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# EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2020

**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.

Information on the Charter, statements of interpretation, and general questions from the Committee, is contained in the General Introduction to all Conclusions.

The following chapter concerns Bosnia and Herzegovina, which ratified the Revised European Social Charter on 7 October 2008. The deadline for submitting the 10<sup>th</sup> report was 31 December 2019 and Bosnia and Herzegovina submitted it on 11 August 2020.

The Committee recalls that Bosnia and Herzegovina was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 27 May 2019, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2016).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2016) found the situation to be in conformity, there was no examination of the situation in 2020.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group I "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 to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20);
- the right to protection in cases of termination of employment (Article 24);
- the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Articles 10, 15, 18, 24 and 25.

The reference period was from 1 January 2015 to 31 December 2018.

The conclusions relating to Bosnia and Herzegovina concern 5 situations and are as follows:

– 5 conclusions of non-conformity: Articles 1§1, 1§2, 1§4, 9 and 20.

The next report from Bosnia and Herzegovina will deal with the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

The deadline for submitting that report was 31 December 2020.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 1 - Right to work**

### *Paragraph 1 - Policy of full employment*

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

The Committee recalls that in 2016, it concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation (Conclusions 2016).

### ***Employment situation***

According to Eurostat, the GDP growth rate stood at 3.1% in 2015 and at 3.7% in 2018.

According to the report, the employment rate (persons aged 15 and over) stood at 31.9% in 2015 and at 34.3% in 2018. This rate was significantly higher for men than for women: 44.1% and 25% respectively in 2018. The Committee notes that the employment rate has stagnated since the previous reference period and remains low.

The unemployment rate (persons aged 15 to 74 years) stood at 27.9% in 2015 (25.9% for men and 30.9% for women) and dropped to 18.5% in 2018 (17.3% for men and 20.5% for women). The Committee notes that despite the sharp fall during the reference period, unemployment remains high.

The Committee also takes note of the employment and unemployment rates by entity (persons aged 15 and over). In the Federation of Bosnia and Herzegovina, the employment rate was 30.2% in 2015 and 31.9% in 2018 and the unemployment rate stood at 29.1% in 2015 and 19.2% in 2018. In the Republika Srpska, the employment rate stood at 35.2% in 2015 and 38.7% in 2018 and the unemployment rate at 25.2% in 2015 and 17.2% in 2018. In the Brčko District, the employment rate was 27.6% in 2015 and 31.5% in 2018 and the unemployment rate stood at 30.3% in 2015 and 19.8% in 2018.

According to the ILOSTAT database, the proportion of 15 to 24-year-olds “outside the system” (not in employment, education or training, i.e. NEET) dropped from 28% in 2015 to 22% in 2018. The Committee notes that this rate is high.

### ***Employment policy***

The Committee takes note of the Reform Agenda 2015-2018 which set out a broad range of measures regarding employment policy and the fight against unemployment. It also notes that the Council of Ministers of Bosnia and Herzegovina reviews and adopts every year an annual Plan on Guidelines for Labour Market Policies and Active Employment Measures in Bosnia and Herzegovina; these plans are prepared by the Labour and Employment Agency of Bosnia and Herzegovina in cooperation with the Federal Employment Service, the Republika Srpska Employment Bureau and the Employment Service of the Brčko District.

### ***Federation of Bosnia and Herzegovina (FBiH)***

According to the report, funds for active labour market policies in the FBiH are primarily provided by public employment services/bureaus, but can be further secured from the cantonal budgets or from some donor support. The Committee notes that the funds spent on active labour market measures in the FBiH have varied in their amounts during the reference period. It also notes that the total funding and co-funding for active measures has gone up from BAM 26.2 million in 2015 to BAM 40.9 million in 2018.

Active employment policies in the FBiH are implemented in accordance with the Law on Mediation in Employment and Social Security of Unemployed Persons and with the Strategy for Strengthening the Mediation Function in Public Employment Services. Support is provided to various target groups, including to the unemployed who have been identified as “more

difficult to employ”, especially young people and women. Active measures are mainly focused on promoting employment with a well-known employer; self-employment; training, vocational training and further development, up-skilling and retraining; preparing the unemployed for the labour market; creating equal access to the labour market for all.

The report provides information on active employment measures implemented during the reference period, in particular training programmes for the unemployed. The Committee notes that 520 unemployed persons were involved in 12 training projects, of whom 438 got a job in 2015. It also notes that in 2018, 13,748 unemployed persons participated in the co-funding programme for employment.

The report indicates that a new Rulebook on employment records was adopted at the end of August 2018, which, *inter alia*, provides for the procedure and deadlines for registration of unemployed persons, the types of employment records and other matters pertaining to record-keeping. Special records contain information on unemployed persons actively seeking work, but not benefiting from counselling services; on the beneficiaries of unemployment benefits; on the beneficiaries of financial and incentive measures under the active employment policy; on persons undergoing occupational skills training without being offered a job, or undergoing retraining, career orientation, training and job preparation. The Committee asks whether this Rulebook helps monitor employment policies and evaluate their effectiveness.

### ***Republika Srpska***

According to the report, in 2016, the National Assembly adopted the Employment Strategy of the Republika Srpska 2016-2020. The Employment Bureau prepares employment projects that are implemented in a given year in accordance with the Action Plan. The focus is on stimulating employment, reducing the unemployment period, improving competitiveness, improving the quality of work and increasing overall productivity. The Employment Strategy specifically foresees the increase in employment among the most vulnerable groups of unemployed persons: young people, children of war veterans, disabled war veterans and other persons with disabilities, demobilized veterans, national minorities, women and persons over 50 years of age.

The Committee takes note of the various employment measures and projects implemented in the Republika Srpska for different groups of persons, such as people over 45 years of age, unskilled workers and Roma. It notes that 2,731 persons were involved in these projects in 2015 and 4,866 in 2018.

### ***The Brčko District***

The Brčko District adopted the Development Strategy of the Brčko District for the period 2008-2017 and the General Policy of the Brčko District for the period 2013-2016.

