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EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2022

BOSNIA AND HERZEGOVINA

This text may be subject to editorial revision.

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

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

The following chapter concerns Bosnia and Herzegovina, which ratified the Revised European Social Charter on 7 October 2008. The deadline for submitting the 12th report was 31 December 2021 and Bosnia and Herzegovina submitted it on 4 July 2022.

The Committee recalls that Bosnia and Herzegovina was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2018).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2018) found the situation to be in conformity, there was no examination of the situation in 2022.

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 concerned the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the 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§1, 26§2, 29.

The reference period was from 1 January 2017 to 31 December 2020.

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

– 1 conclusion of conformity: Article 2§6

– 14 conclusions of non-conformity: Articles 2§1, 2§2, 2§3, 2§4, 2§5, 2§7, 4§3, 6§1, 6§2, 6§3, 6§4, 21, 22, 28.

In respect of one situation related to Article 5, 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 Revised Charter.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),

- the right of children and young persons to social, legal 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 December 2022.

Conclusions and reports are available at www.coe.int/socialcharter.

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

Measures to ensure reasonable working hours

In its previous conclusion, the Committee asked about the length of the reference period for averaging working hours. It considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 2§1 of the Charter (Conclusions 2018). The Committee also asked that the next report indicate the actual number of offences found and penalties imposed for the violations of working time regulations.

In reply, the report states that the Labour Law in the institutions of Bosnia and Herzegovina stipulates that the average working time of an employee is 40 hours a week. There are no limits to an individual working week in the context of flexible working time arrangements. The new Labour Law of the Federation of Bosnia and Herzegovina came into force in 2016. It states that a full-time job is 40 hours, the daily rest period should be at least 12 hours. In the Republic of Srpska, if the worker works in shifts, he/she can work a maximum of 12 hours a day and a maximum of 48 hours a week, including overtime. In the Brčko District, the weekly working time is 40 hours and it may be increased to 52 hours for a certain period. In this case, the weekly working hours for another period must then be reduced, so that the average weekly working hours over a calendar year do not exceed 40 hours.

The Committee notes that when assessing the conformity of flexible working time systems with the Charter, the Committee takes account of the length of the reference period which is used to calculate average working time (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §155). In the absence of any reference periods in Bosnia Herzegovina, the Committee concludes that the situation is not in conformity with Article 2§1 of the Charter on the ground that there are no reference periods in flexible working time arrangements.

The report further states that there is no information on the number of offences and penalties imposed for violations of working time regulations in the Federation of Bosnia and Herzegovina. The report also provides statistical information on fines imposed in the Republic of Srpska. In the Brčko District, three misdemeanour proceedings were initiated against employers for violating the Labour Law of the Brčko District.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

The Committee recalls that teleworking or remote working may lead to excessive working hours. It also reiterates that it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the 'right to disconnect'). States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform. In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods (Statement on digital disconnect and electronic monitoring of workers).

As the report provides no information in reply to the targeted question, the Committee reiterates its request.

Law and practice regarding on-call periods

In its previous conclusion, the Committee asked for more detailed information regarding on-call periods, namely the length of such periods and their treatment. The Committee considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 2§1 of the Charter (Conclusions 2018).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that the Labour Code of Bosnia and Herzegovina provides that periods when employees are on-call, 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. Similarly, in the Republic of Srpska, time when the employee is ready to work but is not at the workplace is not considered as working time. In the Brčko District, on-call duty is not regulated at all.

The Committee asks for clarification whether on-call period is considered a rest period in its entirety or in part. The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No. 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee held that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee again asks whether inactive periods of on-call duty are considered or not as rest periods. In the meantime, the Committee reserves its position on this point.

The Committee also notes that no information is provided on zero-hour contracts and asks whether they do not exist at all in Bosnia and Herzegovina.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report provides no information relating to the impact of the Covid-19 crisis on just conditions of work and on general measures taken.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§1 of the Charter on the ground that there are no reference periods in flexible working time arrangements.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

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 recalls that no targeted questions were asked for Article 2§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday was not adequately compensated (Conclusions 2018).

Bosnia and Herzegovina

The report indicates that according to Section 36 of the Salaries and Benefits in the Institutions of Bosnia and Herzegovina Act, employees who are required to work on public holidays are entitled to payment of their basic wage, in proportion to the number of hours worked, increased by 35%. 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 still 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.

Federation of Bosnia and Herzegovina

In its previous conclusion (Conclusions 2018), the Committee considered that a compensation amounting to the basic salary plus 40% did not constitute an adequate recompense for work carried out on public holidays. It therefore concluded that the situation in the Federation of Bosnia and Herzegovina was not in conformity with Article 2§2 of the Charter.

In this regard, the report recalls that 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 Committee takes note of the examples of wage increases provided for in the various collective agreements presented in the report. Based on these examples, it considers that a compensation amounting to the basic salary plus 40%-60% 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 still not in conformity with Article 2§2 of the Charter.

In its previous conclusions (Conclusions 2018 et 2014), 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 controlled the implementation of such criteria.

In response, the report indicates that pursuant to Article 159 of the Labour Code, the federal and/or cantonal labour inspector shall supervise the implementation of this Act and the regulations made thereunder.

Since the report only partially answers its questions, the Committee reiterates all the specific questions concerning public holidays with pay and considers that it has not been established that there are restrictive criteria defining the circumstances under which work on public holidays may be allowed.

Republika Srpska

In its previous conclusion (Conclusions 2018), the Committee considered that a compensation amounting to the basic salary plus 40%-50% did not constitute an adequate recompense for work carried out on public holidays. It therefore concluded that the situation in the Republika Srpska was not in conformity with Article 2§2 of the Charter.

As the situation did not change during the reference period, the Committee reiterates its previous conclusion of non-conformity.

Brčko District

In its previous conclusions (Conclusions 2018 et 2014), the Committee asked whether work was in principle prohibited on public holidays, what exceptions, if any, were set by the law, how the authorities controlled the respect of the relevant provisions, and what was the salary paid for working on public holidays.

In response, the report states that the Brčko District Law on public holidays stipulates that all institutions in the region, companies and other legal entities shall not work on public holidays, with the exception of employees of institutions dealing with vital public services, such as the police, fire brigade, legal authorities, health sector or those required to maintain minimum functional capacity during public holidays.

Article 60 of the Labour Law provides for the right to a salary bonus for work on public holidays. Labour inspectors monitor compliance with this provision. According to the report, the increased salary may not be less than 30% of the salary for the same number of working hours during normal working hours.

