



Head of Department
Executive Secretary
of the European Committee of Social Rights



BOSNA I HERCEGOVINA

BiH

	19-01-2017
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Mr Predrag GRGIĆ
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Plenipotentiary
Permanent Representative of Bosnia and
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Ref ► KFB/CL 9/2017

Strasbourg, 18 January 2017

Sir,

The European Committee of Social Rights, responsible for ruling on the conformity of national situations with the European Social Charter, has adopted its Conclusions 2016¹.

Please find herewith the Conclusions in respect of your country, as well as the General Introduction.

Please note that Conclusions 2016 will be made public on 25 January 2017 on the Council of Europe website. On the same day a press briefing on the Conclusions will be held in Strasbourg in connection with the 290th session of the European Committee of Social Rights.

Yours faithfully,

Régis Brillat

Copy: Ms Ljiljana SANTIC

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¹ These conclusions relate to the following States Parties: Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine. Because of the failure to submit a report, there are no conclusions in respect of Albania for 2016.



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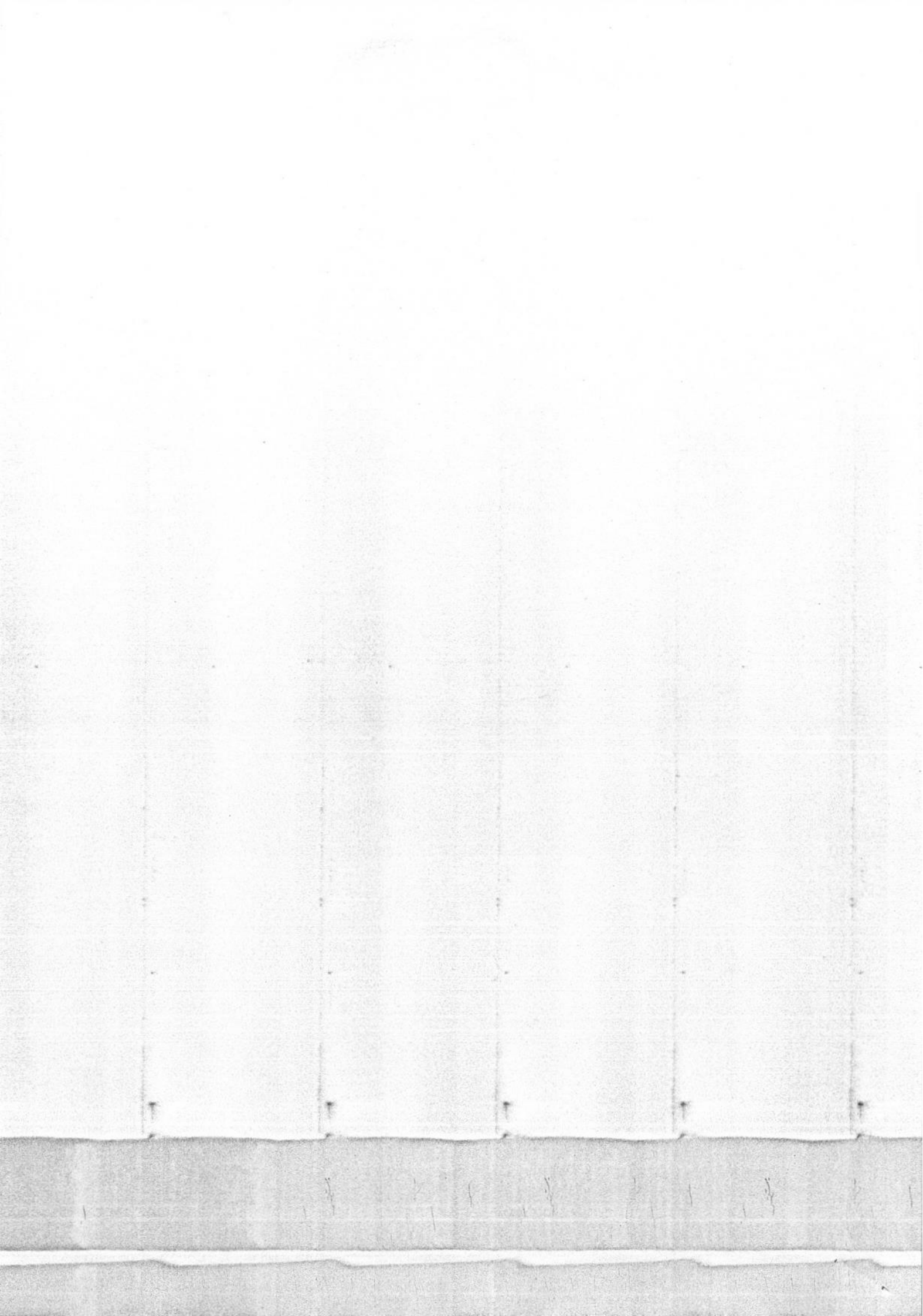
European Social Charter

European Committee of Social Rights

Conclusions 2016

BOSNIA AND HERZEGOVINA

This text may be subject to editorial revision.



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The following chapter concerns Bosnia and Herzegovina, which ratified the Charter on 7 October 2008. The deadline for submitting the 6th report was 31 October 2015 and Bosnia and Herzegovina submitted it on 12 February 2016.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

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

The reference period was 1 January 2011 to 31 December 2014.

The conclusions relating to Bosnia and Herzegovina concern 6 situations and are as follows:

- 1 conclusions of conformity: Article 1§3;
- 5 conclusions of non-conformity: Articles 1§§1, 2 and 4; 9; 20.

The next report will deal with the following provisions of the thematic group "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 report should also contain information requested by the Committee in Conclusions 2015 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of children and young persons to protection – prohibition of employment of children subject to compulsory education (Article 7§3),
- the right of children and young persons to protection – prohibition of night work (Article 7§8),
- the right of employed women to protection of maternity – illegality of dismissal during maternity leave (Article 8§2),
- the right of employed women to protection of maternity – regulation of night work (Article 8§4),
- the right of the family to social, legal and economic protection (Article 16)

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.

Employment situation

According to the report, the GDP growth rate decreased from – 0.9% in 2011 to – 1.2% in 2012 before decreasing further to -2.4% in 2013.

According to the report, the overall employment remained at an alarmingly low level (2011 – 31.9%; 2014 – 31.7%) during the reference period.

The male employment rate remained at a low level (2011; 41.3% – 2014; 41.2%) and the female employment rate at a very low level (2011; 23.0% – 2014; 22.7%).

