March 2018

European Social Charter

European Committee of Social Rights

Conclusions 2018

BOSNIA AND HERZEGOVINA

This text may be subject to editorial revision.

The following chapter concerns Bosnia and Herzegovina which ratified the Charter on 7 October 2008. The deadline for submitting the 8th report was 31 October 2017 and Bosnia-Herzegovina submitted it on 11 December 2017.

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 "Labour Rights":

- right to just conditions of work (Article 2),
- right to a fair remuneration (Article 4),
- right to organise (Article 5),
- right to bargain collectively (Article 6),
- right to information and consultation (Article 21),
- right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- right to dignity at work (Article 26),
- right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- right to information and consultation in collective redundancy procedures (Article 29).

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Articles 4§1, 4§2, 4§4 4§5, 26 and 29.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Bosnia and Herzegovina concern 16 situations and are as follows:

– 0 conclusions of conformity.

– 10 conclusions of non-conformity: Articles 2§2, 2§3, 2§4, 2§6, 2§7, 6§1, 6§4, 21, 22 et 28.

In respect of the 6 other situations related to Articles 2§1, 2§5, 4§3, 5, 6§2 and 6§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments :

Article 2§3

Federation of Bosnia and Herzegovina – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days [of annual holiday with pay], which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. Employees may not waive their right to annual leave, or be denied that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code).

In the **Republika Srpska**, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days.

* * *

The next report will deal with the following provisions of the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),

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

The deadline for submitting that report was 31 October 2018.

* * *

Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was in conformity with the Charter and asked certain questions.

Regarding Bosnia and Herzegovina, the report states, in answer to the Committee's question about whether the flexible working time arrangements laid down any limits, that the Labour Code does not prescribe any maximum weekly working hours. However, the Committee has previously noted (Conclusions 2014) that Articles 21 and 22 of the Labour Law regulating the establishment of flexible working time arrangements allow longer working hours for certain weeks and shorter working hours for others, on condition that the average working hours shall not exceed 40 hours a week.

The Committee also asked about the length of the reference period for averaging working hours. Since there is no answer to this in the report, it repeats the question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 2§1 of the Charter.

According to the report, the Labour Code of the Federation of Bosnia and Herzegovina came into force on 14 April 2016. It still includes a provision under which employment contracts may be concluded for full-time or part-time work. Article 36 defines full-time as working 40 hours per week. Full-time employment may be divided into five or six working days, depending on the relevant collective agreement and internal company regulations. Overtime is authorised for up to eight hours per week (compared with ten under the previous Labour Code). Provision is made for reducing the number of hours worked to take account of the harmful effects of working conditions on employees' health; the duration is fixed in the occupational health and safety regulations in compliance with the Occupational health and safety law.

The report also states that in the Federation of Bosnia and Herzegovina penal provisions have also been amended. A fine must be imposed on an employer – a legal person (from BAM 1,000 (511 €) to 3,000 (1,533 €)), and in the event of a repeat offense (from 5,000 (2,555 €) to 10,000 BAM (5 110 €)), on a head of a legal entity or an employer – a natural person (from 2,000 (1,022 €) to 5,000 BAM) that are in breach of the provisions on reasonable working hours. The Committee asks that the next report indicate the actual number of offenses found and penalties imposed in this respect.

According to the report, the new Labour Code No. 1/16, which came into force during the reference period, has been enacted in the Republika Srpska. Article 57 of the Code sets working time for full-time employees at 40 hours per week. The working day is eight hours. Article 59 authorises part-time work (reduced working hours) for employees in posts in which, regardless of compliance with health and safety regulations, it is not possible to protect them against harmful effects. In such cases, the hours worked must be reduced in proportion to the harmful effects of the working conditions, though not by more than ten hours per week. The hours worked are then considered to equate with full-time work.

With regard to penalties, the report states that, under the new Labour Code, employers will be fined for requiring employees to work more hours than provided for in law or for failing to keep records of employees' attendance in the workplace. No particular measures (such as programmes or action plans) have been introduced to ensure that the legislation is implemented. Under Article 263, the labour inspectorate monitors the regulations governing working time. The Committee asks for information in the next report on the actual number of offences recorded and the penalties imposed in response. It has not found any information in

the report on the absolute maximum number of permitted daily and weekly hours of work and repeats the question.

According to the report, Article 22 of the amended Labour Code sets working time in the District of Brčko at 40 hours per week. Under Article 25(3) of the Code, employees can work up to ten hours of overtime per week and up to 300 hours per calendar year at their employer's request, subject to the written agreement of the employee concerned. The Committee notes that the Civil Service Act was amended during the reference period. Section 68§1 provides that in cases of *force majeure*, a sudden increase in the workload or other exceptional circumstances, public officials may be asked to work up to 12 hours per day or 54 hours per week. Section 68§4 authorises the heads of administrative bodies responsible for protection and rescue activities to require public officials and other employees to work beyond the specified working hours, for an unlimited period, to protect and rescue persons and property.

In its previous conclusion (Conclusions 2014), the Committee asked what rules applied to on-call service and whether inactive periods of on-call duty were considered as rest periods or not. The report states that in the Federation of Bosnia and Herzegovina, Article 35 of the Labour Code defines working hours as the period of time when employees, based on their employment contacts, are required to perform tasks for their employers. The Committee notes from the report that periods when employees are on standby to report for duty, if needed, are not considered to be working hours. The length of such periods and the compensation payable are governed by collective agreements, internal company regulations or the relevant contract of employment. The Committee asks for more detailed information on this subject. The report provides no information on the situation in the Republika Srpska and the District of Brčko. The Committee repeats its request. In the meantime, it reserves its position on this point. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 2§1 of the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The Committee deferred its previous conclusion (Conclusions 2014) and asked a number of questions. It will therefore only consider recent changes and relevant additional information, while bearing in mind that there are questions that relate to each individual entity and others that are common to all of them.

According to the report, employees are entitled to paid public holidays. Those who are required to work on such holidays are entitled to payment of their basic wage, in proportion to the number of hours worked, increased by 35% (Decision of the Council of Ministers, VM 234/08 of 29 December 2008; Section 36 of the Salaries and Benefits in the Institutions of Bosnia and Herzegovina Act). The Committee considers that work performed on a public holiday imposes a constraint on the part of the employee, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to their paid public holiday, those working on that holiday must be paid at least double the usual wage. The compensation may also be provided as time-off, in which case it should be at least double the days worked. The Committee considers that payment equivalent to 135% of the normal wage or salary does not constitute adequate compensation for work carried out on public holidays. It therefore concludes that the situation is not in conformity with Article 2§2 of the Charter.

Since **Bosnia and Herzegovina** has still not passed legislation regulating public holidays at national level, employees exercise their rights in this area under the laws in force in, respectively, the Federation of Bosnia and Herzegovina, the Republika Srpska and the District of Brčko.