In the light of the foregoing, the Committee considers that a compensation amounting to the basic salary plus 30% does not constitute an adequate recompense for work carried out on public holidays. It therefore concludes that the situation in the Brčko District is not in conformity with Article 2§2 of the Charter.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

Conclusion

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

- work performed on a public holiday is not adequately compensated;
- it has not been established that the circumstances under which work on public holidays is permitted are sufficiently defined.

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.

The Committee recalls that no targeted questions were asked for Article 2§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusions, the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave was less than four weeks or 20 working days (Conclusions 2018 and 2014).

Bosnia and Herzegovina

The report indicates that the Law on Work in the Institutions of Bosnia and Herzegovina has been amended regarding the minimum duration of annual leave. In a calendar year, employees are now entitled to 20 days of paid annual leave and no more than 30 days. The Committee notes that this situation is now in conformity with Article 2§3 of the Charter on this point.

In its previous conclusions (Conclusions 2018 and 2014), the Committee asked whether workers who suffered from illness or injury during their annual leave were entitled to take the days lost at another time. The Committee understands that employees who suffer from illness or injury during their annual leave are entitled to take the days lost at another time but no later than June 30th of the next year. It asks the next report to confirm its understanding.

Federation of Bosnia and Herzegovina

In its previous conclusions (Conclusions 2018 and 2014), the Committee asked whether the law provided 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 could be postponed; whether workers who suffer from illness or injury during their annual leave were entitled to take the days lost at another time.

In response, the report states that according to Article 50 of the Federation of Bosnia and Herzegovina Labour Law, if an employee is using an annual leave in parts, the first part should be used without interruption in the duration of at least 12 working days during a calendar year, and the second part should be used no later than June 30th of the next year. The Committee understands that employees who suffer from illness or injury during their annual leave are entitled to take the days lost at another time but no later than June 30th of the next year. It asks the next report to confirm its understanding. In the meantime, it considers that the situation is in conformity with the Charter on this issue.

In its previous conclusions (Conclusions 2018 and 2014), the Committee found that the situation was not in conformity with Article 2§3 of the Charter on the ground that the legislation governing the conditions of police officers provided for a minimum of eighteen days of leave. The report does not provide any information on this issue. The Committee asks for clarification in the next report whether police officers are considered civil servants. In the meantime, the Committee finds that this situation is still not in conformity with Article 2§3 of the Charter on this point.

Republika Srpska

In its previous conclusions (Conclusions 2018 and 2014), the Committee asked whether the law guaranteed that employees cannot waive their right to annual leave or replace it by financial compensation; whether the law provided 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 could be postponed; whether employees who suffer from illness or injury during their annual leave were entitled to take the days lost at another time.

In response, the report states that employees must not have the option of giving up their annual leave and it may not be replaced by financial compensation. If an employee is using an annual leave in parts, the first part should be used without interruption in the duration of at least 12 working days during a calendar year, and the second part should be used no later than June 30th of the next year. The Committee understands that employees who suffer from illness or injury during their annual leave are entitled to take the days lost at another time but no later than June 30th of the next year. It asks the next report to confirm its understanding. In the meantime, it considers that this situation is in conformity with Article 2§3 of the Charter on this issue.

Brčko District

In its previous conclusions (Conclusions 2018 et 2014), the Committee found that the situation was not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave was less than four weeks or 20 working days in the case of certain categories of employees in the Brčko District. In this regard, the report indicates that according to Article 61§1 of the Labour Code, employees are entitled to at least 20 working days of paid leave per year. The Committee notes that the situation is now in conformity with the Charter on this point.

In its previous conclusions, the Committee also asked whether the law guaranteed that employees cannot waive their right to annual leave or replace it by financial compensation; whether the law provided 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 could be postponed; whether employees who suffer from illness or injury during their annual leave were entitled to take the days lost at another time.

In response, the report indicates that under Article 64 of the Labour Code, workers can take a leave in parts. In such a case, the first part should be used without interruption in the duration of at least 2 weeks during a calendar year, and the second part should be used no later than June 30th of the next year. According to the report, the Labour Code does not regulate the postponement of an annual leave. Pursuant to Article 61§5 of the Labour Code, employees must not have the option of giving up their annual leave and annual leave may not be replaced by financial compensation. The Committee notes that the situation is now in conformity with the Charter on this point.

Covid-19

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

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 for police officers in the Federation of Bosnia and Herzegovina 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 no targeted questions were asked for Article 2§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Bosnia-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 (Conclusions 2018).

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

The Committee recalls that the first part of Article 2§4 of the Charter requires States to undertake to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions), according to which States undertake to formulate policies and adopt measures to improve occupational safety and health and to prevent accidents and injury to health, particularly by minimising the causes of hazards inherent in the working environment.

In its previous conclusions (Conclusions 2014 and 2018), the Committee asked whether the situation in the domestic legislation had changed in terms of risk elimination and reduction risks in dangerous or unhealthy occupations (for the territory of Bosnia and Herzegovina, the entities and the Brčko District). It had found that the situation was not in conformity because there was no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations. The Committee further 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.

The report states that the health and safety legislation is applicable in the institutions of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina there is a Law on safety at work. In the Republic of Srpska, activities on the development of the “Occupational Health and Safety Strategy” for the period 2021-2024 are under development. The Law on Occupational Safety and Health (Law No. 01/2008 and 13/2010) is a systemic law which is applied in a subsidiary manner to all areas that have not explicitly prescribed special rules for occupational safety and health, and it ensures a minimum of rights in the field of occupational safety and health. In addition to the Law on Occupational Safety, there are bylaws adopted on the basis of this Law in the field of occupational safety, and regulations.

In Brčko District the Law on Safety and Health at Work (Law 20/2013) which is in line with the Directive EU 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. Ordinances that implement the mentioned law have not been adopted yet.

The Committee requests the next report to give comprehensive information of the practice and in the meantime, it reserves its position on this point.

Measures in response to residual risks

The Committee recalls that where risks have not yet been eliminated or sufficiently reduced despite the application of preventive measures, or where they have not been applied, the second part of Article 2§4 requires States to ensure that workers exposed to such risks are granted some form of compensation. The aim of these measures must be to provide the persons concerned with sufficient and regular rest periods to recover from the stress and fatigue caused by their activity and thus maintain their alertness or limit exposure to the risk.

In its previous conclusions (Conclusions 2014 and 2018), the Committee reserved its position twice 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 stated that if the requested information was not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina would be in conformity with Article 2§4 of the Charter.

The Committee notes that the report refers to regulations on health and safety but it states that these regulations are yet a draft in the Republic of Srpska and in the Brčko District. If in the previous report, there was information about reduced time for certain workers in the Federation of Bosnia and Herzegovina and in the Republika Srpska, but there is no information concerning the District of Brčko. Therefore, the Committee concludes in this respect that it has not been established that all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures).

