard to night work. A woman who is pregnant or nursing may be assigned to another employment for health reasons (established by a medical certificate) and with her consent, without loss of pay. If such reassignment is not possible, she is entitled to paid leave (Article 45 of the Law on Civil Service in the institutions of Bosnia and Herzegovina and Article 35 of the Labour Act applicable in institutions of Bosnia and Herzegovina). In its previous conclusion (Conclusions 2015), the Committee asked whether these provisions concerned specifically night work or, more generally, any activity considered to be heavy or dangerous. The report does not answer this question. However, the Committee notes that an amendment prohibiting night work for pregnant women as of their sixth month of pregnancy and mothers for two years after childbirth was proposed in draft legislation which is being adopted. The draft legislation also stipulates that, pending the adoption of the Bosnia and Herzegovina law on health protection for employees, retirement insurance, disability insurance and other types of social welfare for employees, the laws and regulations of the entities and the District of Brčko must be applied. The Committee asks that the next report provide updated information on any changes to the legal framework.

The Committee notes from the report that a new Labour Code of the **Federation of Bosnia and Herzegovina** came into force on 14 April 2016. According to the new Labour Code, pregnant women as of their sixth month of pregnancy and for mothers for two years after giving birth (this also includes adoptive parents and individuals performing child custody by decision of the competent authority) are not allowed to perform night work. Furthermore, a woman who is pregnant or nursing may be assigned to another employment, for health reasons (established by a medical certificate), with her consent, without loss of pay. If such reassignment is not possible, the employee is entitled to paid leave, in line with the collective agreement and work regulations.

The Committee previously noted (Conclusions 2018, Article 2§7) that the provisions on night work of the new Labour Code of the **Republika Srpska**, which came into force on 20 January 2016, are the same as those of the previous Code. In its previous conclusion (Conclusions 2015), the Committee asked whether the employed women concerned were transferred to daytime work and what rules applied if such transfer were not possible. The report indicates that the transfer to a daytime post must be carried out in agreement with the employer, specifying that the rules are set out in a general instrument or an employment contract in conformity with the Labour Code. The Committee asks that the next report provide more details of the rules applicable in these circumstances.

As regards the **Brčko District**, the report acknowledges that the situation has not changed. The Committee had previously found it not to be in conformity with Article 8§4 of the Charter, as night work of pregnant women, women having recently given birth and women nursing their infant was not regulated. This applies to all female employees, in both the public sector and the private sector. The report indicates that legislative amendments are envisaged to bring the situation into conformity with the Charter. The Committee asks that the next report provide

comprehensive and updated information in this respect. In the meantime, it reiterates its finding of non-conformity.

The Committee refers to its Statement of Interpretation on Articles 8§4 and 8§5 (Conclusions 2019) and asks the next report to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity the woman concerned is entitled to paid leave, and that the women, workers concerned retain the right to return to their previous employment at the end of the protected period.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the ground that 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 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at the state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District).

The report reiterates that in **Bosnia and Herzegovina**, pregnant or nursing women may be assigned to another work, for health reasons, as established by a medical certificate and with their consent, without loss of salary. If reassignment is not possible, the employee is entitled to paid leave. In its previous conclusions, the Committee asked whether, in the case of a temporary transfer to another post, the woman concerned retained the right to return to her previous employment at the end of the protected period. It also asked what rules applied at the level of Bosnia and Herzegovina regarding the prohibition on employing pregnant women, women who have recently given birth or are nursing their infant, in underground mines. The report still fails to provide the requested information.

The Committee recalls that Article 8§5 of the Charter requires that domestic law must make provision for the reassignment of pregnant or breastfeeding women if their work is unsuitable to their condition, with no loss of pay. If this is not possible, such women should be entitled to paid leave. Furthermore, such women should retain the right to return to their previous posts.

The report indicates that in **the Federation of Bosnia and Herzegovina**, the Rulebook on the Determination of Special Working Conditions and the Medical Examination of Workers at Such Posts has been adopted. It draws up a list of work prohibited for pregnant or breastfeeding women, including i) work that may require extreme physical effort or an unnatural posture; ii) work performed at a height/depth of more than three metres; iii) work involving exposure to vibration; iv) tasks performed in conditions of high/low atmospheric pressure; v) work involving the manufacture and handling of explosives, gunpowder and pyrotechnics; vi) work involving exposure to lead dust and smoke and its organic compounds, to fluorine and its compounds, to tetraethyllead, to mercury vapours and dust of mercury compounds, to chromium and chromium compounds, to carbon disulphide, to benzene derivatives; and vii) work involving the production and handling of, and exposure to, organophosphate, carbamate and other pesticides.