In the **Federation of Bosnia and Herzegovina**, public holidays are defined and regulated by several different laws. Article 76 of the Labour Code entitles employees to increased pay for, *inter alia,* working on public holidays, in accordance with the relevant collective agreement. The report indicates that the collective agreement amending the collective agreements for employees of administrative bodies and judicial authorities (OG Nos. 97/13 and 89/16), which came into force in the reference period, provides for the basic wage of employees required to work on public holidays to be increased by at least 40% of the net hourly rate. The general collective agreement (OG Nos. 48/16 and 62/16) also provides for the basic wage of employees required by the needs of their employer to work on public holidays to be increased by at least 40% of the net hourly rate. Employers who fail to comply with this provision are liable to fines ranging from BAM 1 000 to 3 000 (€ 511 to 1 533). The Committee notes that the right to paid public holidays applies to all employees, in both the private and public sectors.

In the light of the foregoing, the Committee considers that a compensation amounting to the basic salary plus 40% does not constitute an adequate recompense for work carried out on public holidays. It therefore concludes that the situation in the Federation of Bosnia and Herzegovina is not in conformity with Article 2§2 of the Charter.

The Committee also asked whether the law in the Federation of Bosnia and Herzegovina provided for restrictive criteria defining the circumstances under which work on public holidays may be allowed and how the authorities controled the implementation of such criteria. In the absence of a reply, it repeats its question.

The Committee notes that the new Labour Code No. 1/16 has been enacted in the **Republika Srpska** and came into force on 20 January 2016. In answer to the Committee's question, the report states that under Article 131 of the Public Holidays Act, such holidays are paid at a rate of at least 100% of average earnings. The Committee understands that this compensation corresponds to the salary paid to all workers, even when they do not work

on public holidays. It also notes from the report that the general collective agreement, Article 28 of which provided for work on public holidays to be remunerated at at least 150% of the basic rate of pay, was revoked on 30 June 2016, and that the new agreement has not yet been concluded. However, on 30 June 2016, the government adopted a decision setting out the means of determining the increase in salaries, the amount of income based on work performed and the amount of assistance to employees (Official Gazette No. 53/16). The decision means that basic pay is increased by at least 40% for public holidays worked. The report states that branch collective agreements and internal company rules may provide for higher rates.

The Committee also asked whether work was, in principle, prohibited on public holidays, what exceptions, if any, were set by the law and how the authorities contoled the respect of the relevant provisions. The report does not reply to these questions so the Committee repeats them.

The report also states that the Republika Srpska imposes fines on employers that refuse to pay compensation or pay it at a lower level than that provided for in legislation, the general collective agreement, or the relevant internal company rules or employment contract.

In the light of the foregoing, the Committee considers that a compensation amounting to the basic salary plus 40-50% does not constitute an adequate recompense for work carried out on public holidays. It therefore concludes that the situation in the Republika Srpska is not in conformity with Article 2§2 of the Charter.

The report provides no new information about the situation in the **District of Brčko**. In its previous conclusion, the Committee noted that public officials and police officers were entitled to a 35% bonus for working on public holidays. There is no information in the report on the situation in the private sector. The Committee repeats its previous requests. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the District of Brčko is in conformity with Article 2§2 of the Charter. In the meantime, it reserves its position on this point.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation was not in conformity with the Charter because the minimum period of paid annual leave was less than four weeks or 20 working days.

In the case of annual paid leave in Bosnia and Herzegovina, the Committee reserved its position. The report provides no new information, so the Committee refers to its last conclusion (Conclusions 2014) for its description of the relevant legislation. It notes that the minimum period of annual paid leave is 18 days. The Committee finds that the situation in Bosnia and Herzegovina is still not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave is less than four weeks or 20 working days.

In its previous conclusion, the Committee asked whether the law was consistent with the Charter, in particular whether, workers who suffered from ilness or injury during their annual leave were entitled to take the days lost at another time. In the absence of any reply in the report, the Committee repeats its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in **Bosnia and Herzegovina** is in conformity with Article 2§3 of the Charter.

Federation of Bosnia and Herzegovina – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days, which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. According to the report, persons employed for the first time or who have had an interruption of employment of more than 15 days are entitled to annual leave after six months of uninterrupted work. Employees may not waive their right to annual leave, or be denied that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code). The Committee notes from the report that entitlement to annual leave is no longer covered by the new collective agreement, but is included in branch agreements and the internal rules of individual undertakings. Employers that fail to respect the right to annual leave are liable to fines ranging from BAM 1 000 (€ 511) to 10 000. The Committee asks whether the law provides for at least two weeks uninterrupted annual holidays to be taken during the year the holidays were due; under what circumstances and within what deadlines annual holidays can be postponed; whether workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time.

The report provides no new information on the legislation governing the conditions of police officers, which provides for a minimum of eighteen days of leave. The Committee therefore finds that this situation is not in conformity with Article 2§3 of the Charter.

In its previous conclusion, the Committee also asked whether employees who suffered from illness or injury during their annual leave were entitled to take the days lost at another time. Since there is no information in the report on this subject, the Committee repeats its question. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the **Federation of Bosnia and Herzegovina** is in conformity with Article 2§3 of the Charter.

In the **Republika Srpska**, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days. Annual leave is also governed by collective agreements. Under Article 15 of the general collective agreement, the 20 working days of annual leave specified in the

Labour Code was increased by one day for every three years of service. Following the revocation of the agreement, this matter has been the subject of branch collective agreements and internal company rules. Employers that fail to respect the right to annual leave are liable to fines ranging from BAM 200 to 10 000.

In the absence of answers to these questions, the Committee again asks for the following information in the next report:

- whether the law guarantees that employees cannot waive their right to annual leave or replace it by financial compensation;
- whether the law provides for at least two weeks' uninterrupted annual holidays to be taken during the year the holidays were due;
- under what circumstances and within what deadlines annual holidays can be postponed;
- whether employees who suffer from illness or injury during their annual leave are entitled to take the days lost at another time.

  It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the **Republika Srpska** is in conformity with Article 2§3 of the Charter.

In the **District of Brčko**, under Article 32 of the Labour Code, employees are entitled to a minimum of 18 days of paid annual leave. Employed minors are entitled to 24 working days and employees whose working conditions pose a threat to their health to at least 30 working days of leave. In addition, employers who fail to respect the right to annual leave are liable to fines ranging from BAM 1 000 to 7 000. According to the report, the minimum period of paid annual leave for police officers ranges from 18 to 30 working days. It also states that sections 71–76 of the Civil Service Act entitle civil servants and other public service employees to at least 20 days' annual leave (may be increased).

The Committee finds that this situation is still not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave is less than four weeks or 20 working days in the case of certain categories of employees in the District of Brčko.

In the absence of answers to these questions in the report, the Committee again asks for the following information in the next report:

- whether the law guarantees that employees cannot waive their right to annual leave or replace it by financial compensation;
- whether the law provides for at least two weeks' uninterrupted annual holidays to be taken during the year the holidays were due;
- under what circumstances and within what deadlines annual holidays can be postponed;
- whether employees who suffer from illness or injury during their annual leave are entitled to take the days lost at another time.

  It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the **District of Brčko** is in conformity with Article 2§3 of the Charter.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave is less than four weeks or 20 working days.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee recalls that Bosnia and Herzegovina consists of two entities, the Republic Srpska and the Federation of Bosnia and Herzegovina, along with Brčko District. The authority over occupational safety and health resides at the level of each of these three units and each of them has its own occupational safety and health regulations.