Covid-19 related measures

No specific measures were adopted in respect of Covid-19 pandemic in this field.

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 it has not been established that all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures).

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.

The Committee recalls that no targeted questions were asked for Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee deferred its previous conclusion pending receipt of the information requested on whether, in connection with all the entities, 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 (Conclusions 2018).

The Committee notes from the report that the Labour Code of the **Federation of Bosnia and Herzegovina** 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. The Committee asks whether this implies that the weekly rest period could not be deferred for more than 12 consecutive working days.

In the **Republika Srpska**, employees have a weekly uninterrupted 24-hour rest period. Employers must offer employees who are required to work on their weekly rest day an alternative day of rest.

According to the report, in the **District of Brčko**, the Labour Code provides for a weekly rest period of 24-hour without interruptions. If an employee needs to work on the day of their weekly holiday, they are provided with a day of rest during the period established by an agreement with the immediate superior. The report states that during the reference period, violations on the rules on weekly rest period were detected.

There is no information as requested in former conclusions on whether it is guaranteed that workers cannot waive their right to weekly rest or have it replaced by financial compensation. Therefore, the Committee considers that it is not established that the situation in Bosnia and Herzegovina is in conformity with Article 2§5 of the Charter in this respect.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§5 of the Charter on the ground that it has not been established that there are sufficient safeguards to prevent all workers from working for more than twelve consecutive days without a rest period.

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.

The Committee recalls that no targeted questions were asked for Article 2§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Bosnia and Herzegovina was not in conformity with Article 2§6 of the Charter on the ground that the Labour Code of the Republika Srpska did not require employers to inform employees in writing of the key aspects of the employment relationship or of the employment contract (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity.

As regards the situation in the Republika Srpska, the report indicates that the standard employment contract as prescribed in the Labour Code includes all elements of information as required under Article 2§6 of the Charter. Employers are required to provide employees with a copy of their contract prior to the beginning of the employment relationship.

In its previous conclusion, the Committee asked additional questions with regard to the situation at the national level and in the Brčko District (Conclusions 2018). The report indicates that the standard employment contract as prescribed in the Labour Code of Bosnia and Herzegovina and the Brčko District respectively includes all elements of information as required under Article 2§6 of the Charter.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 2§6 of the Charter.

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.

The Committee recalls that no questions were asked for Article 2§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In its previous conclusion, the Committee considered 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 (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and any other question raised in its previous conclusion.

As regards the institutions of Bosnia and Herzegovina, the report notes that the notion of night work is not known, as the workforce is composed of civil servants. The Committee notes that it has previously received information concerning specific legal provisions pertaining to night work that apply at this level of government (see for example Conclusions 2018). It, therefore, asks for confirmation that no workers are assigned to working night shifts on a temporary or permanent basis in the institutions of Bosnia and Herzegovina, including for example auxiliary personnel.

As regards the Federation of Bosnia and Herzegovina, in addition to the conclusion of non-conformity on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work, the Committee asked who was considered to be a night worker, and about the circumstances other than health status that may justify a transfer to day work.

With respect to medical examinations, the report notes that the relevant provisions have not been amended during the reference period, but that all workers are required to undergo a medical examination prior to taking up employment in general. The Committee recalls that Article 2§7 of the Charter requires that a medical examination be provided specifically prior to being assigned to night work (Conclusions 2003, Romania). Accordingly, it reiterates the finding of non-conformity on the ground that there is no provision by law for workers assigned to night work to be given a free compulsory medical check-up prior to taking up their duties.

The Committee notes that the report does not indicate who is considered to be a "night worker". The Committee notes that this question has been carried over since 2014, without a satisfactory response being provided (Conclusions 2014, 2018). Accordingly, the Committee concludes that the situation is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that domestic law or practice includes a definition of who is considered to be a "night worker".

With respect to the issue of transfer to day work, the report notes that pregnant women, parents of children of up to two years old, and minors are not normally allowed to perform night work.

As regards the Republika Srpska, in addition to the conclusion of non-conformity on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work, the Committee asked who was considered to be a night worker, about regular medical examinations, about the circumstances that may justify a transfer to day work, and about consultation on the subject of night work. The Committee noted that if the requested

information was not provided in the following report, there would be nothing to establish that the situation was in conformity with Article 2§7 of the Charter.

With respect to medical examinations, the report notes that employers are required to assess the existence of occupational risks and take remedial measures, including by organising medical examinations for the workers concerned. The requirement to undergo medical examinations is associated more with particularly risky occupations or handling dangerous equipment, than with night work as such. While an obligation to undergo initial and regular medical examinations applies to night workers, this is limited to determining visual acuity. The Committee takes note of this information but considers nevertheless that the mechanism for protecting night workers falls short of the requirements laid down in Article 2§7 of the Charter. The Committee concludes that the situation in Republika Srpska is not in conformity with Article 2§7 of the Charter on the ground that there is no provision by law for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties and regularly thereafter.

The Committee notes that the report does not indicate who is considered to be a "night worker". The Committee notes that this question has been carried over since 2014, without a satisfactory response being provided (Conclusions 2014, 2018). Accordingly, the Committee concludes that the situation is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that domestic law or practice includes a definition of who is considered to be a "night worker".

The report notes that poor health may justify a transfer to day work and that pregnant women, parents of children of up to two years old, or disabled children, and minors are not normally allowed to perform night work. The report further notes that consultation on the subject of night work takes place on an ongoing basis through representatives for protection and health at work elected by workers in each company, within the scope of legislation on occupational health and safety more generally. The Committee asks if workers' representatives must be consulted prior to the introduction of night work.

As regards the Brčko District, in addition to the conclusion of non-conformity on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work, the Committee asked who was considered to be a night worker, about regular medical examinations, and about consultation on the subject of night work. The Committee noted that if the requested information was not provided in the following report, there would be nothing to establish that the situation was in conformity with Article 2§7 of the Charter.

With respect to medical examinations, the report provides seemingly contradictory information. On the one hand, the report notes that the Rulebook on Preliminary and Periodic Medical Examinations of Workers in High-Risk Workplaces has not been adopted yet. On the other hand, it also indicates that, pursuant to an unspecified special regulation, employers are required to provide night workers with medical examinations prior to the start of employment and regularly thereafter. This further differs from information received previously by the Committee, to the effect that under occupational health and safety legislation passed in 2013, medical examinations for night workers were based on a risk assessment for each job and certification by a doctor on a case-by-case basis (Conclusions 2018). The Committee asks for a clear account of the applicable regulations on medical examinations for night workers. The Committee concludes that the situation in the Brčko District is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that there is a provision by law for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties and regularly thereafter.