According to the report, the unemployment rate stood at 27.5% in 2014. The youth unemployment rate (% of active population aged 15 – 24) increased during the reference period even further from 56.4% in 2011 to 61.0% in 2014. The same development was observed with respect to the long-term unemployment rate (% of active population aged 15 – 74), which increased from 22.3% in 2011 to 23.4% in 2014.

The Committee takes note of the continued contraction of the economy which resulted in negative features of the labour market, in particular by low participation rates and high unemployment rates.

Employment policy

The Committee notes from the report, that in the employment field national policy was guided by the 2010 – 2014 Employment Strategy adopted in 2010 by the Government of Bosnia and Herzegovina. Specific emphasis was put on addressing the youth unemployment rate by the implementation of the 2nd phase of the “Youth Employment Project”. Another focus was the “2012 – 2015 Decent Work Country Programme”.

The report describes that the Federation Employment Agency in co-operation with the cantonal employment services was continuously implementing active employment policies through programs tailored to the needs of the labour market in accordance with the Law on Mediation in Employment and Social Security of Unemployed Persons. The number of persons included in the active employment policy measures had been increasing during the reference period peaking 16 000 people in 2014.

However, the Committee notes from the 2014 European Commission Progress report that public employment services lack both administrative and financial capacity to implement active labour market measures (Bosnia and Herzegovina progress report, European Commission, 2014).

The Committee requests once again information on the targeting and monitoring of the labour market measures. It asks again whether the employment policies in place are monitored and how their effectiveness is evaluated.

The Committee notes that national strategies and labour market policies as implemented have not been adequate in promoting job creation and combatting unemployment.

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.

Prohibition of discrimination in employment

In its previous conclusion, the Committee examined the situation at the federal level as well as at the level of the entities and deferred its conclusion requesting information on a number of relevant points (Conclusions 2012).

It noted that the Constitution of Bosnia and Herzegovina and the constitutions of the entities (Republika Srpska and the Federation of Bosnia and Herzegovina) as well as the Statute of the Brcko District prohibit discrimination on certain grounds (Conclusions 2012).

Brcko District

The Committee previously noted that the Labour Law of BD ("Official Gazette of BD of BiH" 19/06, 19/07, 25/08) prohibits discrimination in employment on grounds of race, ethnicity, colour, gender, language, religion, political or other opinion or conviction, social origin, property, membership or non-membership in a trade union or political party, physical and mental condition. It applies also to recruitment and training.

The report indicates that Labour inspectors monitor the application of provisions of the Labour Law prohibiting discrimination. When a worker is discriminated against, he/she may seek protection with the labour inspectors and file a complaint with the competent court. The Ministry does not have information on the number of discrimination cases before the courts. The Committee asks the next report to provide information on the number and nature of cases dealing with discrimination in employment, with specific indications on their outcome and compensation granted to victims.

Federation of Bosnia and Herzegovina

The report indicates that FBiH adopted a new Labour Law which was published in the "FBiH Official Gazette" No. 62/15 dated 12 August 2015 and came into force on 20 August 2015 (outside the reference period).

The Law includes a provision that explicitly prohibits discrimination against employees and persons seeking employment with regard to gender, sexual orientation, marital status, family responsibilities, age, disability, pregnancy, language, religion, political or other opinion, nationality, social origin, property, birth, race, colour, membership or non-membership in political parties and trade unions, health status or any other personal characteristic. Discrimination is prohibited in relation to requirements for employment and selection of candidates for a particular job, working conditions and all rights arising from employment, training, retraining and professional development, job promotion and termination of the employment contract. The new Labour Law defines also direct and indirect discrimination and the prohibition of harassment or sexual harassment, gender-based violence and systematic harassment in the workplace or in connection with work – mobbing.

The report indicates that in the event of litigation involving discrimination, the burden of proof that there has been no discrimination lies on the employer and if the court finds that the complaint is well founded, the employer will provide and ensure the rights that have been denied and compensate for the loss caused by discrimination. The Committee asks information on the level of compensation granted in practice and whether there is a ceiling on the amount of compensation granted in discrimination cases.

The report further provides detailed information on the employment situation of persons with disabilities in the FBiH. The Committee takes note of the adoption of the Law on Vocational

Rehabilitation, Training and Employment of Disabled Persons ("Official Gazette of BiH", No. 9/10) as well as of the 2011-2015 Strategy for Equalization of Opportunities for Persons with Disabilities in FBiH: Vocational Rehabilitation and Employment.

Republika Srpska

The Committee noted previously that Article 5 of the Labour Law of RS ("Official Gazette of RS" 55/07)("Official Gazette of RS" 55/07) protects employees and persons seeking employment from discrimination on grounds of race, ethnicity, colour, gender, language, religion, political or other opinion or conviction, social origin, property, membership or non-membership in a trade union or political party, physical and mental condition or any other characteristics which are not directly related to the nature of employment. The legislation defines both direct and non-direct discrimination. It also allows for exceptions. The Committee wished to receive further information on how these exceptions have been interpreted (Conclusions 2012). The report does not provide any information in this sense. The Committee reiterates its question.

The Committee noted previously that Article 112 of the Labour Law stipulates that a person seeking employment as well as an employee may claim compensation for damages before the competent court and that in case of a dispute the employer shall have the burden of proof. If the court finds that the claim is grounded, it shall order the employer to reinstate and ensure the exercise of the denied rights to the defendant or to pay the appropriate monetary compensation (Conclusions 2012). The report indicates that the Ministry does not have information on the number of discrimination cases before the courts or the Ombudsman.

The Committee recalls that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. It asks for information on the level of compensation and whether there is a ceiling on the amount of compensation granted in discrimination cases.

General situation

The Committee noted previously that the Law on Prohibition of Discrimination of Bosnia and Herzegovina (BiH) (No. 59/09, entry into force 5 August 2009) was adopted. The Act defines and prohibits direct and indirect discrimination, including in employment, entrepreneurship, education and training, on a range of grounds, whether real or assumed, namely race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or other association, education, social status and sex, sexual expression or sexual orientation (Sections 2, 3 and 6). The Act also provides for the shifting of the burden of proof and protection against retaliation (Sections 15 and 18).

In its previous conclusion, the Committee requested information on how the different pieces of legislation interact and whether the Law on the Prohibition of Discrimination of Bosnia and Herzegovina 59/09 prevails over the laws at Entity and District level.