Elimination or reduction of risks

In its previous conclusion (Conclusions 2014), the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 2§4 of the Charter on the ground that there was no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations. It asked for comprehensive and up-to-date information on risk elimination and reduction. In the absence of this information in the report, it repeats these questions and its finding of non-conformity in this respect.

Measures in response to residual risks

In its previous conclusion (Conclusions 2014), the Committee reserved its position on this point and asked, with reference to the relevant legislation, what the activities and risks concerned were and, in particular, whether the sectors and occupations that were taken into account included those that were manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding, and occupations exposing employees to ionising radiation, extreme temperatures and noise. The Committee notes that the report does not contain information about the regulations on dangerous and unhealthy work. It repeats its request and reserves its position on this point. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in **Bosnia and Herzegovina** is in conformity with Article 2§4 of the Charter.

According to the report, the 1990 Safety at Work Act in the **Federation of Bosnia and Herzegovina** is still in force. The Committee notes that the Labour Code came into force on 14 April 2016 and contains provisions similar to those of the previous legislation on reducing working hours. In particular, under Article 37, it is obligatory to reduce the working hours of employees in posts where it is not possible to protect them against harmful effects (regardless of compliance with health and safety regulations). The posts concerned and hours worked are determined in accordance with the safety regulations and the safety at work legislation. The reduced hours of work are considered to constitute full-time work.

According to the report, the new Labour Code has also been enacted in the **Republika Srpska** and came into force on 20 January 2016. Article 59 authorises part-time work (reduced working hours) for employees in posts in which, regardless of compliance with health and safety regulations, it is not possible to protect them against harmful effects. In such cases, the hours worked must be reduced in proportion to the harmful effects of the working conditions, though not by more than ten hours per week. The hours worked are then considered to equate with full-time work.

The Committee notes that in the **District of Brčko** a new Occupational Health and Safety Act came into force on 10 August 2013. It deals with measures to protect employees' health and safety, preventive measures and other occupational health and safety issues. The report provides no information on its practical application.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§4 of the Charter on the ground that there is no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina, but highlights the significant gaps in information provided in relation to the specific requirements of Article 2§5 of the Charter.

The Committee deferred its previous conclusion and asked, in connection with all the entities, whether the law ensured that the weekly rest period could not be deferred for more than 12 consecutive working days, and whether it guaranteed that workers could not waive their right to weekly rest or have it replaced by financial compensation. There is no information in the report on these points. The Committee repeats its requests.

The Committee notes from the report that the Labour Code of the **Federation of Bosnia and Herzegovina** came into force on 14 April 2016. Article 46 entitles employees to a weekly uninterrupted rest period of at least 24 hours. Employees who are required to work on their weekly rest day must be offered an alternative day of rest within a maximum period of two weeks. According to the report, this applies to situations of *force majeure* or sudden increases in the workload where the employer is unable to take alternative measures. Employers that fail to respect the right to a weekly rest period are liable to fines ranging from BAM 1 000 to 10 000.

According to the report, in the **Republika Srpska**, Article 78 of the new Labour Code, which came into force on 20 January 2016, entitles employees to a weekly uninterrupted 24-hour rest period, as well as a daily rest period of at least eight hours between two consecutive working days. Employers must offer employees who are required to work on their weekly rest day an alternative day of rest. Employers that fail to respect the right to a weekly rest period are liable to fines ranging from BAM 200 to 12 000.

According to the report, in the **District of Brčko**, Article 31 of the amended Labour Code provides for a weekly rest period. There is still no information in the report on the length of this rest period, so the Committee repeats its question. It notes that the Civil Service Act was amended during the reference period. Under Article 70, employees are entitled to a weekly uninterrupted rest period of at least 24 hours. Employers must offer employees who are required to work on their weekly rest day an alternative day of rest. The Committee asks for information on the length of this rest period, under the relevant provisions.

According to the report, the labour inspectorate identified five violations of the right to a weekly rest period during the reference period.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in **Bosnia and Herzegovina** is in conformity with Article 2§5 of the Charter.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

In its previous conclusion (Conclusions 2014), the Committee asked whether, in **Bosnia and Herzegovina**, all the elements of information required by Article 2§6 of the Charter were provided in writing to workers when starting employment.

In its previous conclusion, the Committee found that the situation in the **Federation of Bosnia and Herzegovina** was in conformity with Article 2§6. Since the situation in the Federation remained unchanged during the reference period, the Committee confirms its finding of conformity.

The Committee also asked whether, in the **Republika Srpska**, all the items of information required by Article 2§6 of the Charter were communicated to employees in writing at the start of their employment. According to the report, the Labour Code does not require employers to inform employees in writing of **the** key aspects of the employment relationship or **of** the employment contract. The Committee finds that the situation in the Republika Srpska is not in conformity with Article 2§6 of the Charter.

The report provides no new information concerning the **District of Brčko**. The Committee therefore repeats its request. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the District of Brčko is in conformity with Article 2§6 of the Charter.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§6 of the Charter on the ground that the Labour Code of the Republika Srpska does not require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract.

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

In its previous conclusion (Conclusions 2014), the Committee found that the situation in **Bosnia and Herzegovina** was not in conformity with Article 2§7 of the Charter on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work.

It noted previously that Article 22§4 of the Labour Code that applied to the institutions of **Bosnia and Herzegovina** defined night work as work performed in the period between 10 p.m. and 6 a.m. the following morning, and asked who were to be considered to be night workers and how the obligations arising from Article 2§7 of the Charter were complied with. In the absence of a reply in the report, the Committee repeats its questions.

The Committee notes that Article 40 of the new Labour Code of the **Federation of Bosnia and Herzegovina**, which came into force on 14 April 2016, defines night work as work carried out between 10 p.m. and 6 a.m. the following morning (or between 10 p.m. and 5 a.m. in the agricultural sector). The Committee asks if all employees working at night are considered as night workers. The Committee notes that employers must organise regular medical check-ups for night workers at least once every two years. The Committee considers that the situation is not in conformity with Article 2§7 of the Charter on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work.

If a medical examination shows that an employee undertaking night work risks some form of disability, he or she is entitled to be reassigned to appropriate alternative duties. The Committee notes that certain categories of employee are not authorised to work night shifts. However, it also notes from the report the provisions of the new Labour Code authorising exemption from the ban on young persons working at night in the event of accidents or disasters, or to protect the interests of the Federation, subject to the prior approval of the competent district authorities.

The Committee again asks under what circumstances, other than health problems, employers are required to consider and study the possibilities of a transfer to day work.

According to the report, the provisions on night work in the new Labour Code of the **Republika Srpska**, which came into force on 20 January 2016, are the same as those of the previous Code. The report does not reply to the Committee's requests for information, so it repeats them. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the Republika Srpska is in conformity with Article 2§7 of the Charter.

In addition to information previously provided, the Committee notes from the report that in the **District of Brčko**, the occupational health and safety legislation passed in 2013 requires employers to carry out a risk assessment for each job, based on which a doctor will then specify the initial and periodic medical examinations that the employees concerned must undergo. Employers who, following a risk assessment and the subsequent assessment of the authorised health care institution, fail to provide their employees with medical examinations are liable to fines ranging from BAM 1 000 to 7 000. The report does not answer the Committee's questions, which it repeats. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in the District of Brčko is in conformity with Article 2§7 of the Charter.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§7 of the Charter on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work.