According to the report, the Brčko District Employment Institute implemented measures and activities within the scope of its remit to enhance employment and social protection of unemployed persons, as well as to create prerequisites for enhancing labour force competitiveness, stimulating labour demand, gaining confidence of and establishing successful cooperation with the labour market partners. The Committee notes that five employment programmes have been implemented by the Institute during the reference period: Preparation for the labour market, Career guidance and counselling, Employment for “hard-to-employ” persons (older workers, young persons aged up to 30 years, children of fallen soldiers, disabled war veterans and other persons with disabilities), Employment for Roma and Self-employment. However, the total amount of allocated funds has been decreasing from BAM 3.3 million in 2015 to BAM 1.3 million in 2018.

As regards the overall employment situation in Bosnia and Herzegovina, the Committee notes from the European Commission’s Opinion on Bosnia and Herzegovina’s application for membership of the European Union (SWD(2019) 222 final, 29 May 2019) that labour market institutions in Bosnia and Herzegovina are undergoing reform aiming at the transition from

mainly administrative work to a client focused approach based on consultative services to improve job mediation. Their work has so far been characterised by the predominance of passive labour market policies caused by the lack of administrative and financial capacities of the public employment services to implement active labour market policies. Both lack of human resources and lack of finance prevent the public employment services from the implementation of comprehensive active labour market policies.

As regards the overall total expenditure of employment policy measures in Bosnia and Herzegovina, the Committee notes that spending on active measures made 0.13% of GDP in 2015 and 0.23% in 2018. The Committee notes that despite economic growth, the employment rate remains low and unemployment remains high. The Committee considers therefore that the situation is not in conformity with Article 1§1 of the Charter as employment policy efforts have not been adequate in combatting unemployment and promoting job creation. The Committee asks the next report to provide information concerning monitoring of the effectiveness of active employment policy measures.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

## **Article 1 - Right to work**

### *Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

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

#### **1. Prohibition of discrimination in employment**

Article 1§2 of the Charter prohibits all forms of discrimination in employment. The Committee asked the State Parties to provide updated information for this reporting cycle on the legislation prohibiting all forms of discrimination in employment, in particular on grounds of gender (had Article 20 not been accepted), race, ethnic origin, sexual orientation, religion, age, political opinion, disability (had Article 15§2 not been accepted), including information on legal remedies. It furthermore asked to indicate any specific measures taken to counteract discrimination in the employment of migrants and refugees.

The Committee will therefore focus specifically on these aspects. It will also assess the replies to all findings of non-conformity or deferrals in its previous conclusion.

Bosnia and Herzegovina has accepted Article 20 of the Charter and, therefore, it was under no obligation to report on prohibition of discrimination on grounds of gender, which will be examined under the said provisions.

As regards the legislation prohibiting discrimination in general terms the Committee comprehensively examined the relevant legal framework in its previous conclusion (Conclusions 2016). It noted that different provisions applied at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD). It observed, however, that in 2010 the cornerstone of the anti-discrimination legislation became the Law on Prohibition of Discrimination adopted at the state level and setting the framework for implementation of equal rights and opportunities for all persons in BiH and that all laws and delegated legislation in BiH at all levels would be brought in line with it. In its conclusion, the Committee considered that the situation was not in conformity with Article 1§2 of the Charter on the ground that the legislation did not prohibit discrimination based on age and disability (Conclusions 2016).

The report provides that in 2016 the Law on Prohibition of Discrimination in Bosnia and Herzegovina was amended, in that age and disability were added to the existing grounds of discrimination. It further confirms that the Law has been adopted at the state level and it sets the framework for implementation of equal rights and opportunities for all persons in BiH. It applies to actions of all public bodies at the level of the state or entity, to municipal institutions and bodies, as well as to the action of all legal and natural persons, in all spheres of life. The Committee considers, accordingly, that the situation was brought into conformity with the Charter in this respect.

The Committee notes from the 2019 report of the European network of legal experts in gender equality and non-discrimination (European Equality Law Network) on Bosnia and Herzegovina that in order to address shortcomings in the Law on Prohibition of Discrimination, a new Law on Prevention and Protection against Discrimination was adopted in May 2019 (outside the reference period) and that it will replace the previous Law, with a view to taking account of the EU directives in the field of equality of opportunity and non-discrimination. The Committee asks that the next report provide a comprehensive description of the amended legal framework. It also asks for information on the implementation of the new regulations and, in particular, whether national legislation has been harmonised internally.

With regard to prohibition of discrimination on grounds of disability, the report provides that in the Federation of Bosnia and Herzegovina (FBiH), the Fund for Professional Rehabilitation and Employment of Persons with Disabilities of the FBiH has been established as a public institution in the field of social protection. The Fund has been actively pursuing a number of

measures and activities that involve immediate financial support to persons with disabilities, so as to enable their retraining, additional training, vocational training, job sustainability and career advancement, as well as activities that promote employment equality. The report further states that in the Republika Srpska (RS), there is no data on the employment status of persons with disabilities for the reference period due to the fact that there are many economic entities in RS which do not comply with their obligation prescribed by the Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities. The Committee asks what measures have been taken to counteract such failure to comply with obligations and, in general, how discrimination on grounds of disability is prevented and combated in Republika Srpska and in the Brcko District. Meanwhile, it reserves its position on this point.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific, targeted legislation and practical measures focused specifically on discrimination on grounds of ethnic origin, race, age, sexual orientation, political opinion or religion. The report does not reply to the Committee's request. The Committee has already requested such information in its previous conclusion, noting that discrimination *inter alia* on grounds of sexual orientation was not uncommon and that ethnic discrimination in employment remained a problem (Conclusions 2016). The Committee asks again that the next report provide comprehensive descriptions of how discrimination on the grounds listed above is prevented and combated. Should the next report not provide comprehensive information in this respect, nothing will allow to show that the situation is in conformity with the Charter on these points.