The report further notes that a night worker is an employee who spends at least a third of their working time performing night work during a period of twelve months.

Consultation on the subject of night work takes place on an ongoing basis through representatives for safety and protection at work elected by workers, within the scope of legislation on occupational health and safety more generally. The Committee asks if workers' representatives must be consulted prior to the introduction of night work.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

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

- as regards the Federation of Bosnia and Herzegovina, there is no provision by law for workers assigned to night work to be given a free compulsory medical check-up prior to taking up their duties;
- as regards the Federation of Bosnia and Herzegovina, it has not been established that domestic law or practice includes a definition of who is considered to be a "night worker";
- as regards the Republika Srpska, there is no provision by law for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties and regularly thereafter;
- as regards the Republika Srpska, it has not been established that domestic law or practice includes a definition of who is considered to be a "night worker";
- as regards the Brčko District, it has not been established that there is a provision by law for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties and regularly thereafter.

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

The Committee deferred its previous conclusion pending receipt of the information requested (Conclusions 2018).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral.

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

Legal framework

In the previous conclusion (Conclusions 2018), the Committee took note of the legal provisions at the state level and in all entities in Bosnia and Herzegovina which guarantee the right to equal pay for equal work or work of equal value. It asked that the next report to provide more detailed information as regards the definition of equal work, as well as information on whether both direct and indirect pay discrimination is prohibited.

In its previous conclusion on Article 20 (Conclusions 2020), the Committee further asked clarifications on the notion of “work of equal value” used in the legislation of Republika Srpska. It also asked clarifications concerning the parameters for establishing equal value of the work performed (such as the nature of the work, training and working conditions) in Brčko District. Pending receipt of the information requested, the Committee reserved its position on this point.

In reply, the report indicates that at the state level of Bosnia and Herzegovina, the legislation prescribes that unequal treatment based on gender during the procedure of recruitment, employment and termination of employment is not allowed and direct and indirect discrimination in terms of salaries is prohibited. The amount of salaries is determined in accordance with the provisions of the Law on Salaries and Remunerations.

According to the report, in the **Federation of Bosnia and Herzegovina**, the Labour Law (Article 77§1) provides that an employer shall pay equal salaries for equal work to employees, irrespective of their national, religious, gender, political and trade union affiliation, as well as any other discriminatory ground referred to in the Law. Paragraph 2 of this provision defines equal work as the work which requires the same level of professional qualifications, the same capacity for work, the same responsibilities, physical and intellectual work, skills, working conditions, and work output.

According to the report, the Labour Law of the Federation includes a general provision on prohibition of gender based and other discrimination of employees regarding conditions of

employment, choice of candidate, work conditions and all rights arising from employment, education, professional, training, promotion and termination of employment contract (Article 8). The Labour Law provides for a detailed definition of both direct and indirect discrimination (Article 8§2).

The report indicates that in **Republika Srpska**, the Labour Law provides for a similar definition of equal work for which the same degree of professional qualifications, the same working capacity, responsibilities and physical and intellectual work are required. The Law further 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. Under Article 5 of this Law, when exercising their right deriving from employment or right to employment, an employee as well as an individual seeking employment shall not be discriminated against on the basis of open-ended grounds listed in this provision, including gender. The Committee asks whether the notion of “indirect discrimination” is stipulated and defined in the Labour Law of Republika Srpska.

As regards **Brčko District**, the Committee notes that Article 4§1 of the Labour Law provides that any person employed may not be discriminated against on grounds of gender (see also Conclusions 2014). The report further indicates that the Law on Salaries of Employees in the Administrative Bodies stipulates inter alia that when determining the salaries and other remuneration for employees in the District administrative bodies, the principle of “equal salary for the same or similar work” will be respected. In accordance with this principle, employees in the District’s administration who perform same or similar work receive the same salary.

The report does not provide an answer to the Committee’s previous question as regards the definition of “same or similar work” in the Labour Law and in the Law on Salaries of Employees in the Administrative Bodies of the Brčko District. Neither does the report provide an answer to the previous question (as regard Brčko District), whether the Law (Labour Law and Law on Salaries) stipulates a clear prohibition of indirect discrimination. The Committee therefore reiterates these questions.

The Committee recalls that the principle of equality should cover all the elements of pay, that is wages or salary, plus all other benefits paid directly or indirectly in cash or in kind by the employer to the worker by reason of the latter’s employment (Conclusion I (1969) Statement of Interpretation Article 4§3; University Women of Europe (UWE) v. France, Complaint No. 130/2016, 5 December 2019, §163). In its Conclusions 2020 as regards Article 20 of the Charter, the Committee asked, with regard to all three entities, that the next report contain clarifications on whether all elements of pays, including benefits, are covered by the principle of equal pay for work of equal value. The Committee reiterates this question (concerning all three entities).

The Committee considers that if the required information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

Effective remedies

In the previous conclusion (Conclusions 2018), the Committee took note of the remedies available in three entities in case of violation of the principle of equal pay. It asked whether there are ceilings to the amount of compensation that may be awarded.

As to the Committee’s previous question on whether there are ceilings to the amount of compensation that may be awarded, the report indicates that in **Republika Srpska and Brčko District**, the laws do not provide for any ceiling concerning the compensation to be awarded in case of discrimination. The report does not provide a specific answer to the question raised in the previous report (compensation ceiling) as regards the **Federation of Bosnia Herzegovina**. The Committee notes from its 2020 conclusion on Article 20 that in the federation of Bosnia and Herzegovina, the amount of compensation awarded to the victim of

discrimination is not limited and the court assesses the material and non-material damage suffered in each specific case.

In its conclusion 2020 on Article 20, the Committee asked for information on the number of cases specifically related to gender pay discrimination brought before the courts, with details on their outcomes and the penalties imposed on employers (for state and at the entities levels). The Committee reiterates this question.

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

Pay transparency and job comparisons

In its previous conclusion (Conclusions 2018), the Committee found that the previous report did not contain any information with regard to the methods of comparison applicable in the context of the principle of equal pay. The Committee therefore asked whether the laws prohibit discriminatory pay in company-level regulations or collective agreements, as well as whether pay comparisons are possible across a company, for example, where such company is a part of a holding and the remuneration is set centrally. In the previous conclusion, the Committee also asked the next report to provide information concerning the criteria according to which the equal value of different types of work is assessed.