The Committee asks whether and how arduous and dangerous activities (in particular as regards risks related to exposure to ionising radiation, high temperatures, viral agents, etc.) are prohibited or strictly regulated for pregnant women, women who have recently given birth or who are nursing their infant in **the Federation of Bosnia and Herzegovina**.

As for **Republika Srpska** and the **Brčko District**, the report repeats the information already noted by the Committee (Conclusions 2011 and 2015) regarding the prohibition of dangerous, unhealthy or arduous work. In its previous conclusions, the Committee asked whether, in the case of temporary transfer to another post, the woman concerned retained the right to return to her previous employment at the end of the protected period. The report does not provide the requested information.

The Committee notes again that although some legislative amendments have been adopted in the Federation of Bosnia and Herzegovina, the situation that it had previously found not to be in conformity with the Charter has not changed during the reference period. Consequently, it reiterates its finding of non-conformity on the ground that there are no adequate regulations on dangerous, unhealthy and arduous work for women who are pregnant women, women who have recently given birth or who are nursing their infant.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4

and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§5 of the Charter on the ground that 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**

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD).

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

As to **rights and obligations of spouses** and legal provisions on **settlement of disputes** between spouses as well as on litigation concerning children, the Committee refers to its previous conclusion (Conclusions 2015) in which it found the situation to be in conformity with the Charter. It asks nevertheless the next report to provide up-to-date information on these points.

Questions linked to **restrictions to parental rights and placement of children** are dealt with under Article 17§1.

The Committee takes note of the information provided in the report in response to its questions (Conclusions 2015) concerning the **mediation services** in the Federation Bosnia and Herzegovina and the Brčko District.

#### ***Domestic violence against women***

Bosnia and Herzegovina has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force on 1 August 2014). The assessment under this instrument has not taken place yet.

The Committee refers to its previous conclusion (Conclusions 2015) for an overall description of the legislative and practical framework for combating domestic violence against women. In this conclusion, it will only take into account the developments occurred in the reference period.

On a general level, the Committee notes that, according to Concluding observations of the United Nations Human Rights Committee (CCPR) of 2017, and those of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) of 2019, domestic violence is a persistent and underreported problem.

The Committee takes note of the prevention measures taken in order to raise public awareness on violence against women. The Committee however notes that, according to the CEDAW's Concluding observations, judges, prosecutors, lawyers, police officers, health professionals and staff of the centres for social welfare who work with victims of domestic violence lack specialized knowledge on the matter.

The Committee takes also note of the measures concerning the direct or indirect protection of victims of domestic violence, such as the Gender action plan (2018–2022), the Action plans for the implementation of the United Nations Security Council resolution 1325 (2000) on women and peace and security (2014–2017 and 2018–2022) and, in particular, the Framework strategy for the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (2015–2018). Furthermore, the report indicates that assistance to women-victims of violence and to their children is primarily provided by non-governmental organisations, mostly through safe houses. According to the report, there are nine safe houses with 173 available places on the territory of Bosnia and Herzegovina. In this respect, the Committee however notes that, according to the above-mentioned CCPR observations, there is still insufficient local access to shelters. Finally, the Committee notes that under the family law of the Federation of Bosnia



and Herzegovina, women are required to undergo mediation before initiating divorce proceedings, including in cases of domestic violence.

As regards prosecution of domestic violence, the Committee takes note of the information and data contained in the report. It however notes that they are not specifically focused on domestic violence against women. Furthermore, it also notes that the police response to cases of domestic violence is inadequate, as pointed out in the CEDAW's Concluding observations. Finally, in the light of the CEDAW's Concluding observations, the Committee considers inadequate and insufficient the measures taken to ensure the effective investigation of allegations of domestic violence against women and to protect the rights of victims at all stages of judicial proceedings in order to avoid secondary victimisation.

The Committee further takes note of the information provided in terms of integrated policies, notably the adoption of the Information on Implementation of the Final Evaluation of the Financial Mechanism for the Implementation of the Gender Action Plan of Bosnia and Herzegovina.