The Committee has previously asked, as regards prohibition of discrimination on grounds of nationality whether there were any types of restrictions at the state level, entity level and district level for foreign nationals to access certain public or private jobs such as the requirement of being a national of Bosnia and Herzegovina, and which are those categories of jobs/positions. The report states in reply that employment in the civil service that is in the public sector in Bosnia and Herzegovina is reserved exclusively for citizens of Bosnia and Herzegovina, in accordance with state and entity regulations. The aforementioned provision is in place in the Federation of Bosnia and Herzegovina, in Republika Srpska, and in the Brcko District. The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to the possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. Accordingly, it considers that the situation is not in conformity with Article 1§2 of the Charter on this point.

Apart from questions on the legal framework, during this examination cycle, the Committee assesses specific measures taken to counteract discrimination in the employment of migrants and refugees. The report does not provide any information on this issue and the Committee recalls its request in this respect.

The Committee recalls that appropriate and effective remedies must be ensured in the event of an allegation of discrimination. The notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, allowing to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection; appropriate adjustment of the burden of proof which should not rest entirely on the complainant, as well as the setting-up of a special, independent body to promote equal treatment.

The report does not provide comprehensive information on the available venues to claim compensation in the event of an allegation of discrimination. The Committee notes from the abovementioned report of the European Equality Law Network (EELN) that there is ambiguity when it comes to addressing discrimination complaints. In particular, the EELN points to the fact that various laws provide different types of proceedings in similar cases. Proceedings vary



from monitoring conducted by inspectorates to misdemeanour procedures, litigation procedures, administrative procedures and criminal procedure. The Law on Prohibition of Discrimination envisages several options for procedural protection, such as administrative, litigation and misdemeanour procedures. The Committee requests that the next report provide a detailed description of the situation in this respect.

The report states, in reply to the Committee's questions about compensation in discrimination cases (see Conclusions 2016) that there is no ceiling to compensation awards. According to the relevant laws, in the Federation of BiH and Republika Srpska the amount of compensation is determined by courts on a case-by-case basis. According to the report, there were no litigation cases involving discrimination in Brcko District (BD). The Committee understands that the law does not set a limit to compensation to be awarded in BD and asks that the next report confirm that this is the case. It also requests information on the practice of determination of compensation by courts.

The report provides information on the number of complaints alleging discrimination dealt with during the reference period by the Ombudsperson of BiH. However, it states that firstly, a significant number of citizens decide not to initiate proceedings before a competent institution or seek judicial protection for fear of losing their job. Therefore, the data of the Human Rights Ombudsperson of Bosnia and Herzegovina do not reflect the real situation in the society. Secondly, The Ministry of Human Rights and Refugees of Bosnia and Herzegovina does not know the number of discrimination cases brought before the courts, albeit it has adopted a rulebook on the manner of collecting such data and has launched activities towards developing appropriate IT tools for this purpose. The Committee considers that statistical data on discrimination cases are invaluable for the assessment of the effectiveness of the remedy. Furthermore, the report does not specify what sanctions may be imposed against employers in cases of discrimination in employment and how violations of the legal provisions prohibiting discrimination in the workplace are scrutinised, whether adequate penalties exist and if so, whether they are effectively enforced by labour inspectors.

The Committee further notes that the European Equality Law Network in its abovementioned country report, as well as the European Commission against Racism and Intolerance (ECRI) in its 2020 Conclusions on BiH and the UN Human Rights Committee in the 2018 report on BiH, all raise concern about underfunding and understaffing which prevents the national human rights institutions from fully exercising their competences and in particular, about the lack of financial autonomy and independence of the Office of the Ombudsperson. The Committee asks that the next report comment on these observations.

In the light of the information in its possession, the Committee considers that it cannot make a comprehensive assessment of all the relevant aspects relating to the existence and functioning of effective remedies in cases of alleged discrimination. It repeats its requests that all relevant data be included in the next report, together with comments on the observations quoted above, in particular on any cases of discrimination in employment dealt with by courts and by the Ombudsperson, with specific indications regarding their nature and outcome, sanctions imposed on the employers and compensation granted to the employees. It further asks whether awareness-raising and capacity-building activities have been undertaken for the wider public, as well as for judges and prosecutors to address the limited use of existing remedies and on the results achieved. It considers that, should the requested information not be provided, nothing will allow to establish that the situation is in conformity with Article 1§2 of the Charter on this point.

## ***2. Forced labour and labour exploitation***

The Committee recalls that forced or compulsory labour in all its forms must be prohibited. It refers to the definition of forced or compulsory labour in the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930 (Article 2§1) and to the interpretation given by the European Court of Human Rights of Article 4§2 of the European Convention on Human

Rights (*Van der Musselle v. Belgium*, 23 November 1983, § 32, Series A no. 70; *Siliadin v. France*, no. 73316/01, §§ 115-116, ECHR 2005-VII; *S.M. v. Croatia* [GC], no. 60561/14, §§ 281-285, 25 June 2020). The Committee also refers to the interpretation by the Court of the concept of « servitude », also prohibited under Article 4§2 of the Convention (*Siliadin*, § 123; *C.N. and V. v. France*, § 91, 11 October 2012).

Referring to the Court's judgment of *Siliadin v. France*, the Committee has in the past drawn the States' attention to the problem raised by forced labour and exploitation in the domestic environment and the working conditions of the domestic workers (Conclusions 2008, General Introduction, General Questions on Article 1§2; Conclusions 2012, General Introduction, General Questions on Article 1§2). It considers that States Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them.