In its conclusion 2020 on Article 20 of the Charter, the Committee found that no strategies nor measures have been adopted in Bosnia and Herzegovina to ensure pay transparency on the job market and that there was no way for workers to obtain information on the levels of remuneration of other workers. The Committee therefore asked whether it was possible to make pay comparisons across companies in equal pay litigation cases and concluded that the situation was not in conformity with the Charter on the ground that the obligation to ensure pay transparency was not complied with.

In reply, the report simply reiterates that labour laws in Bosnia and Herzegovina and its entities, guarantee equal pay and require employers to pay employees equally for equal work, but it does not reply to the specific questions previously raised by the Committee.

Therefore, on the basis of the information at its disposal, the Committee concludes that the situation is not in conformity with the Charter on the ground that the obligation to ensure pay transparency is not complied with.

Statistics and measures to promote the right to equal pay

In the previous conclusion (20148), the Committee asked the next report to provide detailed information regarding the difference between the hourly earnings of men and women in all occupations. The report does not provide any statistical data on the equal pay gap during the reference period.

As Bosnia and Herzegovina has accepted Article 20 c) of the Charter, the Committee will examine policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value

The report does not provide any information in response to the question on the impact of Covid-19.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 4§3 of the Charter on the ground that the obligation to ensure pay transparency is not complied with.

Article 5 - Right to organise

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

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to the targeted questions for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee deferred its conclusion (Conclusions 2018).

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right to organise for members of the armed forces.

The assessment of the Committee will therefore concern the information provided in the report in response to the deferral, to the targeted questions and to the general question.

Prevalence/Trade union density

The Committee asked in its targeted question for data on trade union membership prevalence across the country and across sectors of activity. The report contains no information in this regard.

Personal scope

In its previous conclusion, the Committee asked for confirmation that there are no restrictions on the right to organise for members of the police and civil servants (Conclusions 2018).

In reply to the targeted question, the report states that there are no restrictions on the right to organise for members of the police and civil servants in the Federation of Bosnia and Herzegovina and in the Republic of Srpska.

In its previous conclusion, the Committee requested that all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question). The report does not contain the information requested. The Committee therefore reiterates its request 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 the Charter on this point.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §§80 and 84).

The Committee recalls that it has previously considered that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, inter alia, national security (*Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §92).

Restrictions on the right to organize

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations. The report contains no information in this regard. The Committee therefore reiterates its request and considers that, should the information not be provided in the next report, nothing will allow to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter on this point.

The Committee notes that the ILO in an Observation (adopted 2020) under the Freedom of Association and Protection of the Right to Organise Convention (No.87) encourages the Government in the three entities to revise the relevant legislation so as to ensure that the right to organise is guaranteed for domestic workers, agricultural workers, workers in the informal economy and self-employed workers. The Committee requests that information on the right of the above-mentioned workers to unionise be provided in the next report.

Forming trade unions and employers' organisations

In its previous conclusion, the Committee asked for information on the conditions for registration of trade unions and employers' associations, as well as information on any cases of refusal to register a trade union or an employers' association and any registration fees in respect of BiH, FBiH, RS and BD (Conclusions 2018).

In reply to the targeted question related to the conditions for registration, the report reiterates the information concerning BiH and FBiH from the previous conclusion (Conclusion 2018). As regards **Bosnia and Herzegovina**, the report states that the founding assembly of the association is obliged to adopt the founding act, the statute of the association and appoint the management bodies in accordance with the Law on Associations and Foundations of B&H. The Committee takes note of the conditions for registration of trade unions and employers' associations set out by the Law on Associations and Foundations of B&H detailed in the report, which do not contain any limitation as regards the protection of labour and socio-economic rights and legal interests of workers or employers. As regards the **Federation of B&H**, the report does not contain any information concerning the conditions for registration of trade unions and employers' associations. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, nothing will allow to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter on this point. As regards the **Republika Srpska**, the report states that trade unions are established without any prior consent of any state authority and are registered in the trade union registry. The Committee takes note of the detailed information provided in the report in relation to the conditions for registration of trade unions and employers' associations. The Committee also takes note of the detailed information provided in the report in relation to the formal conditions for registration of trade unions and employers' associations in the **Brčko District** of Bosnia and Herzegovina.

In reply to the targeted question related to refusal to register a trade union or an employers' association and to the registration fees, the report states that fees are charged in accordance with applicable regulations, as well as for all other associations registered at the level of **Bosnia and Herzegovina**. As regards the **Federation of B&H**, the report does not contain any information concerning the refusal to register a trade union or employers' association and the registration fees. The Committee therefore reiterates its request 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 the Charter on this point. As regards the **Republika Srpska**, the report states that registration, changes and deletion from the Register are exempted from fees and charges. It further states that reasons for rejecting the registration may (only) be procedural. As regards **Brčko District** of Bosnia and Herzegovina, the report explains that it is possible to reject an application for registration as irregular for formal reasons. The report adds that so far, no application for the registration of

trade unions or employers' associations has been rejected. Court fee for registration is paid in the amount of 150.00 BAM and court fee for changing the data is paid in the amount of 50.00 BAM.

Freedom to join or not to join a trade union

In its previous conclusion, the Committee asked for information on protection against discrimination on grounds of trade union membership, including relevant case law in BiH, the FBiH, RS and the BD (Conclusions 2018).

In reply to the Committee's question, the report states that in **Bosnia and Herzegovina**, an employee may not be placed in a less favourable position due to union membership or non-membership. The report also states that the Ministry of Justice of B&H does not have data on protection against discrimination based on trade union membership. As regards the **Federation of B&H**, the report provides information about the right of foreigners to join trade unions. However, the report does not provide information on protection against discrimination on grounds of trade union membership. As regards the **Republika Srpska**, the report states that the Labour Law stipulates that an employee and a job seeker may not be discriminated against due to union membership or non-membership. Should such discrimination occur, the report states that a complaint may be filed against the employer. The burden of proof shall be on the employer to demonstrate that there was no discrimination. As for **Brčko District**, the report states that Labour Law of BD stipulates that an employer may not, without the prior consent of the trade union, terminate the employment contract of an authorised trade union representative or put him/her at a disadvantage in relation to the position he/she held before he/she was appointed to office and three months after performing this function. The report adds that, under the current Labour Law of the Brčko District of B&H, a worker cannot be placed in an unequal position due to union membership or non-membership.

Trade union activities

In its previous conclusion, the Committee asked for information on sanctions for interference in trade union activities in BiH, FBiH and BD (Conclusions 2018).

In reply to the Committee's question, the report states that, in the **Federation of B&H** and in the Republic of Srpska, Labour Law stipulates that employers or employers' associations acting in their own name or through any other person, member or representative, are forbidden 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 also be prohibited from interfering with the establishment, functioning or management of an employers' association. The lawful activity of a trade union or employers' association may not be forbidden, either permanently or temporarily. An employer shall ensure appropriate conditions for trade union activities in accordance with the collective agreement.