The Committee asks the next report to provide comprehensive and updated information on all these points. In the light of all the information available, it considers in the meantime that it has not been established that women are ensured an adequate protection, in law and in practice, against domestic violence.

### ***Social and economic protection of families***

#### ***Family counselling services***

The Committee refers to its previous conclusion (Conclusions 2015) and all the information at its disposal leads it to consider that the situation remains in conformity with the Charter in this respect.

#### ***Childcare facilities***

In its previous conclusion (Conclusion 2015), the Committee found the situation to be in conformity with the Charter.

The Committee takes note of the additional information contained in the report. According to the latter, the Framework Law on Pre-school Care and Education in Bosnia and Herzegovina regulates pre-school care and education. Pre-school institutions provide day-care of children, perform educational, preventive-health and social functions by organizing all-day, half-day, minimum, shortened, occasional, five-day and various forms of work with children until the start of primary schooling. The law states that every child has the same right of access and equal opportunities to participate in an appropriate care and education system without discrimination on any grounds.

However, the Committee notes that available data for Republika Srpska and the Brčko District show that the coverage of childcare facilities in relation to the number of preschool children remains extremely low. The Committee also notes that no data are provided for the Federation of Bosnia and Herzegovina.

In view of the foregoing, the Committee asks the next report to provide a full and up-to-date description of childcare facilities in Bosnia and Herzegovina, taking into account in particular the total number of available places in relation to pre-school-age children and their distribution across the country.

## ***Family benefits***

### ***Equal access to family benefits***

In its previous conclusion (Conclusions 2015) the Committee noted that in the three entities a permanent residence requirement applied for the granting of family benefits. It also noted that Section 51, paragraph 5 of the Law on Movement and Stay of Aliens and Asylum provides that permanent residence is the right of stay of aliens in Bosnia and Herzegovina for an indefinite period of time. Article 59, paragraph 1 of the Law provides that a permanent residence permit shall be issued to an alien who has resided in the territory on the basis of a temporary residence permit for at least five years uninterruptedly. The Committee has previously considered that a 5 years residence requirement was excessive and therefore, the situation was not in conformity with the Charter on this point. The Committee now notes that there have been no changes to this situation. Therefore, it reiterates its previous finding of non-conformity.

### ***Level of family benefits***

The Committee recalls that under Article 16 the State must ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. Child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

As regards the coverage of family benefits, in its previous conclusions (Conclusions 2015 and 2017) the Committee noted that in the Federation of Bosnia and Herzegovina benefit was only granted to families whose total income is below the subsistence level. As regards the Republika Srpska and the Brčko District, the Committee notes that the report provides statistics concerning the number of families who received family allowance during the reference period.

With a view to assessing the adequacy of the coverage of family benefits, the Committee asks the next report to indicate the percentage of families who receive this allowance, in all entities. In the meantime, the Committee reserves its position as to whether the family benefit is paid to a significant percentage of families.

As regards the level of family benefits, in its previous conclusion (Conclusions 2015) the Committee considered that in the absence of information on the median equivalised income in the Federation of Bosnia and Herzegovina and the Republika Srpska, it had not been established that child benefit constitutes an adequate income supplement. The Committee takes note of various benefits that are paid to families in all entities including in cantons. It notes that in the Republika Srpska the child benefit for the second and the fourth child stood at BAM 35.00 and at BAM 70.00 for the third child in 2017. Child benefit for vulnerable categories stood at BAM 90.00. In the Brčko District, funds for children were secured from the budget by a universal system, that is for the families whose monthly income per household member does not exceed 15% of the average income in the Brčko District. Child benefits are payable in the amount of 10% of the average salary. The Committee notes that in 2017 the amount of child benefit stood at BAM 83 per month.

With a view to assessing the adequacy of a child benefit as an income supplement, the Committee asks the next report to provide information on the levels of benefits as well as on the average income in all entities. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

### ***Measures in favour of vulnerable families***

In its previous conclusion the Committee asked what measures were taken to ensure the economic protection of Roma families and other vulnerable families, such as single parent families. The Committee reiterates this question.

### ***Housing for families***

In its previous conclusion (Conclusions 2015), the Committee asked to be provided with information on the measures taken in all entities of Bosnia and Herzegovina to promote the provision of an adequate supply of housing for families. It also asked for detailed information concerning the legal protection for persons threatened by eviction. On this point, the Committee held that, should the report fail to provide the requested information, there would be nothing to establish that the situation is in conformity with Article 16.