The European Court of Human Rights has established that States have positive obligations under Article 4 of the European Convention to adopt criminal law provisions which penalise the practices referred to in Article 4 (slavery, servitude and forced or compulsory labour) and to apply them in practice (*Siliadin*, §§ 89 and 112). Moreover, positive obligations under Article 4 of the European Convention must be construed in the light of the Council of Europe Convention on Action against Trafficking in Human Beings (ratified by almost all the member States of the Council of Europe) (*Chowdury and Others v. Greece*, § 104, 30 March 2017). Labour exploitation in this context is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Council of Europe Anti-Trafficking Convention, and *Chowdury and Others*, § 93). Labour exploitation is taken to cover, at a minimum, forced labour or services, slavery or servitude (GRETA – Group of Experts on Action against Trafficking in Human Beings, *Human Trafficking for the Purpose of Labour Exploitation*, Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), p. 11).

The Committee draws on the case law of the European Court of Human Rights and the above-mentioned international legal instruments for its interpretation of Article 1§2 of the Charter, which imposes on States Parties the obligation to protect effectively the right of the worker to earn his living in an occupation freely entered upon. Therefore, it considers that States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation. The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;
- Prevent forced labour and other forms of labour exploitation;
- Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.

In the present cycle, the Committee will also assess the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the “gig economy” or “platform economy”.

The Committee notes that the present report states that there were no forced labour cases registered by the competent labour inspections during the reference period.

The report does not reply to the specific, targeted questions for this provision on forced labour (questions included in the appendix to the letter of 27 May 2019 whereby the Committee

requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”).

### **Criminalisation and effective prosecution**

As the national report does not provide any information, the Committee refers to the 2017 GRETA Report on the legislative framework for combating trafficking in human beings in Bosnia and Herzegovina (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, Second Evaluation Round, GRETA (2017)15, 17 July 2017). It notes that relevant legislation exists at the level of the State, the two entities and the Brčko District, including four criminal codes. The criminal offence of human trafficking has been introduced at the entity level in the Criminal Code of the Republika Srpska, the Federation of Bosnia and Herzegovina, and the Brčko District. Thus in 2013, Article 198a (“trafficking in human beings”), Article 198b (“trafficking in children”) and Article 198c (“organising a group or a criminal association for committing the criminal offences of human trafficking and trafficking in children”) were introduced to the Criminal Code of the Republika Srpska. In that same year, Article 207a (“trafficking in human beings”) and Article 207b (“organised trafficking in human beings”) were introduced in the Criminal Code of the Brčko District. In the Federation of Bosnia and Herzegovina, amendments to the Criminal Code were adopted and promulgated in the Official Gazette on 15 June 2016, introducing Article 210a (“trafficking in human beings”) and Article 210b (“organised trafficking in human beings”).

The Law on Amendments and Supplements to the State Criminal Code, pursuant to which the criminal offences of transnational trafficking in human beings (Article 186), organised transnational trafficking in human beings (Article 186a) and international procuring of prostitutes (Article 187) were introduced. As a result, trafficking in human beings committed transnationally is prosecuted under the Criminal Code of Bosnia and Herzegovina while internal trafficking, i.e. within Bosnia and Herzegovina, is prosecuted under the criminal codes of the entities and the Brčko District. Further, a new paragraph 10 was added to Article 186 of the State Criminal Code, according to which victims of trafficking in human beings are not to be punished for their involvement in illegal activities to the extent that they were forced into such activities.

However, the Committee notes from the GRETA Report that it urged the authorities to complement the criminalisation of trafficking in human beings in the Republika Srpska by inserting “servitude” and “other forms of sexual exploitation” into the list of forms of exploitation. Further, in order to ensure a consistent application across the country, the authorities of Bosnia and Herzegovina have to ensure that the same minimum penalty for the basic offence of trafficking in human beings is set out in all Criminal Codes throughout the country.

The Committee recalls that States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but also take measures to enforce them. It considers, as the European Court of Human Rights did (*Chowdury and Others*, § 116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.

The Committee notes from the 2018 EU country report that Bosnia and Herzegovina remains a country of origin, transit and destination for trafficking in human beings for labour exploitation, sexual exploitation, begging and forced marriages. Trafficking was mainly aimed at forced begging, labour exploitation, forced marriages, and sexual exploitation.

According to the 2018 US Department of State report, the government did not meet the minimum standards in several key areas related to human trafficking.

The Committee asks that the next report provide information on the enforcement of the criminal law related to forced labour. The report should provide information (including statistics

and examples of case law) on the prosecution and conviction of exploiters on grounds of slavery, forced labour and servitude during the next reference period, in order to assess how the legislation is interpreted and applied to combat labour exploitation.

### **Prevention**

The Committee recalls that States Parties should take preventive measures such as research and data collection on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, and should strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation. States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.

The Committee notes from the GRETA Report that the new Action Plan for 2016-2019 was adopted on 31 December 2015. Its strategic objectives are: i) to improve the system for combating THB, by means of amending the legal framework, strengthening co-ordination mechanisms, providing necessary resources for the implementation of the Action Plan, monitoring its implementation, and improving the collection of data related to THB; ii) to efficiently prosecute THB cases and related offences; iii) to prevent THB through risk reduction; iv) to protect and assist victims, through enhanced victim identification, improving the legal framework concerning assistance and ensuring its effective application, providing assistance of adequate quality, building the capacity of service providers, providing effective access to justice and adequate legal assistance to victims of trafficking, and improving child protection mechanisms; and v) to strengthen partnerships and co-operation among stakeholders involved in combating THB.

As no information is provided in the national report, the Committee asks that the next report provide information on the implementation of measures taken and envisaged to strengthen the capacities of labour inspectors in the prevention of forced labour and in particular information related to resources made available to them and training of all bodies concerned in the fight against forced labour, including judges and prosecutors.

Moreover, pursuant to the positive obligations deriving from Article 1§2 of the Charter, the Committee asks that the next report provide information on the measures put in place regulating businesses and other economic activities so as to ensure that they do not use forced labour. Information is also requested on whether the domestic legislation includes measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains and requires that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.

In this regard, the Committee observes from the abovementioned GRETA Report that it urged the authorities of Bosnia and Herzegovina to enhance their efforts to prevent trafficking for the purpose of labour exploitation, in particular by strengthening the monitoring of recruitment and temporary work agencies and reviewing the legislative framework, including by considering the introduction of licensing procedures.