The report does not contain the information requested as regards **Bosnia and Herzegovina and BD**. The Committee therefore reiterates its request and considers that, should the requested information not be provided in the next report, nothing will allow to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter on this point.

Representativeness

In its previous conclusion, the Committee asked for information on the rights/prerogatives of trade unions, employers' associations, and non-representative trade unions (Conclusions 2018).

In reply to the Committee's question, the report states that the Labour Law in **Bosnia and Herzegovina** does not contain special provisions prescribing the rights or prerogatives of a non-representative trade union. The report does not provide any information on the rights/prerogatives of trade unions and employers' associations. The Committee therefore

reiterates its request and considers that, should the information not be provided in the next report, nothing will allow to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter on this point.

As regards the **Federation of B&H**, the report states that all trade unions, regardless of the representativeness, have the right to represent their members. Only non-representative trade unions do not have the right to conduct collective bargaining, to conclude collective agreements and participate in bipartite and tripartite bodies composed of representatives of government bodies, employers' associations, and trade unions.

In the **Republika Srpska**, in accordance with the Labour Law, representative trade unions and representative employers' associations have the right to participate in the process of collective bargaining, the peaceful resolution of labour disputes and the work of tripartite and multipartite bodies at the appropriate level, and other rights in accordance with the law. The Committee takes note of the detailed information provided in the report regarding the obligation of the employer to enable a trade union to act in accordance with its role and tasks, statute, programme and international labour conventions and to provide trade unions with technical and physical conditions for their activity.

The report does not provide the information requested as regards **Brčko District** of Bosnia and Herzegovina. The Committee therefore reiterates its request and considers that, should the information not be provided in the next report, nothing will allow to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter on this point.

In its previous conclusion, the Committee also asked for further information on the actual criteria for determining representativeness (Conclusions 2018).

In reply to the Committee's question, the report states that, in accordance with the Law on Labour in the Institutions of **Bosnia and Herzegovina**, a trade union (or two trade unions acting together) is considered representative if the majority of an employer's workers on the employer's premises have joined it.

As regards the **Federation of B&H**, the Labour Law provides that the union is considered representative: if it is registered with the competent authority, in accordance with the law; if it is financed mainly from membership fees and other own sources; and if there is a required percentage of employees who are members in accordance with the law. The Committee takes note of the information provided regarding the procedural requirements for determining the representativeness of a trade union. The Committee also takes note of the list of representative trade unions in the Federation of Bosnia and Herzegovina provided in the report.

As regards the **Republika Srpska**, in accordance with the Labour Law, the representativeness of the trade union is determined at three levels: (i) at the level of the employer (conditions for acquiring the status: to be founded and operating on the principles of a trade union organisation and operation; to be independent of government and employers; to be registered in the Register of Trade Unions and Employers' Associations; to be financed mainly through membership fees and other own sources and to have not less than 20% members of the total number of employees with the employer); (ii) at the level of the section, division or group (conditions for acquiring the status: to be founded and to operate on the principles of a trade union organisation and operation; to be independent of government and employers; to be registered in the Register of Trade Unions and Employers' Associations; to be financed mainly through membership fees and other own sources and to have not less than 10% members of the total employees in the section, division or group); (iii) at the level of the Republic of Srpska (conditions for acquiring the status: to be established and to operate on the principles of a trade union organisation and operation; to be independent of government bodies and employers; to be registered in the Register of Trade Unions and Employers' Associations; to be financed mainly through membership fees and other own sources and to have not less than 5% members of the total number of employees in the Republic of Srpska in at least three

sections, divisions and groups). The decision on determining representativeness is final in the administrative procedure and no appeal is allowed against it unless an administrative claim is lodged with the District Court in Banja Luka within 30 days of receipt of the decision.

As regards the **Brčko District** of Bosnia and Herzegovina, the report states that according to the Labour Law, a representative trade union is a trade union representing at least 20% of employees working for the employer. A representative trade union, for one or more fields of activity, is a trade union that has at least 30% of the total number of employees in that field of activity. A representative trade union for the territory of the District, is considered to be a trade union that has at least 30% of members in at least 3 fields of activity in relation to the total number of employees in the District, according to the data of the Agency for Statistics of B&H. The Law stipulates that the employer determines the trade union's representativeness. If the employer does not determine within 15 days from the day of submitting the request on the trade union's representativeness, then the competent body may decide at the request of the trade union. The conditions for the trade union's representativeness are also prescribed: to be registered with the competent body, to be financed mainly through membership fees and other own sources and to have the required percentage of employees as members.

In its previous conclusion, the Committee also asked about the criteria of representativeness and the prerogatives of trade unions and employees' councils in the **Brčko District** of Bosnia and Herzegovina. It also asked whether both forms of representation may coexist in businesses with at least 15 employees, and if this is not the case, which form of employees' representation has priority/more privileges in practice (Conclusions 2018).

In reply to the Committee's question, the report states that in BD, workers have the right to form a works council when the employer has at least 15 employees. If a works council has not been set up with the employer, the trade union will take on this role.

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 recalls that no targeted questions were asked for Article 6§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Bosnia and Herzegovina was not in conformity with Article 6§1 of the Charter on the ground that it had not been established that joint consultation was sufficiently promoted (Conclusion 2018). The Committee asked further questions about the functioning of economic and social councils and the articulation of bipartite consultations on matters of mutual interest at all levels of the State.

As regards Bosnia and Herzegovina (BiH), the Committee referred in its previous conclusions to the delays in establishing a Social and Economic Council (Conclusions 2014 and 2018). The report indicates that the body in question has still not been established. It does not otherwise provide any information about bipartite consultation on matters of mutual interest.

As regards the Federation of Bosnia and Herzegovina (FBiH), the report re-submits information already noted in previous reports (Conclusions 2014, 2018), about the status and role of the Economic and Social Council operating at entity level. The report does not otherwise provide any information about bipartite consultation on matters of mutual interest at different levels. According to another source consulted by the Committee, the Economic and Social Council of the FBiH has not met for long periods of time during the reference period and has not received relevant draft bills for review before adoption in Parliament, in breach of the applicable regulations (Friedrich-Ebert-Stiftung, Annual Review of Labour Relations and Social Dialogue 2018).

As regards the Republic of Srpska (RS), the report provides general statements to the effect that tripartite and bipartite consultation structures are in place, without any relevant detail pertaining to the composition of these bodies or matters discussed during the reference period.