The report stresses that in the Republika Srpska, the Ministry of Family, Youth and Sports has implemented a project on interest rate subsidies in respect of housing loans for young people and young married couples, where the Ministry subsidises 1% of the interest. According to the report, by the end of 2017, the amount of BAM 8 574 819.36 was spent for that purpose. The Committee asks the next report to specify whether other modalities of housing support are provided to families, especially the most vulnerable ones, in the Republika Srpska. In this regard, it notes that a law on social housing has been recently adopted (July 2019, outside the reference period; see European Social Policy Network (ESPN), “National strategies to fight homelessness and housing exclusion: Bosnia and Herzegovina”, 2019, p. 10). The Committee therefore wishes to be informed in the next report on the measures foreseen in this law with regard to families as well as their implementation.

The report provides no information on housing policies or housing support for families in the Federation of Bosnia and Herzegovina. Therefore, to enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks the next report to provide this information. In the meantime, it reserves its position on this point.

Furthermore, the Committee notes that according to an ESPN report, the population living in areas at very significant risk of flooding and landslides is estimated to be 283 777 persons and 260 731 persons, respectively (ibid. p. 17). In the light of this information, the Committee asks how adequacy of housing for the families living in these areas is monitored and ensured.

As regards the legal protection for persons threatened by eviction, the current report provides some information on the existing legislation on lease agreements, including on the issue of cancellation of the lease and the notice period applicable (see also in this regard Conclusions 2015). However, the Committee finds no information in the report on issues such as the obligation to consult the parties affected, the obligation to fix a reasonable notice period before eviction, accessibility to legal remedies and legal aid, as well as compensation in case of unlawful eviction. The Committee reiterates its question on all the aforementioned points and considers, in the meantime, that it has not been established that there is adequate legal protection for families threatened by eviction.

As regards Roma families, the Committee previously asked (Conclusions 2015) to be provided with information on the measures taken to improve the living conditions of Roma families and limit forced eviction. While noting that the country had made some progress in this field, it reserved its position on this point.

In response to the Committee’s request, the report indicates that every year the Ministry of Human Rights and Refugees and the Council of Ministers allocate an amount of € 1 500 000 to address the Roma issues. Of this amount, € 1 000 000 are assigned to Roma housing. Granting funds is made through a public call for submitting Roma Housing Projects. Municipalities, cantons, entities, domestic and foreign governmental and non-governmental organisations and donors have the right to participate in the public call as implementers, in

cooperation with the municipality in which the project is being implemented. Priority is given to the construction of Roma housing units, reconstruction of infrastructure and improvement of living conditions, as well as to the most vulnerable Roma families and Roma homeless people. To date, 782 residential units (of which 63 during the period 2015-2016) have been built and reconstructed, and 1017 families (of which 383 during the period 2015-2016) have become users of improved infrastructure in 55 local communities.

In this regard, the Committee notes from the Fourth Opinion on Bosnia and Herzegovina adopted on 9 November 2017 by the Advisory Committee on the Framework Convention for the Protection of National Minorities (§ 137) that many Roma continued to live in segregated communities, often facing deplorable substandard living conditions, despite the progress achieved. The Committee of Ministers of the Council of Europe has therefore recommended for immediate action that the authorities should ensure adequate access of Roma to housing (Resolution CM/ResCMN(2019)8 on the implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina, outside the reference period). In the same vein, the United Nations Committee on the Elimination of Racial Discrimination of the United Nations, in its Concluding observations (adopted on 23 August 2018, outside the reference period), expressed concern about the persistent discrimination of Roma in various areas of life, and in particular about the unhygienic housing units in which some Roma lived and the lack of completion of housing projects.

In the light of the foregoing, the Committee asks the next report to continue to provide information on the measures taken to improve the housing situation of Roma families, and in particular whether sufficient funding is being allocated for this purpose. Pending receipt of the information requested, the Committee reserves its position on this point.

Finally, the Committee notes that the Commissioner for Human Rights of the Council of Europe has recently expressed concern about the reception of refugees and migrants, including asylum-seekers, in Bosnia Herzegovina (letter of 9 May 2018 sent to the authorities of Bosnia and Herzegovina, outside the reference period). In particular, she was informed that refugees and migrants, including families with children, were sleeping rough on the streets. In this connection, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). It also recalls that the right to emergency shelter under the Charter applies to all migrants, regardless of their residence status (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits, 1 July 2014, §144; Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §136, regarding the part of Article 16 relating to the right of families to decent housing and particularly the right not to be deprived of shelter). The Committee therefore asks the next report to indicate which measures are being taken to ensure adequate accommodation to refugee and migrant families, including asylum-seekers.

### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions 2015) and all the information at its disposal leads it to consider that the situation remains in conformity with the Charter in this respect.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 on the grounds that:

- 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 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 1 - Assistance, education and training*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and at the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District. The Committee notes that information is not provided consistently for all levels on all points.

### ***The legal status of the child***

The report states that the Family Law of Republika Srpska does not specifically prescribe the right of the child to know his or her origin, therefore, it is also not prescribed in which cases it can be restricted. The Committee asks for information on the scope of the child's right to know their origins in Republika Srpska, as how this right can be restricted.

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare.

In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

The Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify children unregistered at birth).

The Committee asks further what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

### ***Protection from ill-treatment and abuse***

The Committee previously found the situation not to be in conformity with the Charter on the grounds that not all forms of corporal punishment are prohibited in all settings in the Federation of Bosnia and Herzegovina and the Brčko District (Conclusions 2015). Corporal punishment of children is not prohibited in the home.

The Committee previously asked whether corporal punishment is prohibited in childcare institutions in all entities (Conclusions 2015). No information is provided on this. The Committee repeats its request for this information.

The Committee notes from other sources [Global Initiative to End All Corporal Punishment of Children] that corporal punishment in alternative care settings/child care institutions is prohibited in the Republic of Srpska but not in the Federation of Bosnia and Herzegovina and in the District of Brcko

The Committee concludes that the situation is not in conformity with the Charter.

### ***Rights of children in public care***

The Committee recalls from its previous conclusion (Conclusions 2015) that according to the Family Law of the Federation of Bosnia and Herzegovina, at the request of one or both parents, the supervisory authority may decide on the placement of the child in an institution if it is necessary for the protection of the best interests of a child. The law provides for the circumstances in which a parent can be deprived of the right to live with a child. The Court shall restore the right of a parent to live with the child when it is in the interest of the child.

The Law on Social Welfare of the Republica Srpska provides for the conditions under which a child may be placed in an institution or in a foster family. According to the report, any limitation or restriction upon the parents' custodial rights is based on the criteria set forth in legislation and should not go beyond what is necessary for the protection of the child's best interests and family reunification.

In the Brčko District the restriction and deprivation of parental rights may be ordered by the competent authority in the manner and on the grounds provided for by the Family Law.

The Committee previously asked whether children may be removed from their families on the basis of inadequate resources of their family (Conclusions 2015).

The Committee recalls that children should never be placed outside the home solely on the basis of the inadequate resources or material conditions of their parents (Statement of Interpretation on Article 16 and 17, 2011). It repeats its request for this information. It considers that if this information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

The Committee previously asked to be informed about the maximum capacity of a unit in a childcare institution (Conclusions 2015).

According to the report, in the FBiH, the maximum capacity of a child care institution may not exceed 40 children. The other entities do not provide information. The Committee repeats its request for this information and considers that if it is not provided there will be nothing to demonstrate that the situation is in conformity with the Charter.

The Committee recalls that in 2014, the Government of the Federation of Bosnia and Herzegovina adopted a Strategy on De-Institutionalisation and Transformation of Social Care Institutions (2014-2020).

The report states that there were 970 children without parental care in institutions in 2016. According to the report, data on the number of children placed in foster families is not available for Bosnia and Herzegovina. The Law on Fostering was adopted in the Federation of Bosnia and Herzegovina in 2017 but no data on fostering for the Federation of Bosnia and Herzegovina will be available before 2019 for the reference year 2018. The Committee also notes that, although the report states there is no data on children in foster families in FBiH, it does provide information on the number of children placed in families by canton, namely, 442 children were placed in foster care in 2014, but only 298 in 2017.

The Committee notes that there has been an increase in the number of children placed in institutions over the reference period, from 760 in 2014 to 970 in 2016. The Committee asks the reasons for this.

As regards the Republika Srpska, according to the report, in 2017 there were 90 children placed in institutions and 344 children placed in families.

The report states that in the District of Brčko, 6 children without parental care were placed in an institution in 2017 while 33 were placed with families.