The report indicates that the Law on Prohibition of Discrimination ("Official Gazette" No. 59/09) was adopted at the state level and sets the framework for implementation of equal rights and opportunities for all persons in BiH. This Law applies to actions of all public bodies at the level of the state, entity, canton and BD, municipal institutions and bodies, and legal persons with public authorities, as well as to the action of all legal and natural persons, in all spheres of life. There are no laws prohibiting discrimination at the level of entities, but the Law on Prohibition of Discrimination prescribes that all laws and delegated legislation in BiH at all levels will be brought in line with the Law on Prohibition of Discrimination. Article 24 of the Law on Prohibition of Discrimination (transitional and final provisions) provides that this Law will apply in the event of discrepancies between other laws and this Law in proceedings under this Law. The same provision of the Law on Prohibition of Discrimination provides also

that all laws and delegated legislation will be brought in line with provisions of this Law within a year after its entry into force. The report indicates that the process of bringing other laws in BiH in line with the Law on Prohibition of Discrimination has been carried out only partially due to lengthy procedures.

In its previous conclusion, the Committee noted that at the Entity and District level sexual orientation and age were not explicitly included in the grounds on which the legislation bans discrimination, and at the state level discrimination on grounds of age and disability were not explicitly mentioned. The Committee asked whether age, disability and sexual orientation are prohibited grounds of discrimination at all levels (Conclusions 2012).

The Committee notes from the report as well as from the European Commission's Report 2015 on Bosnia and Herzegovina that the anti-discrimination law has not been amended to include age and disability as grounds for discrimination, nor have its provisions been adequately reflected or transposed into labour law or higher education. A working group, co-ordinated by the Ministry of Human Rights and Refugees and tasked with the revision of the antidiscrimination law was formed in August 2015.

The Committee recalls that under Article 1§2, legislation should prohibit any discrimination in employment *inter alia* on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion. Noting that the laws at state, entity and district levels did not provide for age and disability as prohibited grounds for discrimination (with the exception of the new Labour Law of FBiH which was adopted outside the reference period), the Committee considers that the situation in Bosnia and Herzegovina is not in conformity with Article 1§2 of the Charter on the ground that the legislation does not prohibit discrimination based on age and disability.

The Committee previously noted that there was a wide-ranging list of exceptions to the principle of equal treatment laid out in the Law on the Prohibition of Discrimination, which potentially go beyond genuine occupational requirements, and asked for any case law/interpretation on these exceptions. Since the report does not provide any information on this point, the Committee reiterates its question.

The Committee previously requested information on the number of discrimination cases before the courts at all levels and the number of cases brought before the Ombudsman (Conclusions 2012). The report provides the list of discrimination cases dealt with the courts in 2013 and 2014, and an overview of complaints registered in 2012-2014 with the BiH Ombudsman for Human Rights. The data show provided in the report show that from a total of 232 complaints received by the Ombudsman for Human Rights in 2014, 71 complaints involved violations of the rights of persons with disabilities.

In reply to the Committee's question for detailed information on the employment situation of persons with disabilities, the report indicates that In 2009 BiH ratified the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol and established the Council for Persons with Disabilities, which started operation in 2011. In BiH, persons with disabilities exercise their rights at the level of Entities and BD. In June 2015, the Council for Persons with Disabilities officially sent to the Ministry for Human Rights and Refugees a proposal for amendments to the Law on Prohibition of Discrimination, reasoning that the current law does not cite disability as grounds of discrimination.

In its previous conclusion, the Committee asked whether non-nationals have full access to employment, and in particular whether there are posts in the public sector which are reserved to nationals and if so what is the justification for these restrictions (Conclusions 2012).

The report indicates that Article 4 of the new Law on Employment of Foreigners of FBiH provides that foreigners under this law cannot be placed at a disadvantage on the basis of sex, sexual orientation, marital status, family responsibilities, age, pregnancy, language, religion, political or other opinion, ethnicity, social origin, property, birth, race, colour or other

personal characteristics. The Cantonal Employment Service cannot issue a work permit to a foreigner if there is an unemployed person who meets the requirements under the request for work permit registered in the employment office covering the seat of the employer, except in the case of the unemployed person's refusing the job.

The report indicates that in RS, foreign nationals and stateless persons have access to job in the form of measures and activities of the competent authorities arising from the following provisions of the RS Law on Employment of Foreign Nationals and Stateless Persons. Article 4 provides that in addition to the general requirements established by law, terms and conditions of certain collective agreements and by-laws of the employer, a foreigner must meet one specific requirement and that is to have a work permit for the conclusion of employment contract issued by the RS Employment Institute.

The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to 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. It asks whether there are any types of restrictions at the state level, entity level and BD 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 Committee noted previously from other sources that discrimination *inter alia* on the grounds of sexual orientation was not uncommon and that ethnic discrimination in employment remained a problem, in particular for the Roma. It therefore asked what measures are being taken to raise awareness of rights and to ensure effective implementation of non-discrimination in employment in all parts of the country (Conclusions 2012).

The report does not provide information on this point. The Committee notes from the European Commission's Report 2015 that on non-discrimination policies, no steps were taken to develop an anti-discrimination strategy at State level. Implementation of the 2009 anti-discrimination law is hampered by procedural hurdles and low levels of knowledge of the law. Hate crime and hate speech are not covered by the Federation's criminal law. Most hate incidents targeted returnees, LGBTI persons or were ethnically motivated. Information about hate crime acts is not systematically collected or tracked (Commission staff working document Bosnia and Herzegovina 2015 Progress Report SWD(2015) 214 final).

The Committee asks that the next report provide information on the manner in which the authorities ensure the implementation of the anti-discrimination legislation in employment. It further asks the next report to provide information on any concrete positive measures/actions taken or envisaged to promote equality in employment and to combat all forms of discrimination in employment.

2. Prohibition of forced labour

Work of prisoners

The Committee examined the legislation on work of prisoners in Bosnia and Herzegovina in Conclusions 2012. Referring to its Statement of Interpretation on Article 1§2 with regard to work of prisoners (Conclusions 2012), it asks for up-to-date information in the next report on prisoners' social protection (covering employment injury, unemployment, health care and old age pensions).