As regards the Brčko District (BD), the report provides new detailed information about the structure, mandate and functioning of the Economic and Social Council, which provides an institutional forum for tripartite economic and social dialogue. According to the report, a new founding agreement renewing the Economic and Social Council’s mandate was adopted in 2017. Based on this information, the Committee considers that the situation in the BD is in conformity with Article 6§1 of the Charter.

The Committee reiterates its request for detailed and updated information on how joint consultation between employers and employees on issues of mutual interest at national, entities and local level (other than the BD) is promoted, including bipartite consultation. It recalls that consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.). The Committee also asks for updated information on the structure, mandate and functioning of economic and social councils at national, entity and local level (other than the BD).

Meanwhile, the Committee concludes that the situation in Bosnia and Herzegovina (other than the BD) is not in conformity with Article 6§1 of the Charter on the ground that joint consultation is not sufficiently promoted.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina (other than the Brčko District) is not in conformity with Article 6§1 of the Charter on the ground that joint consultation is not sufficiently 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 recalls that no targeted questions were asked for Article 6§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

The Committee deferred its previous conclusion pending receipt of the information requested on the proportion of workers covered by a collective agreement (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the general question.

The Committee notes that the report does not provide the information requested. Accordingly, the Committee asks for detailed and up-to-date information on the situation with regard to Article 6§2 of the Charter, on the number of collective agreements, and on the proportion of workers covered by a collective agreement at all levels (national/entity, branch/sectoral, company). Meanwhile, the Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the promotion of collective bargaining is sufficient.

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

Covid-19

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the promotion of collective bargaining is sufficient.

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 recalls that no questions were asked for Article 6§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee deferred its previous conclusion (Conclusions 2018) pending information on:

- whether, in Bosnia and Herzegovina, the Labour Law in the Institutions provided for conciliation or mediation procedures in the context of collective labour disputes;
- any development in the Federation of Bosnia and Herzegovina relating to the new law intended to encourage the use of conciliation and mediation to settle labour disputes (which was about to be adopted);
- whether, in Republika Srpska, there was a system of arbitration for collective labour disputes;
- conciliation and mediation procedures for civil servants in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District.

In its report the Government does not answer the question as to whether in Bosnia and Herzegovina, the Labour Law in the Institutions (or any other legal text) provides for conciliation or mediation procedures in the context of collective labour disputes. Therefore, the Committee considers that it has not been established that such procedures exist.

In reply to the second question, the Government states that, in the Federation of Bosnia and Herzegovina, the Law on Peaceful Settlement of Labour Disputes has entered into force. The aim of this new law is to reach agreements on individual or collective labour disputes within a relatively short time frame through a procedure based on the principles of voluntariness, equality, impartiality and independence, with the expert assistance of conciliators and arbitrators.

In reply to the third question, the Government states that in Republika Srpska, under the Law on Peaceful Settlement of Labour Disputes the settlement procedure of collective labour disputes is voluntary, in other words both parties must agree to submit their dispute to the Agency for the Peaceful Settlement of Labour Disputes (the Agency). Exemptions to this principle are only possible for collective labour disputes arising in public interest activities prescribed by the law or activities whose interruption could endanger human life and health or cause damage on a larger scale. In such cases, the parties are required to submit the proposal for a settlement to the Agency within five days of the collective dispute arising; if they do not do so, the Director of the Agency initiates the procedure ex officio in accordance with the law. The Committee asks what types of collective labour dispute are regarded as arising during public interest activities or activities whose interruption could endanger human life and health or cause damage on a larger scale.

The Committee notes that in Republika Srpska, the Law on Peaceful Settlement of Labour Disputes provides for friendly settlement procedures. The law also provides for the possibility to establish an arbitration council (Articles 34 to 36); under Article 34, the arbitration procedure is initiated at the employer’s proposal in a specific case, namely refusal by a trade union to agree to the termination of an employment contract.

The Committee points out that any form of compulsory recourse to arbitration is a violation of Article 6§3 of the Charter, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other

authority to defer the dispute to arbitration without the consent of one party or both. An exception of this sort is permitted however if it satisfies the conditions laid down in Article G of the Charter.

The Committee asks for detailed information in the next report on the arbitration procedure in collective labour disputes in Republika Srpska, specifying in particular whether this procedure is voluntary or it may result in a binding decision imposed at the request of the authorities or one of the parties, and what types of collective labour dispute may be deferred for arbitration. In the meantime, the Committee considers that it has not been established that there is a voluntary arbitration system for collective labour disputes in the Republika Srpska.

In reply to the fourth question (conciliation and mediation procedures for civil servants), the Government states that in the Federation of Bosnia and Herzegovina, over the last five years, the Ministry of Labour and Social Policy of the Federation has received only one application for the friendly settlement of a collective labour dispute, lodged in accordance with labour law provisions. It does not have any data on conciliation boards at cantonal level. The Committee asks for detailed information in the next report on the friendly settlement procedure for collective labour disputes (in the civil service) provided for in labour law in the Federation of Bosnia and Herzegovina.

The Committee notes that the Government report does not provide any information on conciliation and mediation procedures for the settlement of collective labour disputes in the civil service in Bosnia and Herzegovina, the Republika Srpska or Brčko District. Therefore, the Committee considers that it has not been established that such procedures exist.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§3 of the Charter on the grounds that it has not been established:

- that in Bosnia and Herzegovina there are conciliation or mediation machinery for the settlement of labour disputes in the collective bargaining process;
- that in the Republika Srpska, there is a system of voluntary arbitration for the settlement of labour disputes in the collective bargaining process;
- that there are conciliation or mediation machinery for the settlement of labour disputes in the collective bargaining process in the civil service in Bosnia and Herzegovina, Republika Srpska and Brčko District.

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.

The Committee recalls that no targeted questions were asked for Article 6§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In its previous conclusion (Conclusions 2018), the Committee considered that the situation in Bosnia and Herzegovina was not in conformity with Article 6§4 of the Charter on the grounds that the sectors in which the right to strike could be restricted were overly extensive and the restrictions did not satisfy the conditions laid down in Article G of the Charter. In addition, the Committee reserved its position on the question of groups entitled to call a collective action (pending receipt of information) and requested information on several other points. The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, the requests for information and the general question.

Right to collective action

Definition and permitted objectives

In its previous conclusion, the Committee asked that the next report contain full information on any new legislation adopted.

In its report, the Government indicates that many laws and regulations were amended during the reference period, including the Law on Labour in the Institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 93/17), the Labour Law of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina No. 89/18) and the Law on Police and Internal Affairs of the Republika Srpska (Official Gazette of the Republika Srpska No. 58/19 and No. 82/19).