The Committee notes from other sources [*Opening Doors for Europe's Children*, Country fact sheet Bosnia Herzegovina 2018] that in the Republic of Srpska (RS), a new Law on Child Protection was adopted. In the Federation of Bosnia and Herzegovina (FBiH), a draft law on the Protection of Families with Children was adopted by the FBiH Government in July 2018. According to this source, the exact number of children without parental care in Bosnia and Herzegovina is unknown due to the lack of a single database with recent statistics at national level. Furthermore, a clear legal definition of the term "children without parental care" is missing. *Opening Doors* estimates that there are 2,435 children without parental care in Bosnia and Herzegovina. It is also estimated that over 70% of children in institutional care have one or both parents alive. There are still 18 institutions for children across the Federation of Bosnia and Herzegovina and the Republic of Srpska, and a large number of children

between 0 and 3 years of age are still institutionalised. Although the Law on Foster Care in FBiH stipulates that a child aged 0 to 3 years should be placed directly in family-based care, the implementation of this law is slow.

Further, the Committee asks the next report to continue to provide information on the number of children in public care, in institutional care and in foster care, and on trends in the field. It also asks for information on the monitoring of institutional care and foster care.

The Committee notes from the report that it appears that neglected children in FBiH may be placed in young offenders institutions. The Committee asks if this is the case and if so, on what basis.

The Committee requests the next report provide information on the new legislation on child protection in FBiH and Republika Srpska.

### ***Right to education***

As regards education, the Committee refers to its conclusion under Article 17§2.

### ***Children in conflict with the law***

The Committee recalls that the Federation of Bosnia and Herzegovina adopted the Law on the Protection and Treatment of Children and Juveniles in Criminal Procedure in January 2014. The Committee wished to be informed of the implementation of this law (Conclusions 2015).

According to the report, children convicted of a criminal offence are generally subject to educational measures, and only older children can be sentenced to a period of detention.

The report states that children sentenced to detention are held in separate juvenile facilities.

In the Republika Srpska, children sentenced to a period of detention are either held in a separate juvenile facility or in a separate wing of the adult prison.

As regards the Brčko District, the Committee recalls that according to Article 100 of the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, pre-trial detention may not exceed thirty days from the day of arrest, and may be extended to a maximum of two months.

According to Article 103 of the above-mentioned legislation, minors in detention are separated from adults.

The term of imprisonment that can be imposed on a child offender cannot be longer than five years. If a minor is guilty of an offence punishable by a long-term prison sentence, or if he has committed at least two offences punishable by a sentence longer than ten years, juvenile imprisonment may last up to 10 years.

The Committee previously asked whether the maximum pre-trial detention of two months and the maximum prison sentence of 10 years also apply in the other entities (Conclusions 2015). The report does not provide the requested information; therefore, it reiterates its request. Should the information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity with the Charter.

The Committee recalls that children should only exceptionally be sentenced to a period of imprisonment and only as a measure of last resort, and sentences should be regularly reviewed. The Committee asks whether sentences are regularly reviewed in all the regions.

The Committee asks, with regard to all regions, whether children may be placed in solitary confinement, and if so, under what circumstances and for how long. The Committee also asks for updated information on the age of criminal responsibility in all regions.



### **Right to assistance**

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation [International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, Decision on the merits of September 2004, § 36, *Defence for Children International (DCI) c. Netherlands*, Complaint NO. 47/2008, Decision on the merits of 20 October 2009, §§70-71, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50].

The Committee considers that the detention of children on the basis of their immigration status or that of their parents is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that the child is unaccompanied or separated, or on their migratory or residence status, or lack thereof.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the combined fifth and sixth reports of Bosnia Herzegovina [CRC/C/FBiH/CO/5-6, 2017] that the Committee expressed concern, *inter alia*, about the insufficient capacity of the authorities to implement the Law on Asylum (2016) with respect to the provision of guardianship for unaccompanied and/or separated children; the administrative detention of asylum-seeking and migrant children; and the insufficient capacity of reception centres to accommodate migrant and asylum-seeking children, thus forcing them to sleep on the streets without adequate shelter and in unsafe and unsanitary conditions.