### **Protection of victims and access to remedies, including compensation**

The report does not include any detailed information related to the protection of victims of forced labour and their access to remedies.

The Committee notes from the 2018 EU country report that a comprehensive, multidisciplinary and victim-oriented approach to trafficking in human beings still needs to be developed, and identification and protection of victims needs to be improved. The number of potential victims of trafficking in human beings detected in 2017 was 55, compared to 47 potential victims detected in 2016. More than a half of the detected potential victims were minors, and almost

three quarters of them were women. The trafficking was mainly aimed at forced begging, labour exploitation, forced marriages, and sexual exploitation.

According to the 2018 US Department of State report, although the law exempts victims from punishment for crimes committed as a result of their exploitation, the government penalized victims for unlawful acts committed as a direct result of being subjected to trafficking, in part due to inadequate victim identification practices.

The Committee considers that protection measures in this context should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation.

The Committee asks for information in the next report on the number of potential victims of labour exploitation during the next reference period and the number of such persons benefiting from protection measures and support. It also asks that the next report provide general information on the type of assistance (protection from retaliation, safe accommodation, health care, material assistance, social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, provision of residence permits for migrants) and to specify the period during which that support and assistance is provided.

As regards access to remedies and compensation, the Committee asks whether the existing legislative framework provides victims of forced labour and labour exploitation, including irregular migrants, with accessible and effective remedies (before criminal, civil, employment courts or other venues) to obtain compensation for all the damages related (including unpaid wages and contributions for social security benefits). It requests statistical information on the number of victims who obtained compensation and examples of the amounts awarded.

#### **Domestic work**

The report does not provide information on domestic work.

The Committee recalls that domestic work may give rise to forced labour and exploitation. Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see Conclusions XX-I (2012), General Introduction, General Questions, and the Court's judgment in *Siliadin v. France*). States Parties should adopt legal provisions to combat forced labour in the domestic environment and protect domestic workers as well as take measures to implement them (Conclusions 2008, General Introduction, General Question).

The Committee requires that the next report provide information on this point in the next report.

#### **“Gig economy” or “platform economy” workers**

The report does not provide information on “gig economy workers”.

The Committee notes that since the global crises of 2008, the “gig economy” is growing and developing throughout the country, affecting mostly young workers. Therefore, the Committee requests that the next report contain information on the concrete measures taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse. It asks to be informed on the status and rights of these workers (employees or self-employed, or an intermediary category, and their rights in terms of working hours, paid holiday and minimum wage), on whether labour inspection services have any mandate to prevent exploitation and abuse in this particular sector and on any existing remedies they have access to, in particular in order to challenge their employment status.

### **3. Work of prisoners and other aspects of the right to earn one's living in an occupation freely entered upon**

With regard to the work of prisoners and other aspects of the right to earn one's living in an occupation freely entered upon (minimum periods of service in the armed forces, requirement to accept the offer of a job or training, privacy at work), the Committee refers to its previous

conclusion (Conclusions 2016). It takes note in particular of the information provided in the national report concerning training of professional military personnel and the minimum period of service.

*Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§2 of the Charter on the grounds that:

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

**Article 1 - Right to work**

*Paragraph 3 - Free placement services*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in 2020.

## **Article 1 - Right to work**

### *Paragraph 4 - Vocational guidance, training and rehabilitation*

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

The Committee recalls that in the appendix to the letter of 27 May 2019 (whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Employment, training and equal opportunities") no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. It is complemented by Articles 9 (right to vocational guidance), 10§3 (right of adult workers to vocational training) and 15§1 (right of persons with disabilities to vocational guidance and training), which contain more specific rights to vocational guidance and training.

As Bosnia and Herzegovina has not accepted Articles 10§3 and 15§1, the Committee assesses under Article 1§4 the conformity of the situation relating to the right of adult workers to vocational training and the right of persons with disabilities to vocational guidance and training in case the previous conclusion was one of non-conformity or a deferral.

### ***Vocational guidance***

As regards measures related to vocational guidance, the Committee refers to its assessment under Article 9, in which it considers that the situation is not in conformity with the Charter on the ground that it has not been established that the right to vocational guidance within the education system and labour market is guaranteed (Conclusions 2020). Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same grounds.

### ***Vocational guidance for persons with disabilities***

With regard to measures related to vocational guidance of persons with disabilities, in its previous conclusion (Conclusions 2016) the Committee considered the situation not to be in conformity with the Charter on the ground that it had not been established that the right to vocational guidance within the education system and labour market was guaranteed.

The Committee refers to its assessment under Article 9 (Conclusions 2020), in which it considers that it has not been established that the right to vocational guidance is guaranteed to persons with disabilities. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§4 of the Charter on the grounds that:

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



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

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 (BiH) and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD).

The Committee recalls that in its letter requesting national reports it stated that no information was requested under this provision unless the previous conclusion was one of non-conformity or a deferral.

In its previous conclusion (Conclusions 2016), the Committee considered that the situation was not in conformity with Article 9 of the Charter on the ground that it had not been established that the right to vocational guidance within the education system and in the labour market was guaranteed.

The Committee also asked (Conclusions 2016) whether foreigners and stateless persons enjoy access to vocational guidance on an equal footing both within the education system and in the labour market, and whether this applies to all parts of the country. In response to the Committee's request, the current report indicates that foreign nationals and stateless persons are equal to citizens of Bosnia and Herzegovina when it comes to education (higher and secondary education). As regards equality within the labour market and employment services, the report only refers to the situation in the FBiH and the BD. The Committee asks the next report to clarify whether nationals of other States Parties and stateless persons enjoy access to vocational guidance services in the RS.

As Bosnia and Herzegovina has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with here.