Article 4 - Right to a fair remuneration

Paragraph 3 - Non-discrimination between women and men with respect to remuneration

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

Legal basis of equal pay, guarantees of enforcement and judicial safeguards BiH

- **BiH**

According to the report, Article 6 of the Labour Law of BiH stipulates that a person seeking employment with an employer as well as an employee may not be discriminated against on the basis of various grounds, including gender.

Pursuant to provisions of Article 12 of the Law on Gender Equality in BiH gender based discrimination at work and in employment is prohibited. Gender based discrimination is defined as, among other actions, failure to provide equal wages and other benefits for the same work or work of equal value.

According to the report Article 3 of the Law on Salaries and Benefits in Institutions of BiH stipulates the principles for determining the reimbursement and other benefits for employees in BiH institutions, where the basic principle is the "same salary for the same or similar job". Every person who considers to be a victim of discrimination or finds that a certain right has been violated due to discrimination shall be able to seek for protection of that right in the procedure in which this right shall be decided as a main issue, and shall be able to seek for protection in a special proceedings for protection from discrimination in compliance with the Law on Prohibition of Discrimination in BiH. The Law on Gender Equality and the Law on Prohibition of Discrimination in BiH are mutually aligned in the part in which victims of discrimination are directed to a possibility of using legal mechanisms for the protection of the rights.

According to Article 13 of the Law on Gender Equality in BiH any person who believes that he or she is a victim of discrimination due to a difference in salary for the equal work or work equal value work may file a complaint before relevant competent court. Victims of discrimination are entitled to a compensation.

In addition, a fine ranging from BAM 1,000.00 to BAM 30,000.00 shall be imposed on a legal person for failing to undertake appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender at work and in employment, pursuant to Article 12 of the Law on Gender Equality in BiH.

- **FBiH**

As regards FBIH, according to the report there is a general provision under Article 8 of the Labour Law on prohibition of any discrimination based on gender with regard to all aspects connected with employment.

Article 77 of the Labour Law provides for employer’s obligation to pay employees equally for equal value work, regardless of various non-discrimination grounds, including gender, as provided by Article 8 paragraph 1 of this law. The law clarifies that the work of equal value implies work requiring the same level of professional skills, the same working capacity, responsibility, physical and intellectual work, skills, working conditions and results of work.

Provisions of the employment contract proved to be discriminatory on any basis under Article 8 of the Labour Law are to be considered as void. Article 12 of this Law stipulates that in cases of discrimination pursuant to the provisions of this law, a worker as well as a person seeking employment may request protection. If an employee or a person seeking employment in the event of a dispute presents facts justifying a suspicion that employer’s actions were in violation of the provisions regarding prohibition of discrimination, the employer has the burden of proof that there was no discrimination, that is, the existing difference is not directed at discrimination but has its own objective justification. If the court

determines that a lawsuit pursuant to this Article is reasonable, the employer shall enable the employee to exercise the denied rights and compensate the employee for the damage arisen from the discrimination.

- **RS**

Article 120 of the Labour Law stipulates that the employee is entitled to a salary in accordance with the collective agreement, the rules of procedure and the employment contract. Employees are guaranteed equal pay for the same work or equal value work they perform with the employer. The equal value under the Law is work for which the same degree of professional qualifications, the same working capacity, responsibility and physical and intellectual work are required.

The Labour Law also stipulates that a decision by the employer or an agreement with an employee which does not provide equal pay is annulled. In the event of a violation of rights, the employee has the right to initiate a proceedings for compensation of damages. The law stipulates that the employer may not pay an employee a lower salary than the one determined in accordance with the collective agreement, the rules of procedure and the employment contract.

In addition, the Labour Law stipulates a penalty for a violation by the employer if he/she denies an employee or reduces his or her salary or reimbursement, which he/she is entitled to. For this violation, a fine ranging from BAM 2,000.00 to BAM 12,000.00 is envisaged.

- **BD**

According to the report, all employees are entitled to an equal salary pursuant to the Law on Salaries in the BD administrative Bodies. Article 4 paragraph 1 of the Labour Law of BD stipulates *inter alia* that an employee may not be discriminated against on the ground of gender, and in case of violation of the provision under Article 3 of the same Law, it is envisaged that a person whose rights are allegedly violated can file a lawsuit for violation of the rights before a relevant competent court. If the claimant proves, providing relevant evidence, the existence of any activity prohibited by this article, the respondent shall prove that such a difference was not created on the basis of discrimination.

Article 1a of the Law on Salaries of Employees in the Administrative Bodies of the Brčko District stipulates *inter alia* that when determining the amount of salaries and other remunerations for employees in the BD administrative bodies, the principle of "equal salary for the same or similar work" will be respected, and that, in accordance with this principle, employees of the BD administration who perform the same or similar tasks receive the same base salary.

Labour Inspectorate, Inspector and Internal Audit shall conduct supervision and control of the aforementioned legal frameworks. For violations of Article 4 of the Labour Law of the BD, effective legal remedies (Article 110 paragraph 1of the Labour Law of BD envisages a fine for a legal entity and responsible person, as well as judicial protection under Article 88 paragraph 4 of this Law) are envisaged.

The Committee notes that in all entities the right to equal pay for equal work or work of equal value is guaranteed. The Committee asks the next report to provide more detailed information as regards the definition of equal work, as well as if both – direct and indirect pay discrimination is prohibited.

As regards remedies, the Committee recalls in this regard that domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. In court proceeding the shift of burden of proof on employer must be insured if an employee claiming discrimination has established the facts from which it reasonable to suppose that discrimination has occurred. Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good pecuniary and non-pecuniary damage suffered by the victim and act as a deterrent on

employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed. The Committee asks whether there are the ceilings to the amount of compensation that may be awarded in pay discrimination cases.

Methods of comparison

The report does not contain the information on the methods of comparison applicable in the context of principle of equal pay. The Committee asks whether the laws prohibit discriminatory pay in statutory regulations or collective agreements, as well as whether the pay comparison is possible outside one company, for example, where such company is a part of a holding and the remuneration is set centrally. The Committee also asks the next report to provide information concerning the criteria according to which equal value of different works is evaluated.

Statistics

The Committee takes note of the data provided by the Agency for Statistics for BiH according to which a greater presence of women is visible in comparison to men in the fields of wholesale and retail, education, health and social protection, professional, scientific and technical activities, financial activities and insurance, art, entertainment and recreation, as well as in other parts of service industry.

According to the report, in cooperation with the World Bank, the Agency for Statistics for Bosnia and Herzegovina, the Federal Bureau for Statistics and the Republic Bureau for Statistics of the RS in May 2015, conducted a the research on "Gender Differences in Exercising the Rights and Opportunities offered by Society, Access to Economic Opportunities and Representation in Bosnia and Herzegovina ". It was concluded that there are visible gender based differences in in favour of men, noticeable at all levels of education, age groups, occupations and industries.

The Committee recalls that the States Parties must provide information on the gender pay gap and are under obligation to take measures to improve the quality and coverage of wage statistics. They should collect reliable and standardised statistics on women's and men's wages. The Committee notes that the report does not provide this information. Therefore, it asks the next report to provide detailed information regarding the percentage difference between hourly earnings of men and women, in all occupations.