Domestic work

In its previous conclusion, the Committee referred to its statement of interpretation on Article 1§2 with regard to the existence of forced labour in the domestic environment. As the report fails to provide any information on the legislation adopted to combat this type of forced labour and the measures taken to implement this legislation and supervise its implementation, the Committee repeats its request for relevant information on this point to be included in the next report.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Minimum periods of service in the Armed Forces

The Committee notes from the report that under the Law on Service in the Armed Forces of Bosnia and Herzegovina, military personnel on active service may be selected to attend training or professional development courses and will be relieved of their duties if these courses last more than one year (Article 140, paragraphs 1 and 2, of the law). If they are required to attend training or professional development courses to change their specific military occupation, they are relieved of their duties regardless of the length of the courses (Article 140, paragraph 3), while the time spent on courses is credited to total service time and the entitlements arising from their original rank and post and their rights to promotion are guaranteed in accordance with the law (Article 140, paragraph 4). The Ministry of Defence may award scholarships to college and secondary school students to fill posts or enrol candidates in military training establishments. To fill available military posts, military personnel on active service may be required to attend a course at a college or another type of establishment in Bosnia and Herzegovina or abroad (Article 141). At the end of their studies, these persons will be assigned to appropriate positions in the army or in a civilian service if the scholarship contract so provides (Article 142). Military scholarship holders who do not complete their education through their own fault or because they have failed to join the armed forces after graduation are required to reimburse an amount determined separately in each individual contract by the Ministry of Defence. The length of military service for cadets and military scholarship holders who have completed their studies is twice as long as their studies unless the contract stipulates otherwise (Article 143, paragraph 1). Similarly, active military personnel required to spend a period in education or training must serve in the armed forces for twice as long as this period unless their contract stipulates otherwise (Article 140, paragraph 2), the exception to this rule being cadets graduating from flight school as pilots, who must serve for a period of ten years unless the contract stipulates a longer period (Article 140, paragraph 3).

The Committee notes from the report that the disproportion between the length of military service and the length of military education and training can be accounted for by the high costs of such courses, some of which are borne by the Ministry of Defence. It asks for relevant information in the next report on the circumstances in which contracts offered to flight school graduates provide for a minimum period of service of more than ten years, what the average length of such service is and what percentage of persons are affected. Pending receipt of this information, the Committee defers its conclusion on this point.

Requirement to accept the offer of a job or training

The Committee notes from the report that Article 44 of the Law on Mediation in Employment and Social Security of Unemployed Persons in the Federation of Bosnia and Herzegovina provides that the entitlements of unemployed persons under this law shall cease if they refuse the offer of an appropriate job without good reason. For the same reason, the public employment service will cease to keep the person concerned registered in its files (Article 4b of the law). These measures are designed to encourage unemployed persons to take advantage of every employment opportunity offered to them and hence reduce unemployment. Anyone who feels that they have been discriminated against under this law may bring legal proceedings. Similar provisions apply to the loss of unemployment benefit in Republika Srpska. Under Article 54(1)(m) of the Law on Mediation in Employment and Unemployment Rights, unemployed persons are struck off the register if they reject appropriate job offers in their place of residence or within a 50 km radius.

Referring to its Statement of Interpretation on Article 1§2 with regard to the requirement to accept the offer of a job or training or otherwise lose entitlement to unemployment benefit (Conclusions 2012), the Committee asks for information in the next report on the rules and procedures governing the examination of rejections of applications for unemployment benefit and the extent of this phenomenon.

Privacy at work

The Committee reiterates that the right to undertake work freely includes the right to be protected against interference with the right to privacy. As the report does not provide any information in this respect, the Committee asks for information in the next report on measures taken by the state to ensure that employers give due consideration to workers' private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned (Statement of Interpretation on Article 1§2, Conclusions 2012).

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§2 of the Charter on the ground that the federal legislation does not prohibit discrimination in employment on grounds of age and disability.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In particular, it notes the information provided in reply to the questions contained in its previous conclusion (Conclusions 2012).

As regards the requirement that public employment services are free of charge, the report provides the following information: in the *Federation of Bosnia and Herzegovina* (FBiH) employment services are free of charge for unemployed persons, employed workers looking for another job and employers; in the *Brčko District* (BD), employment services are free of charge for persons seeking employment and employers; in the territory of the *Republika Srpska* (RS) employment services are free of charge for the unemployed. The Committee recalls that basic placement services such as registration of job-seekers and notification of vacancies must be provided free of charge for both employees and employers (Conclusions XIV-1 (1998), Statement of Interpretation on Article 1§3). It asks that the next report confirm that this requirement is fulfilled throughout the whole national territory of Bosnia and Herzegovina. In this respect, it also recall that fees imposed on employers for the notification of vacancies is contrary to Article 1§3, even where the fees are small and aimed only at covering administrative costs (Conclusions XIV-1 (1998), Turkey). The existence of fee-charging by private employment agencies is not contrary to Article 1§3 provided that fully-fledged free employment services exist in all occupational sectors and geographical areas.

As regards the co-ordination among the large number of employment services at State, entity and canton levels, the report refers to the co-ordination among the employment services within each level; however, it does not refer the co-ordination among services between different levels. The Committee asks that the next report provides information in this respect as well.

As regards private employment agencies (licensing, operation, co-ordination with public services), in reply to a Committee's request the report states that in the FBiH a specific decree provides that any legal person registered as a company may perform activities of mediation in employment as a private agency. Licenses are issued and revoked by the Ministry of Labour and Social Policy. Co-operation between private agencies and public employment services is governed by specific protocols. It is specified that in the RS) the law bans private agencies from charging job seekers for their services. No information is provided with respect to the BD. The Committee asks that the next report include further information on the operation of private employment agencies in the RS and BD. The Committee asks that the next report also contains information on the number of employment services staff in relation to the number of job seekers, and the respective market shares of public and private services.

As regards indicators of performance of employment services, the data contained in the report with respect to registered job seekers and employed persons in the FBiH concern just one year (2014) and are provided on a monthly basis. This does not allow the identification of the placement rate during the whole reference period. Concerning the RS, data refer exclusively to registered job seekers employed in 2011: 24,963, 2012: 28,368; 2013: 28,860; and 2014: 32,671; according to the report, the latter figure increased by 3,811 persons (or 13.2%) compared to 2013. The report does not provide any data on the number of registered job seekers during the reference period. Concerning the BD, it is stated that the implementation of active employment measures resulted in the following: 165 job seekers were employed in 2011, 519 in 2012, 314 in 2013 and 124 in 2014. No information is provided on the number of registered job seekers during the reference period. The Committee asks that the next report includes information on the placement rate (i.e. placements made by the employment services as a share of notified vacancies) per year during the reference period with respect to the FBiH, RS and BD.

From another source (European Commission – Bosnia and Herzegovina Progress report 2014), the Committee notes the following information: the Entity governments and public employment services lack both administrative and financial capacity to implement active labour market measures. The Committee asks that the next report comments on this observation.

As regards the participation of trade union and employers' organisations in the operation and running of public employment services, the report indicates that two representatives of trade unions and employers are members of the Advisory Committee to the Steering Committee of the FBiH Employment Institute. However, it is pointed out that this committee has not yet been constituted. Concerning the RS, the report states that the employment service steering committee, consists of representatives of the RS Trade Union Alliance and the Employers' Union of the RS. It is indicated that the BD Steering Committee of the Employment Institute consists of representatives of trade union of the District and employers' associations.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 1§3 of the Charter.