### ***Vocational guidance within the education system***

In its previous conclusion (Conclusions 2016), the Committee asked the next report to provide, in addition to updated data on the number of pupils and students involved, information on the number and qualifications of the staff in charge of vocational guidance in schools and the expenditure for these activities. It furthermore asked information, including relevant statistical data where available, showing that persons with disabilities are guaranteed free access to vocational guidance in the education system. The Committee pointed out that the information requested should focus on guidance activities, not training, and should cover each part of the country. In the meantime, it considered that it had not been established that the right to vocational guidance within the education system was guaranteed.

The Committee takes note of the data provided in the current report concerning the number of students involved in vocational guidance activities in educational institutions of the RS during the reference period. It also takes note of the number of students (primary and secondary schools) attending vocational guidance presentations by the Employment Institute of the BD during the period 2017-2018, as well as the budget allocated to the BD Employment Institute and its "Career Guidance and Counselling Programme" in 2018 (BAM 100,000). However, no information is provided on the number of students involved in vocational guidance activities in the FBiH and on the number of the staff in charge of vocational guidance in schools in the three sub-state entities (FBiH, RS, BD). Information concerning the expenditure for these activities is only provided in respect of the BD. The Committee accordingly repeats its previous questions and stresses that the information should cover each part of the country.

The report does not provide any specific information on vocational guidance to people with disabilities within the education system. The information provided in the report is mostly related to vocational guidance for unemployed persons (see below) and to the employment of

professional staff for children with disabilities in educational institutions (only with regard to the FBiH). The Committee accordingly asks the next report to contain specific information on vocational guidance activities provided to people with disabilities within the education system.

In the meantime, the Committee reiterates its conclusion of non-conformity on this point.

### ***Vocational guidance in the labour market***

In its previous conclusion (Conclusions 2016), the Committee referred to the criteria for assessing conformity with Article 9 of the Charter, and asked that the next reports systematically contain updated figures, for each part of the country, on the expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market, including as regards persons with disabilities. Details of the measures taken to ensure dissemination of information on vocational guidance (internet websites and databases, information leaflets and publications, one-to-one and group sessions, career days etc.) were also needed. In the meantime, in the absence of such information, the Committee considered that it had not been established that the right to vocational guidance in the labour market was guaranteed.

The Committee takes note of the information provided in the current report concerning the legal framework on vocational guidance of unemployed persons at the different sub-state entities (Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District).

With regard to the FBiH, the current report provides information on the number of users of “Job Search Clubs” and of Information, Counselling and Training Centres (CISO) during the reference period. The goal of CISOs and job clubs is to provide information, individual counselling for job seekers and long-term unemployed, particularly young people (see also Conclusions 2016). The Committee notes from the report that out of 10 centres in the FBiH, only two remained operational during the reference period. The report also acknowledges that in terms of the ratio of the total number of registered unemployed persons and the number of advisers in municipal employment offices, there is a persistent disproportion that does not allow for greater inclusion of unemployed persons. The Committee notes that this problem was already mentioned in the previous report and that it asked what measures were being taken to improve this situation and what was the budget allocated for guidance activities (Conclusions 2016). The Committee asks again the next report to provide information on the allocation of human and financial resources to the relevant vocational guidance activities in the FBiH.

In the RS, the current report provides information on the activities carried out by the Employment Institute in terms of career guidance and career planning. The report however does not provide any information concerning the number of people (apart from students) who attended vocational guidance activities, the number of vocational counsellors and the expenditure distribution of services. The Committee asks the next report to contain such information.

As regards the BD, the report provides some information about the activities carried out by the Employment Institute, including the “Career Guidance and Counselling Programme” and the allocation of resources for 2018-2019. It does not contain any specific information on the number of people who attended these activities during the reference period or the number of vocational counsellors.

With regard to access of persons with disabilities to vocational guidance in the labour market, the report refers to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities (FBiH) and to other projects aimed at integrating persons with disabilities into the labour market (FBiH, RS and BD). However, it is still not clear to what extent these persons have access to vocational guidance in the labour market in the different entities. The Committee accordingly requests that the next report provide more specific information on this issue, including on the number of such persons attending vocational guidance activities and

on the expenditure and staffing related to vocational guidance services offered to such persons.

In the meantime, the Committee reiterates its conclusion of non-conformity on this point.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 9 of the Charter on the grounds that it has not been established that:

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

## **Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

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

The Committee notes that this report responds to the targeted questions on this provision, which relate specifically to equal pay (questions included in the appendix to the letter of 27 May 2019 whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Employment, training and equal opportunities”). The Committee will therefore focus specifically on this aspect. It will also assess the replies to all findings of non-conformity or deferral in its previous conclusion.

### ***Obligations to guarantee the right to equal pay for equal work or work of equal value***

#### ***Legal framework***

##### ***Bosnia and Herzegovina***

In its previous conclusions on Article 4§3 (Conclusions 2018), the Committee noted that pursuant to the provisions of Article 12 of the **Law on Gender Equality of Bosnia and Herzegovina**, gender-based discrimination at work and in employment was prohibited. Such discrimination was defined, among other factors, as failure to pay equal wages and other benefits for the same work or work of equal value.

The Committee asks for information in the next report on the *concept of remuneration*, i.e. which elements are considered as "remuneration" within the meaning of equal pay.

##### ***Federation of Bosnia and Herzegovina***

In its previous conclusions on Article 4§3 (Conclusions 2018), the Committee noted that Article 77 of the Labour Code of the **Federation of Bosnia and Herzegovina** provided for an obligation on the employer to pay employees equally for work of equal value, regardless of various non-discrimination grounds, including gender. The Committee concludes that the obligation to recognise the right to equal pay is complied with in the Federation of Bosnia and Herzegovina.

As to the *concept of remuneration*, the Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) indicated in its observations published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that according to Article 75(2) of the Labour Code, “the salary” comprises “the basic salary, the part of the salary related to professional results and the salary increase to which reference is made in Article 76 of this law”. In this regard, the Committee points out that the concept of remuneration must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment (*University Women of Europe (UWE) v. France*, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). Therefore, it requests that the next report contain clarifications on this issue, in particular, on whether all elements of pay, including benefits, are covered by the principle of equal pay for work of equal value.