Policy and other measures

The Committee notes from Direct Request of CEACR (2016) as regards Convention No 100 that the Federation of Independent Trade Unions of Bosnia and Herzegovina (FITUB) points to discrimination in respect of employment and occupation, including unequal remuneration for men and women, due to stereotypes and/or social and cultural patterns of behaviour that manifests in inadequate regulation. It also notes that the Union of Autonomous Trade Unions of Bosnia and Herzegovina of FBiH observed that no cases were received relating to discrimination concerning equal remuneration for men and women.

The Committee also asks the next report to provide information on the measures implemented with a view to promoting gender equality and reducing the gender pay gap in all entities. In the meantime, the Committee reserves its position as regards measures taken to guarantee the right to equal pay in practice.

Conclusion

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

Article 5 - Right to organise

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

The Committee has examined the situation with respect to the right to organise (forming trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

Forming trade unions and employers' organisations

In order to assess the situation in **Bosnia Herzegovina (BiH)**, **Federation of Bosnia and Herzegovina (FBiH), Republika Srprska** and **Brčko District (BD)**, the Committee previously asked that the next report clearly describe: a) the conditions that may have been laid down for registering a trade union or an employer organisation and the cases in which registration may be refused or cancelled; b) which political or administrative authority takes decisions relating to registration; c) what criteria are applied in the decision-making process and what margin of discretion is left to the authority in question; d) what administrative and/or legal remedies are available for challenging decisions concerning registration. The Committee also wished to be informed of the grounds for any refusals or cancellations of registration in practice and of any legal decisions on this matter. Furthermore, the Committee wished to know whether registration fees are charged (Conclusions 2014)

In **BiH** the Labour Law provides that trade unions may be established without any prior authorization.

Trade unions, well as other associations may be established by at least three natural persons, citizens of BiH and a party residing in BiH, or legal entities registered in BiH .

In order for the association to fulfil the requirements for registration, the founding Assembly of the association needs to adopt the founding act, the statute of the association and to nominate the management in accordance with the law. According to Article 12 of the Law on Associations and Foundations of BiH, the Statute of an association shall include, *inter alia*, the name and the address of the association, its objectives and activities, the procedures of admission and dismissal of its members, the bodies of the association, quorum and rules of voting, and representation of the association.

With regard to the registration of trade unions and employers' organisations, the report indicates that according to Article 8(3)(1). of the Law on Associations and Foundations of BiH, an association becomes a legal entity on the day of its registration.

The report again refers to the power of the courts to ban or suspend the activities of a trade union but states that in practice this has never occurred.

As regards the **FBiH** again the report states that trade unions and employers' associations can be established without any prior approval.

The report provides no information in respect of **BD**.

The Committee asks the next report to provide information on the conditions for registration of a trade union and employers association, as well as information on any cases of refusal to register a trade union or employers association and any registration fees in respect of BiH, FBiH, RS and BD.

Freedom to join or not to join a trade union

The Committee asks that the next report provide information on protection against discrimination on grounds of trade union membership, including relevant case law in BiH, the FBiH, RS and the BD.

Trade union activities

In **BiH** Article 4 of the Labour Law prohibits an employer from interfering with the establishment, operation or management of the union; advocating and assisting the union with the aim of controlling it, while Article 5 stipulates that the legitimate trade union activity may not be permanently or temporarily banned.

According to the report a prohibition in the interference in the functioning of a trade union is laid down by the Article 16 of the Labour Lawof the **FBiH** in such a way that it is forbidden for employers or associations of employers acting in their own name or through any other person, member or representative to interfere with the establishment, functioning or management of the trade union or provide assistance to the union in order to be able to gain control. A trade union acting in its own name or through another person, member or representative shall be prohibited from interfering with the establishing, functioning or management of association of employers.

The General Collective Agreement provides for access to the work place for trade union representatives as well as additional protection against dismissal.

The Committee notes that according to the report that the penalty in the **RS** for an employer who interferes in the activities of a trade union is a fine of 2.000 to 12.000 convertible marks (approximately 1100-6200 euros).

The Committee repeats its request for information on sanctions for interference in trade union activities in **BiH, FBiH and BD**.

Representativeness

The Committee previously noted the representative criteria in force in **BiH** (Conclusions 2014). The Committee asked for information the rights/prerogatives of non representative trade unions. The Committee repeats its request for this information.

The Committee notes that during the reference period representative criteria were adopted for trade unions and employers association in **FBiH**. It asks the next report to provide information on these as well as information on the rights and prerogatives of non representative trade unions.

Articles 217-237 of the Labour Law of the **RS** regulate the representativeness of trade unions and employers' associations. According to provisions of Article 237 of the Labour Law, a representative trade union and a representative association of employers participate in the process of collective bargaining, peaceful resolution of labor disputes and work of tripartite bodies, its organization and action.

The report states that non representative trade unions and employers associations still maintain certain prerogatives, for example if a non representative trade union has 10% of members in the enterprise concerned a representative trade union is obliged to cooperate with the non representative trade union.

According to the report the criteria for representativeness are clear, legally defined and open to judicial review. Once established representativeness can be questioned after one year, if conditions are met, or criteria change. The Committee asks for further information on the actual criteria for determining representativeness.

The Committee previously noted that the main forms of workers' representation in **BD** are the trade unions and the employees' councils. The latter may be founded in undertakings with at least 15 employees. No information was provided on any representativeness criteria for trade unions or employers' organisations. The Committee asked what the prerogatives of both trade unions and employees' councils are. It also asked whether both forms of representation may coexist in undertakings with at least 15 employees, and if this is not the case, which form of employees' representation has priority/more privileges in practice

(Conclusions 2014).The report provides no information in this respect therefore the Committee repeats its request for this information.

Personal scope

The Committee recalls that in **BiH, FBiH BD and RS** members of the police and civil servants are guaranteed the right to organise. The Committee seeks confirmation that there are no restrictions on these rights.

The Committee refers to its general question on the right of members of the armed forces to organise.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee previously noted that an Economic and Social Council had not been established in **BiH** yet due to the disagreement between the social partners and to failure to achieve representativeness of social partners to form the Council (Conclusions 2014). However it asked for further information about bipartite joint consultation on matters of mutual interest. The report states in this respect that employers are required to consult with trade unions when adopting staff guidelines. However no information is provided on the establishment of an Economic and Social Council nor on bipartite consultation at the sectoral level for example on matter of mutual interest. Therefore the Committee concludes that the situation is not in conformity in this respect.

The Labour Law (Article 130) of the **FBiH** provides for the establishment of the Economic and Social Council of the Federation and Cantons. The Economic and Social Council encourages, *inter alia*, collective bargaining and the conclusion of collective agreements, provides opinions and suggestions on the content of collective agreements, monitors, reviews and comments on the regulations pertaining to labour and employment. The report provide detailed information on the work of the Council during the reference period. However no other information is provided on other forms of consultation.

The Committee previously requested information about economic and social councils in **RS**, and more general about joint consultation (Conclusions 2014). According to the report joint consultations between workers and employers are not covered by the Labour Law but are applied in practice, when it comes to passing regulations and resolving some economic and social issues. No further information is provided. Therefore the Committee concludes that the situation is not in conformity on the ground that it has not been established that joint consultation is suffciently promoted.