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.

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.

The Committee 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).

Equal treatment

In its previous conclusion (Conclusions 2012), the Committee asked whether nationals of the other States Parties lawfully resident or working regularly in Bosnia and Herzegovina enjoy equal treatment regarding all the aspects considered under Article 1§4. The report indicates that:

- in the Federation of Bosnia and Herzegovina (pursuant to Article 6 of the Law on Employment of Foreigners) foreign employees have the same rights, obligations and responsibilities as nationals, in accordance with the relevant legislation, regulations and collective agreements, unless otherwise provided by international agreements;
- in the Republika Srpska, the Constitution guarantees that everyone has the right to education under equal conditions. Foreign nationals and stateless persons are entitled to primary and secondary education in accordance with the conventions and agreements concluded with other countries or international organisations (Law on Primary Education of 2008, as amended, and Law on Secondary Education of 2008, as amended).

The Committee reiterates the question and asks the next report to clarify whether the law provides for equal access of foreign nationals, lawfully resident or working regularly in the country, to vocational guidance and training in all parts of Bosnia and Herzegovina. It holds that if such information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

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. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

Continuing vocational training

The Committee takes note from the report of the relevant provisions in the Labour Law of 2004, as amended, and the "Law on Civil Service in the Institutions of BiH" of 2002, as amended, which concerns continuing vocational training for employees and civil servants as regards Bosnia and Herzegovina at its central level (BiH). It notes that pursuant to Article 50 of the Labour Law, the employee is entitled to compensation for the costs of in-service training and training in the particular job standards, in conformity with the Law on Salaries and Allowances in the Institutions of BiH and delegated legislation. In addition to the Framework Law on Vocational Education and Training of 2008, which provides *inter alia* for opportunities for professional development and training of adults, the Council of Ministers adopted in 2014 the "Standards and Principles of Adult Education of BiH" and "The 2014-2020 Strategic Development Platform of Adult Education in the Context of Lifelong Learning in BiH". These documents constitute the framework for educational authorities that do not have their own laws in the field of adult education / lifelong learning to draft and pass them. The report also refers to other strategic documents in the field of education and training and indicates that secondary vocational schools are still dominant in providing training and retraining. When training is organised directly by a company, the latter also covers the costs of training and the certificates issued can be recognised by the appropriate certification authorities. The Committee takes note from the report of the retraining measures taken to assist the reintegration into civilian life of discharged military personnel. It asks the next report to clarify whether continuing vocational training is available both for employed and unemployed workers and to provide all relevant and updated information as to the number of beneficiaries of such training.

In the Federation of Bosnia and Herzegovina, the rights and duties of employees as regards training and retraining are provided by the Labour Law of 1999, as amended. In 2011, the Federation Employment Institute completed the implementation of the Programme of Training, Additional Training and Retraining initiated in 2010. The program provided funds for the training of 2 194 persons. Other training activities took place in the framework of the Project of Support of Networks for Social Security and Employment (1 474 beneficiaries), of the USAID and SIDA-funded FIRMA project (740 beneficiaries), the Programme of Preparation for Employment through Training, Retraining and Professional Development (1 618 beneficiaries, of which 1 312 were employed upon completion of the training) and other specific training projects described in the report. The report also mentions the implementation in 2014 of a Programme aimed at supporting adults to complete primary school, with a focus on women. In July 2014, the FBiH House of Representatives passed a new Law on the Principles of Adult Education. The rules and regulations for the implementation of this Law should be enacted by the competent cantonal ministries of education by drafting their own laws on adult education or bringing the existing laws in line with its provisions, as well as by the adoption of bylaws: the Cantons of Una-Sana and Zenica-Doboj have already enacted laws on adult education in 2013-2014, while draft laws on adult education have been sent to the parliament for deliberation in Sarajevo Canton, Bosnia-Drina Canton and Tuzla Canton. In most cantons, programmes of training, retraining and professional training are implemented in secondary schools, organised by the employment services or within international projects implemented in cooperation with cantonal ministries of education and the cantonal employment services. The Committee asks the next report to provide information on the progress made in the implementation of programmes and legislation on adult education and continuing training, in particular in the cantons, and to provide updated statistical information on the number of employees and unemployed people involved in continuing training.

The report describes the measures taken in the field of education in the Republika Srpska, including adult education (in accordance with the Law on Adult Education of 2009, as amended). The Committee takes note of the detailed information provided on Adult education in its different forms of organisation: formal (in educational institutions of primary

and secondary education), non-formal (training, specialisation etc.) and informal (self-education, professional development and acquisition of knowledge and skills outside educational institutions and specialised organisations of adult education). It notes the adoption by the Government of an annual Plan of Adult Education, upon recommendation of the Institute of Adult Education, set up in 2010. According to the report, there are 38 providers of training for a total of 60 occupations. The number of students in the training is 1 806, and 2 943 students completed the training. In addition to the regulations in the field of education, also labour and employment regulations provide and guarantee appropriate vocational training, additional training and rehabilitation. In particular, Articles 25-27 of the Labour Law (consolidated text of 2007) provides for additional training, professional education and professional development of employees at the expense of the employer and Article 21 of the Law on Mediation in Employment and Unemployment Rights of 2010, as amended, provides for the right on vocational training and preparation for employment, which means the measures offering persons out of work separate programs to acquire the necessary knowledge to work in certain posts. This measure is provided free of charge by the Employment Institute. The Committee takes note of the information provided and asks the next report to provide updated data on the number of employees and unemployed people involved in continuing training.

In the Brčko District, education, training and development are dealt with in the Labour Law, pursuant to its Article 18. The report refers in particular to non-formal education courses, aimed at training long-term unemployed persons in acquiring new knowledge and skills, notably in IT, bookkeeping and English language. The Committee takes note of the data provided in the report concerning the number of beneficiaries of such training activities during the reference period (97 in 2011, 62 in 2012, 12 in 2013 and 84 in 2014).

Guidance and vocational training for persons with disabilities

With regard to measures related to vocational guidance of persons with disabilities, the Committee refers to its assessment under Article 9 (Conclusions 2016), 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. Accordingly, the Committee considers that the situation is not in conformity with Article 1§4 on the same ground.