##### ***Republika Srpska***

In its previous conclusions on Article 4§3 (Conclusions 2018), the Committee noted that employees were guaranteed equal pay for the same work or work of equal value. The Committee concludes that the obligation to recognise the right to equal pay is complied with in **Republika Srpska**.

Concerning the *concept of remuneration*, the Committee notes that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) indicated in its observations published in 2017 (106th session of the International Labour Conference) concerning Convention No. 100 on Equal Remuneration (1951) that Article 121(1) of the Labour Code defines “wages” as comprising “the portion of wages for the work performed and the time spent at work, increase of wages stipulated under the law, a general enactment or a labour contract, and other earnings on the grounds of the employment relationship pursuant to the law, a general enactment or a labour contract”; pursuant to Article 132, the “other earnings” include per diems for business trips, compensation for the costs of transport, increased cost of accommodation, hot food and the utilisation of personal or own car for official activities, severance pay, as well as other earnings stipulated in collective agreements or a labour contract. The Committee requests that the next report contain clarifications on the concept of remuneration applied in the context of equal pay.

### **Brčko District**

In its previous conclusions on Article 4§3 (Conclusions 2018), the Committee noted that public sector employees in the Brčko District were guaranteed equal pay for the same work or “similar work”. The Committee notes that this wording is narrower than the principle set out in the Charter. The Committee points out that under Articles 4§3 and 20 of the Charter (and Article 1 (c) of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The concept of equal remuneration applies both to equal work and to work of equal value (*University Women of Europe (UWE) v. France*, Complaint No. 130/2016, decision on the merits adopted on 5 December 2019, §163). The Committee also refers to the observations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) to different ILO member States on this issue in connection with Convention No. 100 on Equal Remuneration (1951), where it pointed out that the concept of “work of equal value” permits a wide scope for comparison, including, but going beyond, equal remuneration for “equal” work, the “same” work and “similar” work, and encompasses work that is of an entirely different nature but nevertheless of equal value. Therefore, the Committee requests that the next report clarify the definition used in the legislation.

The Committee also asks whether the legislation, in particular, the Labour Code of the Brčko District expressly guarantees the principle of equal pay between men and women for equal work or work of equal value for private sector employees.

The Committee asks for information in the next report on the *concept of remuneration* in the **Brčko District**.

In its previous conclusions (Conclusions 2016 and 2012), the Committee noted that it was prohibited to employ women in underground mining in the Federation of Bosnia and Herzegovina, in Republika Srpska and in the Brčko District. Therefore, the Committee concluded that the situation was not in conformity in this respect with Article 20 of the Charter. In this regard, the report refers to ILO conventions, and, in particular, to the *Underground Work (Women) Convention No. 45*, which ceased to have effect in Bosnia and Herzegovina on 26 March 2018. Moreover, the same report indicates again that in the **Federation of Bosnia and Herzegovina**, it is prohibited for women to work in mines, except in administrative positions, as trainees or in posts not requiring physical work. The Committee points out in this respect that its task is not to judge the conformity of a situation with other international instruments, but to assess whether the situation in **Bosnia and Herzegovina** is in conformity with Article 20 of the Charter. Pending clarifications on this issue, the Committee considers that the prohibition which it found not to be in conformity with the Charter still applies. It therefore upholds its conclusion of non-conformity on this point.

## ***Effective remedies***

The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol). Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer (see in this respect collective complaints Nos. 124 to 138, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, 5-6 December 2019).

The Committee refers to its previous conclusions on Articles 4§3 and 20 (Conclusions 2016 and 2018) and notes that the situation is in conformity with the Charter regarding shifting the *burden of proof*, *effective remedies* for gender-based pay discrimination and *compensation*. The report confirms, while specifying the relevant legislative provisions of each State entity, that any worker who deems that they are the *victim of discrimination* may bring their case to the relevant courts, that the burden of proof lies with the employer and that the amount of compensation awarded to the victim is not limited (the court assesses, in each case, the material and non-material damage suffered).

Nevertheless, the Committee requests that the next report clarify how the principle of shifting the burden of proof is applied in practice (at the level of the State of Bosnia and Herzegovina, in the Federation of Bosnia and Herzegovina, in Republika Srpska and in the Brčko District), for example, whether it is systematically applied in the case of pay discrimination. It also asks whether the obligation to compensate the difference of pay is limited in time or is awarded for entire period of unequal pay (for the State level, at the entities level and in the Brčko District).

The Committee takes note of the information on the number of discrimination cases. According to the report, few official data are available on discriminatory practices because the persons concerned rarely choose to use the protection mechanisms in force for fear of losing their jobs. Nonetheless, the Committee asks for information on the number of cases specifically related to gender pay discrimination brought before the courts, with details on their outcomes and the penalties imposed on employers (for the State level, at the entities level and in the Brčko District).

The Committee asks for information in the next report on the rules that apply in the event of *dismissal in retaliation* for a complaint about equal wages (in the State of Bosnia and Herzegovina, in the Federation of Bosnia and Herzegovina, in Republika Srpska and in the Brčko District).

As to the *penalties imposed* for breaches of the principle of non-discrimination, the report states that an administrative fine may be imposed on an employer. The Committee requests confirmation in the next report that such fines are also imposed on employers if they have

infringed the provisions on equal pay for women and men for work of equal value (at the State level, at the level of the entities and the Brčko District).

### ***Pay transparency and job comparisons***

The Committee recalls that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect. The Committee also recalls that, in order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

With regard to *pay transparency*, the report indicates that no strategies or measures have been adopted to ensure pay transparency on the job market and there is no way for workers to obtain information on the levels of remuneration of other workers. Individual salaries are confidential and not transparent or accessible to the public. However, the report indicates that in 2019 (outside the reference period), in the Federation of Bosnia and Herzegovina, the Sarajevo canton published the Register of Public Sector Employees in the canton, which contains data on the net salaries of all public sector employees in the canton (with the aim of providing the public with an insight into the spending of public funds). In view of the above, the Committee finds that the situation is not in conformity with Article 20 of the Charter on this point on the ground that the obligation to ensure pay transparency has not been satisfied.