The Committee previously asked whether joint consultation between workers and employers is conducted in the **BD** (Conclusions 2014). No information is provided. Therefore the Committee concludes that the situation is not in conformity on the ground that it has not been established that joint consultation is suffciently promoted.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that joint consultation is suffciently promoted.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The Committee previously noted the legal framework applicable to collective bargaining in Bosnia Herzegovina at the state level, in each of the entities – Federation of Bosnia and Herzegovina (FBiH) and Republica Srpska (RS) – and the Brcko District (BD). The Committee invited the Government to provide up-to-date information in the next report on the number of collective agreements concluded at all levels (national/entity, branch/sectoral, company) and on the number of employees covered by the collective agreements (Conclusions 2014).

According to the report here is no collective agreement between BiH Council of Ministers and employees in institutions, that is, representatives of labor unions in BiH at the level of BiH institutions.

In **FHiB** 9 collective agreements are registered, a general collective agreement and sectoral collective agreements including for the public sector.

However the Committee notes that no information is provided on the proportion of employees covered by a collective agreement. The Committee again requests this information.

In RS a General Collective Agreement, 16 sectoral and 49 individual collective agreements. are registered.However the Committee notes that no information is provided on the proportion of employees covered by a collective agreement. The Committee again requests this information.

According to the report there is no general collective agreement in BD.

The Committee defers its conclusion on Bosnia and Herzegovina pending receipt of information on the proportion of workers covered by a collective agreement.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The Committee refers to its previous conclusion for a description of the situation (Conclusions 2014).

The Committee previously noted that the Labour Law in the Institutions of Bosnia and Herzegovina **(BiH)** provides the possibility for parties to agree to refer a labour dispute to arbitration (Conclusions 2014).It ask whether any provision is made for conciliation or mediation in the context of collective labour disputes.

The Committee previously noted the conciliation procedures available in the Federation of Bosnia and Herzegovina **(FBiH**) it also noted that in certain circumstances that recourse could be had to arbitration and sought confirmation that this was not compulsory but only where both parties had agreed to go to arbitration (Conclusions 2014). The report confirms that arbitration is only possible at the request of both the parties.

The Committee notes that according to the report new legislation is to be adopted on the promotion of conciliation and mediation for the settlement of labour disputes. It asks to be kept informed of all developments in this respect.

In the Republika Srpska **(RS)** the Agency for the Peaceful Resolution of Labour Disputes deals with collective (and individual) labour disputes where the parties agree to have recourse it i. From 01 January 2016 until 31 December 2016 a total 6765 cases were received, out of which 6729 referred to individual and 36 to collective labor disputes. The Committee understands that no system of arbitration exists for collective labour disputes in RS and seeks confirmation that this is corrct.

As regards the Brcko District **(BD)** the report repeats that conciliation procedures are available for the settlement of a labour dispute where both parties to the dispute agree. Arbitration procedures are regulated by a collective agreement which has not yet been signed.

The Committee asks the next report to provide information on conciliation and mediation procedures for civil servants in **BiH, FBiH, RS and BD.**

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

Collective action: definition and permitted objectives

The Committee previously examined the situation in Bosnia Herzegovina (BiH), Federation of Bosnia and Herzegovina (FBiH), Republika Srprska and Brčko District (BD), and found it to be in conformity with the Charter (Conclusions 2014).

The Committee notes that new legislation on the right to strike is currently under consideration in **FBiH** it asks the next report to provide full information on any new legislation adopted.

Entitlement to call a collective action

The Committee recalls that entitlement to call a strike is reserved to a trade union in **FiBH**, and to the most representative trade unions in **BiH**. No information was provided in respect of **RS** or **BD** (Conclusions 2014). It requests that this information be provided in the next report.

The Committee recalls that the right to call a strike may be reserved to trade unions exclusively but only under the condition that forming a trade union is not subject to excessive formalities (Conclusions 2004, Sweden). On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions XV-1 (2000), France). The Committee recalls that according to Article 92 of the Labour Law in BiH, a representative trade union is a trade union registered at the level of BiH or two or more trade unions who act together and whose majority members are employees of one employer in the headquarters of the employer.

Given the specificity of the situation in BiH, in particular fact that a representative trade union is one which is registered in BiH, the Committee reserves its position on this point, pending information on the registration of trade unions in **BiH** (see conclusion under Article 5) and pending further information on strike in practice.

Specific restrictions to the right to strike and procedural requirements

Article 96 of the Law on Strikes of the **BiH** stipulates that an employee can not participate in a strike, inter alia, when the employee is employed in basic or maintenance services. The employer determines his basic and maintenance services after consulting with representative trade unions.

Likewise in **FBiH** the Law on Strikes (Article 5) provides that the trade union and the employer have to reach an agreement on which activities cannot be interrupted during the strike.

In **RS,** the Law on Strikes (Article 11) provides that in the activities of general interest or activities where the stoppage of work could endanger human life or health or inflict large-scale damage due to the nature of work, a minimum service must be guaranteed. The Law lists the following activities: electricity and water supply; rail transport; air traffic and air traffic control; public radio and television services; postal services; utilities; fire protection; health and veterinary care and (child) social care. The report also indicates that activities of general interest under this Law are the activities related to the functioning of public administration and security of the **RS** in accordance with the law, as well as activities necessary for the fulfilment of obligations arising from international agreements in the services listed above.

The Committee finds that the range of sectors where strike action is restricted and a minimum service required is extensive and considers there is no information enabling the

Committee to conclude that all these services, or sectors , may be regarded as “essential” in the strictest sense of the term. In accordance with Article G of the Charter, essential services are activities that are necessary in a democratic society in order to protect the rights and freedoms of others or to protect the public interest, national security, public health, or morals. The Committee therefore concludes that the situation is not in conformity with Article 6§4 on the grounds that the sectors in which the right to strike may be restricted is overly extensive and the restrictions do not satisfy the conditions laid down in Article G of the Charter.

No information is provided in respect of **BD,** the Committee repeats its request for information on the restrictions on the right to strike and minimum service requirements.

The Committee asks for information on any restrictions on the right of civil servants to strike in **BiH, FBiH, RS and BD**.

The Committee notes that on RS police officers have the right to strike however as regards **BiH, FBiH and BD** refers to its general question on the right of members of the police to strike.

Legislation provides for a cooling off period of 15 days in **BiH**, **10** days in **FBiH,** the Committee seeks information as to the situation in **RS and BD**, it also seeks information on other procedural requirements such as ballot requirements and quorum.

Consequences of a strike

The Committee previously found the situation to be in conformity in this respect in **BiH, FBiH, RS and BD**.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§4 of the Charter on the ground that the sectors in which the right to strike may be restricted are overly extensive and the restrictions do not satisfy the conditions laid down in Article G of the Charter.

Article 21 - Right of workers to be informed and consulted

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

The Committee examined the situation as regards the right of workers to be informed and consulted (legal framework, personal scope, material scope, remedies and supervision) in its previous conclusion (Conclusions 2014). It will therefore only consider new developments and additional information in this conclusion.

Personal scope

In its previous conclusion, the Committee asked whether the legal framework applies to all undertakings, both in the private and public sector.