As regards vocational training of persons with disabilities:

- Article 46 of the Labour Law of Bosnia and Herzegovina at its central level (BiH), provides for the rehabilitation of an employee who has been victim of a work accident or an occupational disease. Furthermore, the report refers to the provisions concerning vocational education of children with special needs, but does not indicate whether continuing vocational training is also available to employed or unemployed workers with disabilities;
- no information is provided in respect of the Federation of Bosnia and Herzegovina, apart from a mention in the report of the adoption in 2014 of "The 2015 – 2020 Strategic Directions for the Development of Career Orientation in the FBiH" which concerns the provision of (career) monitoring and counselling for vulnerable and at risk groups, including people with disabilities;
- in the Republika Srpska, the Law on Primary Education and the Law on Secondary Education of 2008, as amended, explicitly provide for equal access and prohibit discrimination based, inter alia, on disability. The Committee notes the information provided in the report concerning inclusive education of children and students with special needs. In the field of work, all forms of discrimination are prohibited by the Labour Law, the Law on Mediation in Employment and Unemployment Rights and the Law on Vocational Rehabilitation, Training and Employment of Disabled Persons (consolidated text of 2012). Articles 6-10 of the latter law establish the right to professional rehabilitation of persons with

disabilities, the manner and the procedure of granting that right, which is funded by the Fund for Vocational Rehabilitation or other competent Republic's authorities;

- as regards the Brčko District, the report does not provide any information in respect of vocational training for persons with disabilities.

The Committee asks the next report to indicate whether discrimination on the ground of disability in the field of training is explicitly prohibited in the legislation, whether the labour market offers vocational guidance and training services aimed specifically at persons with disabilities and how many people make use of these services. This information should be provided in respect of the whole country (BiH, FBiH, RS and BD).

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§4 of 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.

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 previously noted (Conclusions 2012) that foreigners and stateless nationals enjoy access to vocational guidance on an equal footing. It asks the next report to clarify whether this concerns the guidance provided both within the education system and in the labour market, and whether this applies to all parts of the country.

Vocational guidance within the education system

As regards Bosnia and Herzegovina at its central level (BiH), the Committee had previously (Conclusions 2012) taken note of the Development Strategy of Vocational Education and Training for the 2007-2013 period. After the expiry of this Strategy, the report indicates that the adoption of a new strategic document was being considered. The Committee asks the next report to clarify what measures, if any, have been taken in the field of career guidance in the education system and whether their scope extend to the whole country or not.

In the Federation of Bosnia and Herzegovina, the Government adopted in December 2014 the "2015 – 2020 Strategic Directions for the Development of Career Orientation in the FBiH". Among the objectives of this document there is the provision of (career) monitoring and counselling for vulnerable and at risk groups, including people with disabilities. The Committee asks the next report to provide updated information on the measures taken to implement these directions. As regards the reference period, the report recalls that the Federation Employment Institute, in cooperation with the cantonal employment services, regularly carries out vocational information activities in primary and secondary schools in order to inform and prepare schoolchildren about the choice of their further education and profession. In 2014, such activities involved 288 primary schools with 10,984 students and 151 secondary schools with 10,192 students. In the Zenica-Doboj Canton, the professional information included 9,596 students. In some cantons, professional information was organised at universities. The Committee takes note of the data provided in the report and asks the next report to clarify the situation of Posavina canton and why no activity was carried out in West Herzegovina Canton. According to the report, during the reference period the public employment services did not carry out specific activities in respect of people with disabilities, but they had access to the regular programs and measures.

In the Republika Srpska, according to the report, guidelines have been prepared to enhance vocational guidance of students, in cooperation with the employers, aimed at helping student to better know the professions for which there is a shortage of supply. To this effect, a "Guide to Occupation" has been prepared as a reference for secondary schools' students in career orientation; since 2011, a "Shortage Occupations Fair" is organised in order to help students of the ninth grade of primary school in choosing an occupation in line with the market needs; vocational guidance open door days have been organised for students in primary and secondary schools. The Employment Institute, in cooperation with the Ministry of Education and Culture, also defined an enrolment policy and set up an Enrolment Policy-Making Commission for Students of the 1st grade of Secondary School, appointed for a period of four years, which includes representatives of relevant social partners. The activities, which were carried out within the Centres for Information, Counselling and Training (CISO), are primarily focused on career information of students in primary and secondary schools as well as university students. Career information and counselling in school year 2013/2014 covered about 4,200 students in 192 classes; in 2012/2013 it covered 2,448 students from 104 classes in primary and secondary schools. As regards people with disabilities, the report refers to the setting up in 2011-2012 of the Centre for Vocational

Rehabilitation and Employment of Disabled Holding Company of Banja Luka. The Committee asks the next report to clarify whether career guidance activities are available to people with disabilities and to provide any relevant information in this respect.

As regards the Brčko District, the report indicates that vocational guidance and counselling on career choice was strengthened through contacts between the Employment Institute and educational institutions. The guidance activities proposed aim at informing graduates from eight-year primary school and secondary school about the situation on the labour market, thus helping them to choose occupations in demand. Information related to career guidance was provided in four secondary schools and 540 students of final grade of Grammar School, Technical School, the School of Economics and Agricultural / Medical School. Presentations on vocational guidance were also held for a total of 626 students of final grade in 10 primary schools. The report does not provide any information as regards vocational guidance available to people with disabilities in the education system.

The Committee recalls that Article 9 imposes on States Parties to set up and operate free of charge vocational guidance services to help all persons, including persons with disabilities, in relation to their occupational choice and career progression, with due regard to the individual's characteristics and their relation to occupational opportunity. Vocational guidance must be provided within the school system (information on training and access to training) and within the labour market (information on vocational training and retraining, career planning, etc.):

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

While taking note that vocational guidance activities are organised in educational institutions in most of the country, and taking note of the data provided on the number of students attending such activities, it asks the next report to provide, in addition to updated data on the number of pupils and students involved, also information on the number and qualifications of the staff in charge of vocational guidance in schools and the expenditure for these activities. It furthermore asks the next report to provide any information, including relevant statistical data where available, showing that persons with disabilities are guaranteed free access to vocational guidance in the education system. It points out that the information requested should focus on guidance activities, not training, and should cover each part of the country. 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.) are also needed. In the meantime, the Committee considers that it has not been established that the right to vocational guidance within the education system is guaranteed.

Vocational guidance in the labour market

In its previous conclusions (Conclusions 2012), the Committee had noted that the Employment Institutes which exist at state, entity and canton levels are responsible, *inter alia*, for implementing programmes of vocational/professional guidance which are free of charge. They prepare relevant indicators of labour market trends, such as the most frequent occupations, identify needs and the possibility of matching the needs, etc., in cooperation with the educational system. In addition to guiding and informing people when choosing future occupations, the Employment Institutes also provide assistance to persons who want to change their profession, offering re-training or additional training.