Concerning the parameters for establishing the equal value of the work performed, the report indicates that work of equal value means work requiring the same level of education/qualifications, knowledge, ability to work and responsibilities. However, in its previous conclusions on Article 4§3 (Conclusions 2018), the Committee noted that:

- in the **Federation of Bosnia and Herzegovina**, the law defined the expression “work of equal value” as work requiring the same level of professional qualifications, the same working capacity, responsibilities, physical and intellectual work, skills, working conditions and results of work;
- in **Republika Srpska**, work of equal value meant work requiring the same level of qualifications, working capacity, responsibilities and physical and intellectual effort. However, the Committee observes that in its above-mentioned observations, the ILO Committee of Experts quoted a slightly different definition. According to its observations, the Labour Code of **Republika Srpska** provides that “work of the same value shall imply work for which the same degree of professional qualifications, that is to say, education, knowledge and skills, is required, in which the same work contribution is realised, with the same responsibility.” In the light of the above, the Committee requests that the next report contain clarifications on this situation, and, in particular, on the concept of “work of equal value” used in the legislation.
- The Committee again requests that the next report also clarify the parameters for establishing the equal value of work performed in the **Brčko District**. It 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 20 of the Charter in this respect.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter, and does so therefore every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). Articles 20 and 4§3 of the Charter require the possibility to make job comparisons across companies (see in this respect Complaints Nos. 124 to 138, UWE, *op. cit.*). According to the report, although state-level and entity-level statistics agencies and institutes regularly collect and process wage data, the pay comparisons across enterprises are not part of regular statistical surveys. There are average wages per entity or sector, but they are not disaggregated according to gender because, according to the report, gender inequality is prohibited. The Committee asks whether it is possible to make pay comparisons across companies in equal pay litigation cases. In order to clarify this issue, the Committee considers that provision should be made for the right to challenge unequal remuneration resulting from legal regulation and collective agreements. In addition, there also should be the possibility to challenge unequal remuneration resulting from internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such holding company.

The Committee also requests that the next report indicate whether a comparator, real and/or hypothetical, of remuneration is required by law to establish or prove a difference in treatment.

The report contains no information about job classification systems. The Committee therefore asks again for this information in the next report.

Pending receipt of the information requested, the Committee reserves its position on this point.

### ***Enforcement***

The Committee requests that the next report provide information about how equal pay is ensured, notably, about the monitoring activities conducted in this respect by the Labour Inspectorate and other competent bodies (at State level, entity level and in the Brčko District).

### ***Obligations to promote the right to equal pay***

The Committee recalls that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted), the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc. The Committee further considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it (see in this respect Complaints Nos.124 to 138, UWE, *op. cit.*).

In its previous conclusion (Conclusions 2016), the Committee noted that there were major differences in the number of women and men in employment or economically active. It also noted that the legal and institutional frameworks which guided employment practices in Bosnia and Herzegovina were largely in place, but that the legislation was not effectively implemented in practice. Therefore, the Committee concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 20 of the Charter on the ground that the right to equal opportunities in employment without gender discrimination was not guaranteed in practice.

The Committee takes note of the employment rates for women and men presented in the report, which were respectively 25% and 44.1% in 2018 (23.2% for women and 40.9% for men in 2015) in **Bosnia and Herzegovina**; 22.5% and 44.1% in 2018 (21.4% for women and 40.9%



for men in 2015) in the **Federation of Bosnia and Herzegovina**; 22.5% and 42% in 2018 (21.4% for women and 39.4% for men in 2015) in **Republika Srpska**; and 29.7% and 47.7% in 2018 (26.8% for women and 44% for men in 2015) in the **Brčko District**.

The report indicates that gender equality action plans, which contain measures for promoting equality between men and women and for the representation of women in the administration were adopted and implemented at State and entity levels. In particular, the action plan for gender equality for 2018-2022 sets out objectives and programmes and measures for achieving gender equality in all areas of social and working life, both in the public and private sectors. A co-ordination committee for implementing the plan was established in Republika Srpska.

The report also indicates that in May 2015, the Agency for Statistics of Bosnia and Herzegovina, the Institute of Statistics of the Federation of Bosnia and Herzegovina and the Institute of Statistics of Republika Srpska conducted a study on gender disparities in the enjoyment of rights, together with the World Bank (see also Conclusions 2018, Article 4§3). The study found visible gender disparities in favour of men at all levels of education, in all age groups and in all occupations and activity sectors.

Data from the Institute of Statistics of Republika Srpska also shows that the average salary for men for equal work or work of equal value is higher than that of women in that entity.

The Committee notes that according to a European Commission Staff Working Document (SWD(2019) 222 final, 29 May 2019), it is estimated that women earn 78% to 85% of a man's salary for the same position.

The report indicates that the wage gap between men and women can be explained in part by segregation in the labour market. The report states that the segregation between men and women in employment is still flagrant, in view of the tendency for women to be over-represented in the service and retail sectors and men in skilled technical positions, in crafts, the army and in management positions.

The Committee also takes note of the information in the above-mentioned working document according to which the informal sector in Bosnia and Herzegovina is put at 25.5% of GDP and that approximately 30% of all workers have informal jobs.

Noting that despite the measures taken to ensure gender equality in employment, there is still occupational sex segregation in the labour market and that the gender pay gap is still high, the Committee considers that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress to reduce the gender pay gap has not been fulfilled.

The Committee requests that the next report provide updated information on the specific measures and activities implemented to promote gender equality, overcome gender segregation in the labour market and reduce the gender pay gap, together with information on the results achieved. It also requests that the next report provide information on the employment rate for both men and women and the gender wage gap for each year in the reference period, at the State and entity levels and in the Brčko District.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 20(c) of the Charter on the grounds that:

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