- The report states that in **Republika Srpska**, all employees have the right to information and consultation, provided for by the Labour Law, the Law on Protection at Work and the General Collective Agreement. However, employees in the police, judiciary and public administration may not receive any information through a worker's consultation body as they have no right to establish such a body. The Committee recalls that the right to information and consultation is not applicable to public servants (Conclusions XIII-3 (1995), Finland; European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 40/2007, decision on the merits of 23 September 2008, § 42) and asks the next report to clarify whether all employees in the police, judiciary and public administration who do not have the right to establish a worker's consultation body are public servants.
- The report does not provide any information on the matter regarding the federal level, the **Federation of Bosnia and Herzegovina** or the **Brčko District**. The Committee therefore reiterates its request.

The Committee also asked for information on the existence of any thresholds established by the national legislation or practice, which may exclude undertakings which employ less than a certain number of workers.

- The report states that in the **Federation of Bosnia and Herzegovina,** according to Article 119 of the Labour Law, employees working with an employer employing at least 30 workers have the right to form an employee council, to represent them in protection of their rights and interests.
- With regard to the **Republika Srpska**, the Committee notes that there are no thresholds with regard to a minimum number of employees as stated above.
- The Committee notes that in the **Brčko District**, Articles 92§1 and 92§4 of the Labour Law provides for the obligation of an employer who employs more than 15 employees to adopt and post on the employer's notice board a rulebook regulating wages, work organisation and other issues relevant to the relationship between the employee and the employer, in accordance with the law and the collective agreement, which enters into force on the eighth day of publication.
- The report does not provide any information on the matter at a federal level. The Committee therefore reiterates its request.

The Committee therefore concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 21 of the Charter on the ground that it has not been established that all workers enjoy the right to information and consultation.

Material scope

In its previous conclusion, the Committee asked for detailed information on the matters which are subject to information and consultation and for decisions which are subject to consultation of workers and/or their representatives within the undertaking.

- The report states that in the **Republika Srpska**, according to the Law on Workers' Advice, the employer is obliged to inform the workers' council about the state of protection at work and working conditions, the movement of salaries and other issues of importance for the material and social position of workers. The employer is also obliged to consider the opinions and suggestions of the council, and if not accepting them, to inform the council in a timely manner about the reasons. The Committee asks the next report to provide the exact provisions of the Law on Workers' Advice dealing with the matter. The report further states that according to Article 29 of the Law on Councils the employer is obliged to inform the council about the state of protection at work and working conditions, the movement of salaries and other issues of importance for the material and social position of workers including aspects of employment. Moreover, according to the General Collective Agreement, the employer is obliged to inform the employee representatives about the rights, duties and responsibilities, in particular form the Labour Law and collective agreement, wages, working conditions, the manner of protection of workers' rights, general situation and prospects and activities of the employer, as well as plans for future development, employment perspectives and job safety. Trade unions also have the right to require additional information which are significant for the exercise of employee rights as long as they do not represent a business secret of the employer.
- The Committee previously noted that at the level of the **Federation of Bosnia and Herzegovina**, the right to information and consultation is ensured through the Employees' Council. The Law on Employees' Council provides that the employer, at least every six months, informs the employees about matters that affect their employment-related interest, including in particular the business situation and achievements; development plans and their impact on economic and social position of employees; trends and changes in wages, safety at work and measures to improve working conditions; and other matters relevant to employment-related rights and interests of employees. Also, the same Law stipulates that the employer is obliged to consult with the Employees' Council before taking a decision with regard to: the Employees' Work Rules; the employer's intention to terminate employment contracts of more than 10% of employees but not less than five employees due to economic, technical or organisational reasons; an employment plan, transfers and dismissals; measures of safety at work; significant changes in or an introduction of new technologies, annual leave, working time arrangements, night work, remuneration for inventions and technical improvements; and other decisions for which mandatory consultations with the Employees' Council are required by the collective agreement. The employer is obliged to provide the Employees' Council with the information and facts relevant to the decision at least 30 days before making a decision. The deadline for giving the position of the Employees' Council on the proposed decision is seven days of receipt of data relevant to the decision. The decision issued by the employer in contravention with the obligation to consult with the Employees' Council is null and void.
- The Committee notes that in the **Brčko District**, according to Article 39 of the Labour Law the employer has to make sure that a new employee becomes familiar with the regulations on labour relations and regulations in the field of occupational protection within 30 days from the day the employment starts. The Committee asks whether employees are consulted prior to the adoption of said rulebook.

In light of the fact that the Committee's request has only partially been answered, the Committee reiterates it and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 21 of the Charter.

Remedies

In its previous conclusion, the Committee asked for detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. The Committee also asked for penalties which can be imposed on employers if they fail to meet their obligations and whether employees, or their representatives, are entitled to damages. It finally asked for updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to information and consultation.

The Committee previously noted that in the **Federation of Bosnia and Herzegovina** a fine in the amount of BAM 1 000 (€511.29) – BAM 7 000 (€3579.04) is imposed on an employer who fails to inform and consult with the Employees' Council in accordance with the Law on Employees' Council. The report does not provide any further information on this point, the Committee accordingly reiterates its requests.

It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 21 of the Charter on this point.

Supervision

In its previous conclusions, the Committee asked for information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking with particular regard to its powers and operational means.

- The Committee notes that in the **Republika Srpska,** according to Article 263 of the Labour Law, supervision is performed in accordance with the Law on Inspections by the Republic Administration for Inspection Affairs through the Labour Inspectorate. The Committee asks the next report to clarify what the powers and operational means of this body are, as well as to provide updated information on its decisions. The report further states that according to Article 26 of the Law on Council of Workers, the council monitors fulfilment of legal obligations of the employer in relation to the registration of workers for health, pension and disability insurance and regular payment of contributions on those grounds and if it identifies that the employer fails to execute such obligations, it may undertake necessary measures to protect the rights of the workers including bringing the matter to the attention of the competent Labour Inspectorate.
- The report does not provide any information on the matter regarding the federal level, the **Federation of Bosnia and Herzegovina** and the **Brčko District**.

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 21 of the Charter on the ground it has not been established that the supervision of respect of the right to information and consultation is guaranteed.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 21 of the Charter on the grounds that it has not been established that:

- all workers enjoy the right to information and consultation, and
- the supervision of respect of the right to information and consultation is guaranteed.

Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Bosnia-Herzegovina, but highlights the significant gaps in information provided in relation to the specific requirements of Article 22 of the Charter.

Legal framework

In its previous conclusion (Conclusions 2014) the Committee asked whether Article 22 is applied to both private and public undertakings as well as whether there are any thresholds established by the national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

- The report states that in the **Republika Srpska** the Law on Protection at Work and by-laws are applicable to all employees and employers in the territory and that there is no exception for employers and workers from the application of this law.
- The Committee notes that there is no new information on the matter regarding the federal level, the **Federation of Bosnia and Herzegovina** or the **Brčko District**.

The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that employees are not granted an effective right to participate in the decision-making process within the undertaking with regard to working conditions, work organization and working environment.