The Committee notes in this respect from a letter to the Bosnian authorities by the Commissioner for Human Rights of the Council of Europe in May 2018 (outside the reference period) that Bosnia and Herzegovina has been facing an increasing number of arrivals and that the lack of accommodation for migrants is acute. Hence, only those who have formally applied for asylum have been accommodated. As a result, she expressed concern that many refugees and migrants, including families with children, sleep rough on the streets, and have irregular access to food.

Furthermore, the report from the Special Representative of the Secretary General on Migration and Refugees following his visit to Bosnia Herzegovina in 2018 [SG/Inf(2019)10] (outside the reference period) states that children whether unaccompanied or with their families may be detained. He also noted that, in two facilities, unaccompanied children were not separated from adult men, and emphasized the need to address the safety and protection of children in these facilities.

The Committee notes that the situation is very serious. Therefore, the Committee requests further information on the measures taken to find alternatives to detention for asylum-seeking families and to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored. It further asks what assistance is given to unaccompanied children in order to protect them from abuse and exploitation.

The Committee asks whether children in an irregular situation have access to healthcare.

As regards age assessment, the Committee recalls that, in line with other human rights bodies, it has found that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable [European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, Decision on the merits of 24 January 2018, §113]. The Committee asks whether Bosnia Herzegovina uses bone testing to assess age and, if so, in what situations the State does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

### ***Child poverty***

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the State's obligations under the terms of Article 17 of the Charter.

The Committee notes that a 2015 study conducted by UNICEF found that the majority of children (75 percent) aged 5 to 15 are deprived of one or more basic necessities of life, such as nutrition, educational resources and housing.

The Committee also notes from the above-mentioned Concluding Observations of the UN Committee on the Rights of the Child that the very high unemployment rate and the slow progress made by FBiH and cantonal governments in developing strategies and programmes focused on the reduction of poverty negatively affect the children's standard of living.

The Committee asks the next report to provide information on the rates of child poverty as well as on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for, children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in all settings in the Federation of Bosnia and Herzegovina and the Brčko District.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 2 - Free primary and secondary education - regular attendance at school*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

Compulsory education begins in the calendar year in which the child reaches six years of age, and lasts for an uninterrupted period of not less than nine years, until a child reaches the age of 15 years.

In the Federation of Bosnia and Herzegovina, the Federal Ministry of Education and Science, in cooperation with the competent cantonal ministries of education, is considering the possibility of introducing compulsory “secondary” education to last at least two years i.e. prolonging compulsory education by two years. This measure has already been introduced in certain Cantons where education is compulsory until the age of 18..

### ***Enrolment rates, absenteeism and drop out rates***

The Committee previously asked to be kept informed of the enrolment rate in compulsory education in all entities (Conclusions 2015).

In the Republika Srpska the Committee notes that the number of children dropping out decreased during the reference period (from 143 children in 2015 to 50 children in 2017) and the number of children in secondary education increased slightly (from 306 pupils in 2016 to 312 in 2017).

The enrolment rate in secondary-post compulsory education in the Republika Srpska and the District of Brčko is nearly 100% despite it not being compulsory.

The Committee wishes the next report to provide information on enrolment rates, absenteeism and drop out rates as well as information on measures taken to address issues related to these rates in all entities.

### ***Costs associated with education***

The report states that during compulsory education, the competent authorities shall take all necessary measures to ensure that pupils have free access to and participate in education, in particular with regard to providing access to free textbooks, manuals and other materials.

The Committee asks the next report to provide information on measures taken to mitigate the costs associated with education such as transport, books and stationary in all entities.

### ***Vulnerable groups***

As Bosnia and Herzegovina has not accepted Article 15§1, the Committee considers the issues relating to the inclusion of children with disabilities into mainstream education under Article 17§2.

The Committee previously asked the next report to provide information about the overall number of children with disabilities in general and those who are enrolled in the mainstream education and in special schools, in each of the entities. In the meantime, the Committee reserved its position on this issue (Conclusions 2015).

The report states that children and young people with special educational needs receive education in the mainstream schools according to curricula tailored to their individual needs. An individual programme, tailored to their abilities and capabilities, should be created for each pupil, Children and young people with severe disabilities can be educated in part or in whole

in special educational institutions if it is impossible to provide adequate education in mainstream schools.

According to the report in the Federation of Bosnia and Herzegovina, there were 2397 pupils with special needs included in mainstream primary education in the school year 2015/16, 2086 pupils with special needs included in mainstream schools in the school year 2016/17 and 2510 pupils with special needs included in mainstream schools in 2017/18.