At central state level (BiH), the Committee takes note of the services deployed in order to assist former military personnel in their reintegration into civilian life and notes that 2,634 discharged military personnel benefited from such services. The Committee asks the next

report to clarify if the measures taken include career guidance and, if so, to provide any relevant information.

In the Federation of Bosnia and Herzegovina, as noted above, the "2015-2020 Strategic Directions of Career Orientation Development of the Federation", adopted in December 2014, aim at establishing guidelines for actions to improve and develop the activities of career guidance into an inter-connected and efficient system with a view to providing adequate support to each individual to successfully make decisions about the choice of a profession and career development. During the reference period, in the framework of projects funded by international institutions, 10 Information, Counselling and Training Centres (ICTC/CISO) were set up, as well as 13 job clubs to assist young job seekers. The goal of CISOs and job clubs is to provide information, individual counselling and training for active job-seekers up to 30 years old and in special cases up to 35 years old in order to build competencies for employment. In 2014, the CISOs and job clubs employed 21 counsellors (they were 10 in 2011). The number of organisational units of public employment services in charge of information, counselling and training to anybody remained on the other hand stable (78 employees) during the reference period. In this respect, the report acknowledges that the current staff resources of cantonal employment services are insufficient to meet the needs of the unemployed in terms of career orientation. The Committee asks what measures are being taken to improve this situation and what is the budget allocated for guidance activities. The Committee takes note of the figures provided in the report concerning the number of people who participated to different activities organised by CISOs, job clubs and municipal employment offices. In particular, 8762 persons attended sessions of information about active job searching and counselling in municipal employment offices and 731 people used individual counselling and drafting of individual employment plan. The report does not provide any information as regards vocational guidance available to people with disabilities in the labour market.

In the Republika Srpska, the report indicates that, in the framework of the Enrolment policy, professional assistance was not only given to pupils and students, but also to other people needing advice in their education or employment choices. These activities were carried out within the CISOs. The report does not provide any information concerning the number of people assisted, the number and qualifications of vocational counsellors and the expenditure and geographical distribution of services. As regards persons with disabilities, the report refers to the Employment Strategy, which identifies persons with disabilities as a target category, but it is not clear whether and to what extent these persons have access to vocational guidance in the labour market.

As regards the Brčko District, the provision of information about employment conditions and opportunities, and vocational guidance and counselling in choosing an occupation are regulated by the Law on Employment, which defines vocational guidance and counselling on career choices as "... advising and informing in order to assist the unemployed in the choice of profession and employment, as well as providing support to young people, unemployed people and employees, individually or in groups, in education, training and vocational rehabilitation, while choosing or changing of occupation or business." During the reference period, these tasks were performed by the Employment Institute. The report mentions that a CISO Centre (Centre for Information, Counselling and Training) started operating between 2011 and 2012. The report does not provide any information concerning the number of people assisted, the number and qualifications of vocational counsellors, the expenditure and the access of persons with disabilities to vocational guidance in the labour market.

The Committee refers to the criteria for assessing conformity with Article 9 of the Charter already mentioned above, and asks 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.) are also needed. In the meantime, the Committee considers that it has not been established that the right to vocational guidance in the labour market is guaranteed.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 9 of 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.

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.

Equal rights

The Committee recalls that it examined measures relating to maternity protection under Article 8 of the Charter (Conclusions 2015).

The Committee noted previously that the Gender Equality Law of Bosnia Herzegovina provides for gender equality and equal opportunities, *inter alia*, in the field of employment. It provides for a definition of direct and indirect discrimination covers all areas of employment including recruitment. It also covers harassment, mobbing, instructions to discriminate. Persons who believe that they have been the victim of gender discrimination may use the procedures set out in the Law on the Prohibition of Discrimination to enforce their rights (Conclusions 2012). The Committee recalls that the law provides for a shift in the burden of proof.

The report indicates that Article 13 of the Gender Equality Law of BiH provides that prohibited discrimination on the grounds of gender at work and in employment is defined as failure to pay equal wages and other benefits for the same work or work of equal value. The report adds that there is no information indicating that women do not receive equal pay for equal work or work of equal value.

The Committee asked previously whether there are limits to the amount of compensation that may be awarded to victims of discrimination (Conclusions 2012). The report indicates that the Law on Gender Equality of BiH and the Law on Prohibition of Discrimination provides for the right of victims of gender-based discrimination to compensation. A claim may be filed by victims of discrimination in special proceedings for protection from discrimination that is conducted in accordance with the Law on Prohibition of Discrimination. There are no restrictions on the amount of compensation granted to victims, but the court determines in each case the amount of pecuniary and non-pecuniary damage. The Committee asks for further information on the number of gender discrimination cases brought before the courts, with specific indications on their outcome, sanctions applied on employers and compensation granted to victims.

The Committee previously asked what the powers of the Gender Equality Agency and Gender Centres were when investigating a complaint and what remedies they may order (Conclusions 2012). The report indicates that the Gender Equality Agency of BiH, the Gender Centre of FBiH and the Gender Centre of RS monitor and examine violations of the Gender Equality Law committed through an act, action or inaction of authorities or legal persons and take action to eliminate them in accordance with this Law and the Unified Rules for Consideration of Requests of Citizens for Examination of Violations of the Gender Equality Law of BiH (hereinafter: the Unified Rules). The Unified Rules define the procedure of receiving and processing applications for examination of violations. The Gender Agency or the Gender Centres advise clients on the legal remedies available in the legal system of BiH for protection against gender-based discrimination. In the examination of a submission, the Gender Agency or the Gender Centres send oral or written requests to collect all relevant information necessary for making recommendations to the competent authority. The relevant authorities and state institutions, employers and other legal and natural persons are obliged to provide all necessary information and access to the documentation requested by the Gender Agency, the Gender Centre of FBiH and the RS Gender Centre forthwith and not later than within 15 days. If following the examination it is established that the amendment to certain laws, policies or practices is needed/required, the Gender Agency will make a recommendation to the competent authority in order to rectify the situation.

The report indicates that in 2014 the Agency for Gender Equality received three requests for the initiation of an investigation into violations of the rights guaranteed by the Gender Equality Law. The requests were sent to the entity gender centres because they had jurisdiction over them. The Committee asks information on the outcome of such investigations. The report further indicates that according to the Report on the activities carried out by the Ombudsman, in 2014 there were no gender equality-related recommendations, but the Ombudsman issued 21 labour-related recommendations.