Working conditions, work organisation and working environment

As the report contains no new information on the matter the Committee reiterates all questions from its previous conclusion. In particular, it asks whether the participation of employees in the determination and improvement of working conditions and the working environment through consultations conducted by the employer with the trade union in the process of adopting regulations is in line with the Committee's case law. It also asks again for specific information on the measures adopted or encouraged by the competent authorities in order to enable workers, or their representatives, to contribute to the determination and improvement of the working conditions, work organization and working environment within the undertaking at state level of Bosnia and Herzegovina and at the level of entities. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 22 of the Charter on this point.

Protection of health and safety

In its previous conclusion, the Committee asked how the protection of health and safety is ensured in the private sector.

- The report states that in the **Republika Srpska** according to the Job Safety Law workers have the right to make suggestions, remarks and notices on occupational health and safety issues to the employer and to control his/her health according to job risks in accordance with health care regulations.
- As regards the **Federation of Bosnia and Herzegovina**, the Committee refers to its previous conclusion for the description of the protection of health and safety.
- The Committee notes that the report provides no new information on the matter regarding the federal level and the **Brčko District**. The Committee therefore reiterates its request.

The Committee also asked for any new developments with regard to a new draft law on Safety and Health at Work in the Federation of Bosnia and Herzegovina. The report does not provide any new information on this point, the Committee accordingly reiterates its request.

The Committee requested information on the right of workers to participate in the decision-making process as regards the protection of health and safety within the undertaking in the Brčko District. The report contains no information in this regard, the Committee accordingly reiterates its request.

The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that the right of workers to take part in the determination and improvement of the protection of health and safety is not effective.

Organisation of social and socio-cultural services and facilities

The Committee notes that the report does not provide new information concerning the organisation of social and socio-cultural services and facilities and therefore reiterates its previous requests. The Committee recalls that according to the Appendix, Article 22 the terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 22 of the Charter on this point.

Enforcement

In its previous conclusion, the Committee asked for a description of the monitoring activities carried out by the Committee on Safety and Health at Work of the **Republika Srpska**. It also asked whether the activities of this committee in addition to health and safety issues also refer to other matters linked to the implementation of Article 22. The report states that the above mentioned committee systematically monitors health and safety at work, establishes proposes, conducts and periodically reviews occupational health and safety policies and encourages work on harmonization of legislation in order to promote health and safety at work. It also periodically submits a report on the state of health and safety at work to the Economic and Social Council and other competent bodies. The Committee asks again whether the activities of this committee in addition to health and safety issues also refer to other matters linked to the implementation of Article 22.

The Committee further requested information on sanctions for non-compliance for the Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District.

- The report states that the Labour Law in Institutions of **Bosnia and Herzegovina** does not provide for penalties for non-adoption of the Labour Regulations.
- **Brčko District** – In case of a violation of the Law on Occupational Safety and Health Protection of Workers, according to Article 67§1a, a penalty can be imposed ranging between BAM 1,000 (€511) and BAM 7,000 (€3 579) for the employer and a fine can be imposed on the responsible person ranging from BAM 300 (€153) to BAM 1,500 (€ 767).
- The Committee notes that there is no new information on the matter regarding the Federation of Bosnia and Herzegovina or the Republika Srpska and therefore reiterates its request.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 22 of the Charter on the grounds that:

- the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;
- the right of workers to take part in the determination and improvement of the protection of health and safety is not effectively secured.

Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them

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

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

Types of workers' representatives

Federation of Bosnia and Herzegovina (FBiH): The term "workers' representative" is not defined in the FBiH Labour Law. The Committee understands from the report that the employees are represented by trade unions or employees' councils. It asks the next report to provide more detailed information in this respect, including on the adoption of the new Law on Safety and Protection at Work which appears to aim at defining the forms of employees representation.

Republika Srprska (RS): In addition to trade union representatives, there exist other types of elected workers' representatives under the Republic Labour Law and the Law on Safety and Health at work, such as workers' council or representatives in the field of health and safety.

Brčko District (BD): Employees' councils or trade unions may represent employees in employment-related matters. In order to obtain a comprehensive picture of the situation, the Committee asks that the next report describes these existing forms of representation in more detail.

Protection granted to workers' representatives

In its previous conclusion (Conclusions 2014), the Committee noted the following information:

- **Federation of Bosnia and Herzegovina (FBiH)**: Trade union representatives may be dismissed while in office and 6 months after only with the prior approval of the FBiH Ministry of Labour, subject to a fine. Members of the Employees' Council may be dismissed only with the prior consent of the Council.
- **Republika Srprska (RS)**: The Labour Law guarantees protection from dismisssal to workers' representatives during the duration of their mandate and one year after its termination.
- **Brčko District (BD)**: Trade union representatives enjoy legal protection against detrimental acts, including dismissal. According to Artcile 78 of the BD Labour Law, the employer may terminate an employement contract of a trade union member during his/her term of office and within six months after its expiration only after having consulted the trade union.

The Committee observes that the legal framework has changed within the reference period, shortening the duration of protection against dismissal of trade union members in **BD** to 3 months after the expiry of their mandate. The Committee recalls that the protection afforded to workers' representatives should extend for a period beyond the effective end of their term of office. The extension for at least six months is considered reasonable (Statement of interpretation, Conclusions 2010 and Conclusions 2010, Bulgaria). Accordingly, the Committee considers that the situation is not in conformity with the Charter on this point.

The Committee has previously asked (Conclusions 2014), whether protection against prejudicial acts other than dismissal was granted to all types of workers' representatives in all entities of Bosnia and Herzegovina and if these principles were fully applied in practice. It also asked for clarification, as to whether the protection against dismissal in BD extended to members of the employees' councils. The report does not provide any new information in

this respect. The Committee thus reiterates its questions and underlines that should the next report not provide the requested information, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 28 in this respect.

Finally, the Committee asks the next report to provide comprehensive information on remedies in all entities of Bosnia and Herzegovina available to workers' representatives to contest their dismissal or any other prejudicial treatment.

Facilities granted to workers' representatives

The Committee has previously noted (Conclusions 2014) the information on paid time off granted to workers' representatives in FBiH and an example of technical support and equipment offered free of charge under a collective agreement in one of its cantons. Referring to its Statement of Interpretation on Article 28 (Conclusions 2010), the Committee asked for detailed information on facilities afforded to workers' representatives in all entities of Bosnia and Herzegovina and on practical implementation of the relevant legislative provisions.

For **FBiH** and **BD** no new information was submitted. As regards **RS**, the report explains that the Labour Law guarantees trade union members access to information, premises, means of communication and facilities. There are no specific measures envisaged for the implementation of these provisions. Their application is supervised in **RS** by the Administration for Inspection Affairs through the Labour Inspectorate.

The information provided to the Committee is not sufficient to demonstrate that the facilities afforded to workers representatives in Bosnia and Herzegovina satisfy the requirements of Article 28 ot the Charter. Although the information on the legal framework of the **RS** is more detailed, it does not allow to establish that all types of workers' representatives, other than trade union representatives, are covered.

In the light of the above, the Committee considers that it has not been demontrated that the facilites granted to workers' representatives satisfy the requirements of Article 28.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 28 of the Charter on the grounds that:

- the protection granted to workers' representatives in Brčko District is not extended for a reasonable period after the expiration of their mandate,
- it has not been established that facilities afforded to workers' representatives are adequate in all three entities of Bosnia and Herzegovina.