In secondary schools in the Federation of Bosnia and Herzegovina, there were 280 pupils with special needs in the school year 2015/16, 257 pupils in the school year 2016/17 and 255 pupils in the school year 2017/18.

In Republika Srpska there were in 2016 1307 children with disabilities in mainstream education at primary level and 1319 in 2017, the number of children with disabilities in special schools for the same years was 371 and 375. At secondary level in 2016 there were 387 children with disabilities in mainstream education and in 2017 381 children; in special schools the corresponding figures were 137 and 125.

There are no special schools in the District of Brčko. Pupils are included in mainstream education and pupils with more severe disabilities attend special classes within a mainstream school.

In the whole of Bosnia Herzegovina in 2015/2016 there were 3803 children with disabilities in mainstream primary schools and in 2016/2107 3484, there were 1036 children in special schools in 2015/2016 and 975 children in 2016/2017.

At secondary level there were in 2015/2016 841 children with disabilities in mainstream schools and in 2016/2017 869 such children. For the same years there were 398 and 394 children with disabilities in special schools.

The Committee notes that most children are included in mainstream schools. The numbers of children in special schools seems to be decreasing although the number in special schools remains significant. The Committee asks to be kept informed of the number (percentage) of children with disabilities in education, the percentage in mainstream schools and the percentage in education in separate special education.

The Committee notes from the UN Committee on the Rights of Persons with Disabilities Concluding Observations on the initial report of Bosnia Herzegovina [CRPD/C/BIH/CO/1, May 2017], that the UN Committee expressed concern that there was no comprehensive legislation with an effective strategy on inclusive education. The Committee asks what measures have been taken to address this concern.

The Committee previously wished to be kept informed of the results of the measures taken to improve access for Roma children to education and receive information on the enrolment, drop-out and absenteeism rates of Roma children in all entities (Conclusions 2015).

The Revised Action Plan of Bosnia and Herzegovina on the Educational Needs of Roma (Official Gazette of BiH, No. 5/11) has been adopted. The document outlines four objectives and 48 measures to ensure that Roma children have equal access to quality education. It aims to ensure that children belonging to the Roma national minority are included in the compulsory primary education system, to encourage the Roma population to continue secondary and tertiary education, as well as initial occupational training, and to preserve and promote the Roma language, culture and history. An expert team for monitoring the implementation of the Revised Action Plan has been set up and it operates in the Roma-populated areas.

The total number of Roma children included in regular primary education in the school year 2015/2016 was 1,842 pupils. In the school year 2015/2016, 291 children enrolled in the first grade. In the school year 2015/2016, 136 Roma children repeated the class, 145 Roma children dropped out of compulsory primary education, 151 Roma children completed primary education.

In the school year 2015/2016, 64 Roma children enrolled in secondary school. 112 Roma children were registered in secondary education and 38 Roma children completed secondary education.

In the District of Brčko all Roma children receive free textbooks and are entitled to free transportation if they live more than four kilometres away from school. Local communities provide them with scholarships. Teachers undergo training in order to strengthen their ability and skills to work with Roma children. The Committee asks what assistance is provided to Roma children in the Federation of Bosnia Herzegovina and Republika Srpska.

The Committee notes from ECRI [Fifth monitoring cycle CRI (2017)2, December 2016] that in spite of the efforts made, the gaps between Roma and the overall population in the area of education are still worrying. As of 2015, only an estimated 40% of Roma children completed primary school and 10% completed secondary education, as compared to 92% and 57% respectively for the overall population. The authorities also informed ECRI that the envisaged significant increase in the number of Roma children enrolled in day-care centres has not been achieved.

The Committee asks the next report to provide updated information on the situation of Roma children and measures taken to improve their access to education.

As regards children in an irregular migration situation and asylum seeking children the Committee notes from the UN Committee on the Rights of the Child's Concluding Observations on the combined fifth and sixth periodic report of Bosnia Herzegovina [CRC/C/BIH/CO/5-6, December 2019] (outside the reference period) that there is limited access to education for asylum seeking, refugee and migrant children. The Committee asks what measures have been taken to ensure such children have an effective right to education.

### ***Anti bullying measures***

The Committee asks what measures have been taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.

### ***The voice of the child in education***

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17.2 This requires states to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments. The Committee asks what measures have been taken by the State to facilitate child participation in this regard.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.