The Committee previously noted that women are prohibited from working in underground mining in FBiH, as well as in Republika Srpska and District of Brčko, and it concluded that such a prohibition is not in conformity with Article 20 of the Charter (Conclusions 2012). The Committee asked whether there were any other occupations which were prohibited for women. The report indicates that there are no other occupations banned for women with the exception of the prohibition from working in mines. The Committee notes from the report that there have been no changes to the situation, and therefore it maintains its conclusion of non-conformity on this point.

With regard to equal pay, the Committee previously asked for further information on the legal guarantees for equal pay for work of equal value. It asked in this context whether it was possible for pay comparisons to be made across enterprises (Conclusions 2012).

The report indicates that in FBiH the individual salary payments are not public and therefore comparisons of pay are not possible. The way of determining the salary in branch collective agreements that is applicable to certain jobs prevents different pay for equal work.

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"). The Committee refers to its Conclusions 2014 on Article 4§3 where it examined the legislation on equal pay in each entity separately (Conclusions 2014, Bosnia and Herzegovina, Article 4§3).

The Committee recalls that equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies. It notes that at the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate (Conclusions 2012, Statement of Interpretation on Article 20).

The Committee recalls that in equal pay litigation cases the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source. For example, the Committee has considered that the situation complied with this principle when in equal pay cases comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source (Conclusions 2012, Netherlands, Article 20) or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit (Conclusions 2014, France, Article 4§3).

In the light of the above mentioned, the Committee reiterates its question whether in Bosnia and Herzegovina in equal pay litigation cases it is possible to make comparisons of pay outside the company directly concerned.

Equal opportunities

According to the report, the unemployment rate in BiH stood at 27.5% in 2014 (men: 25.2% and women: 31.2%). According to the Agency for Statistics, the male employment rate remained at a low level (2011; 41.3% – 2014; 41.2%) and the female employment rate at a very low level (2011; 23.0% – 2014; 22.7%). The rates of employment were significantly higher for men than for women.

The report provides data on the structure of employed persons by sector of activity in BiH which show that the largest share of persons were employed in the service sector 52.9% (including 46.5% of women), followed by the industrial sector 30% (including 19.7% of women) and in the agricultural sector 17.1% (including 38.1% of women) in 2014. The highest net salaries were recorded for employees in senior management positions, but the representation of women in these positions is extremely small, i.e. they are rarely appointed to these positions.

The report does not provide information on the gender pay gap. The Committee requests that the next report provide information on the unadjusted pay gap, that is, the difference between the average salary of men and women in all occupations.

The report further provides information on the strategies and measures/projects designed to promote gender equality in BiH, in the Entities and the District of Brcko.

The Committee notes from a Direct Request of ILO-CEACR that a five-year financial programme for the implementation of the BiH Gender Action Plan (2009-2014) has been set up, as a result of cooperation between the Agency for Gender Equality, the Ministry of Human Rights and Refugees, the Gender Centres of the FBiH and the RS and non-governmental organisations, and that the financial mechanism has been supported by a range of donors.

The District of Brcko adopted the 2015-2016 Action Plan to improve the status of women and promote gender equality (outside the reference period). The Committee asks what are the concrete measures taken and the impact of such measures on promoting gender equality and reducing the gender pay gap.

In 2013, the RS Government adopted the 2010-2012 Report on the progress in the application of normative and legal standards for gender equality in the field of labour and employment. Recommendations for the advancement of women's position in the labour market were made with an intention to get relevant actors in the field of employment and labour relations familiar with the obligations and opportunities for active participation in the empowerment, protection and support of women in the labour market in RS. The Committee notes from the data provided in the report that women register a higher unemployment rate than men (women: 29.7%; men: 24.9%). The employment rate among women is very low (34.7%) as compared with the male population (52.0%) as well as with the EU average (employment rate is 57.1%).

Several institutional mechanisms for promoting gender equality have been adopted; the state level Agency for Gender Equality, Entity Gender Centres, Commissions for Gender equality in the Parliament of BiH and Entity Assemblies, which have inter alia developed resources in order to make women aware of their rights, and providing legal assistance to those who believe they have been discriminated against.

However, the Committee notes from the European Commission's Report 2015 that "*Legal provisions providing equality between women and men are broadly in place but are not being implemented in an effective manner. Cooperation between the State Agency and*

Entity Centres for Gender Equality remained good. Implementation of gender policies in Bosnia and Herzegovina is hampered by the fragmentation of powers and the multiple institutional bodies, as well as by limited budgetary resources. To date, financing is not in place to continue running the 2009-2014 Financial Mechanism for Implementation of the Gender action plan of Bosnia and Herzegovina” (Commission staff working document Bosnia and Herzegovina 2015 Progress Report SWD(2015) 214 final).

The Committee takes also note of the concerns expressed by CEDAW in its Concluding Observations 2013 on Bosnia and Herzegovina in relation to the markedly low participation rate of women in the labour force, in spite of their high level of education, as reflected by the disproportionately high unemployment rate among women; the concentration of women in such sectors as health care, education and agriculture, in the informal sector and in the “grey economy”, and the large number of women employed with temporary contracts; and the exclusion from the formal labour market of disadvantaged groups of women, such as internally displaced women, rural women and Roma women; the lack of an institutional framework to enforce the prohibition of gender-based discrimination and sexual harassment at work and the lack of measures to facilitate the reporting of such acts and to inform women of their rights; the lack of childcare facilities, which constitutes an obstacle to the full exercise of women’s right to work (Concluding observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina, 30 July 2013, CEDAW/C/BIH/CO/4-5).

The Committee recalls that under Article 20, the States Parties are required to take specific steps aimed at removing *de facto* inequalities affecting women’s training and employment opportunities. Appropriate measures include:

- adopting and implementing national equal opportunities action plans;
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.

Action taken must be based on a comprehensive strategy for incorporating the gender perspective into all labour market policies. The Committee asks the next report to provide information on any such measures and strategies adopted to promote gender equality in employment and to reduce the gender pay gap.

The Committee notes that there are big gender-gaps in the numbers of women and men in employment and economically active. More men are employed both in salaried employment and self-employment; fewer men are unemployed; and more men are able to find and retain a job. It further notes that the legal and institutional frameworks which guide employment practices in BiH are largely in place; however the legislation is not effectively implemented in practice.

Therefore, from all the information at its disposal, the Committee considers that the situation is not in conformity with Article 20 on the ground that the right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice.

Conclusion

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

- women are not permitted to work in all professions which constitutes discrimination based on sex;
- the right to equal opportunities in employment without discrimination on grounds of sex is not guaranteed in practice.