Entitlement to call a collective action

In its previous conclusion, the Committee noted that entitlement to call a strike was reserved to the most representative trade unions in Bosnia and Herzegovina and to a trade union in the Federation of Bosnia and Herzegovina. Given the specificity of the situation in Bosnia and Herzegovina, in particular the fact that a representative trade union was a trade union registered in Bosnia and Herzegovina, the Committee reserved its position on this point, pending information on the registration of trade unions in Bosnia and Herzegovina (Article 5 conclusion) and on strike in practice.

In addition, the Committee asked who was entitled to call a strike in the Republika Srpska and the Brčko District.

In its report, the Government states that “any trade union” can call a strike in accordance with the Law on Labour in the Institutions of Bosnia and Herzegovina. The Committee requests that the next report refer to the relevant legal provisions.

The Government confirms that in the Federation of Bosnia and Herzegovina, the Labour Law provides that a trade union has the right to call a strike.

In the Republika Srpska, the decision to call a strike with the employer (i.e. at the level of an enterprise) shall be made by the competent body of the representative trade union or by more than half of the workers in the enterprise; it may also be made by the competent body of another trade union which has the support of more than half of the workers in that enterprise. The decision to call a group, section or division strike shall be made by the competent body of the trade union whose representativeness has been determined in that group, section or division. The Committee points out that 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 of the Charter.

The Committee asks again who is entitled to call a strike in the Brčko District. The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

Restrictions to the right to strike, procedural requirements

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the grounds that the sectors in which the right to strike could be restricted were overly extensive and the **restrictions** did not satisfy the conditions laid down in Article G of the Charter.

From the Government's report it appears that the situation in the Federation of Bosnia and Herzegovina has not changed: the Law on Strike provides that the trade union and the employer have to reach an agreement on the activities that may not be interrupted during the strike. Similarly, in the Republika Srpska the range of sectors in which workers can strike provided that a minimum service is guaranteed has not changed and is still wide: these are activities of general interest and activities where the stoppage of work could endanger human life or health or inflict large-scale damage (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, social services (children) and social care, etc.).

The Committee notes that in the Federation of Bosnia and Herzegovina and in the Republika Srpska, the range of sectors where strike action is restricted and where a minimum service is required is extensive. Moreover, there is no information enabling the Committee to conclude that all these sectors may be regarded as "essential" in the strictest sense of the term. Therefore, the Committee reiterates its conclusion of non-conformity on this point.

The Government indicates that according to the 2016 Law on Strike in the Institutions of Bosnia and Herzegovina, the right to strike is general. This right can only be limited (for employees of certain institutions) on the basis of a special law. The same law prescribes that the Council of Ministers shall determine the minimum service during the strike on the basis of a proposal submitted by the employer to which the trade union has given its consent; the aim is to protect public interests, the interests of citizens, general safety, the safety of persons and property, taking into account in particular the need to ensure unhindered life, work and movement of persons, goods and services. The Committee requests that the next report contain the list of sectors in which the right to strike is prohibited or restricted by special legislation, as well as examples of how this special legislation is implemented. Pending receipt of this information, the Committee reiterates its conclusion of non-conformity on this point.

No information is provided in respect of the Brčko District, the Committee reiterates its question and asks for detailed information in the next on the restrictions on the right to strike and minimum service requirements in this Entity. Pending receipt of this information, the Committee reiterates its conclusion of non-conformity on this point.

In its previous conclusion, the Committee asked that the next report contain information on any restrictions on the **right to strike of civil servants** in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

In this respect, the Committee recalls that the right to strike of certain categories of public officials (e.g. members of the armed forces) may be restricted. However, under Article G of the Charter, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.

In its report, the Government states that in Bosnia and Herzegovina and in the Republika Srpska, civil servants have the right to strike. The Committee asks whether special rules govern the right to strike, and in particular restrictions on the right to strike, of civil servants.

With regard to the Federation of Bosnia and Herzegovina, the Government indicates that the Law on Strike does not apply to strikes in administrative bodies and services. Issues related to strikes in such bodies and services are subject to special regulations: the collective agreement for administrative and judicial officers in the Federation (Official Gazette of the Federation of Bosnia and Herzegovina No. 6/20 and No. 11/21, partly outside the reference period) and the branch collective agreement for administrative and judicial officers in the Federation (Official Gazette of the Federation of Bosnia and Herzegovina No. 32/21, outside the reference period). The Committee asks that the next report contain information on the regulation of the right to strike (and in particular restrictions on the right to strike) of civil servants in the sectors of activity covered by a collective agreement. It also asks how the right to strike of civil servants is regulated in the absence of a collective agreement.

No information is provided in respect of the District of Brčko, the Committee reiterates its question and asks that the next report contain detailed information on any restrictions on the right to strike of civil servants in this Entity. The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

In its previous conclusion, the Committee asked whether, in the Republika Srpska and the Brčko District, legislation provided for a cooling-off period, as well as for other **procedural requirements**, such as ballot requirements and quorum.

The Government states that in the Republika Srpska, a strike must be announced in writing to the employer at least seven days before it begins (24 hours in the case of a warning strike and ten days in the case of a strike concerning activities of general interest). The parties to the dispute have an obligation to try to resolve the dispute peacefully during this period and during the strike. The Committee asks whether there are other procedural requirements, such as the obligation to approve the use of strike action by a vote, and the majority/quorum necessary to decide on strike action.

No information is provided in respect of the Brčko District, the Committee reiterates its question and requests that the next report contain detailed information on whether the law provides for a cooling-off period and other procedural requirements. The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§4 of the Charter.

Right of the police to strike

In its previous conclusion, the Committee noted that police officers had the right to strike in the Republika Srpska, and referred to its general question on the right of members of the police to strike in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brčko District.

In its report, the Government confirms that police officers have the right to strike in the Republika Srpska. The Committee asks for information on any restrictions on this right. In the absence of further information, the Committee reiterates its question and requests that the next report contain information on the right to strike of members of the police and any restrictions on it in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brčko District.

Covid-19

In the context of the Covid-19 health crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

The Committee notes that the Government has not provided the requested information.

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§4 of the Charter on the grounds that:

- in the Republika Srpska, the right to call a strike is limited to the representative trade unions;
- in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District, the range of sectors in which the right to strike may be restricted is too extensive and the restrictions on the right to strike go beyond the limits set by 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 recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion (Conclusions 2018), the Committee found that the situation was not in conformity with the Charter on the grounds that it had not been established that all workers enjoy the right to information and consultation, and that that the supervision in respect of the implementation of this right was guaranteed. The assessment of the Committee will therefore concern the information provided by the Government in response to previous conclusion of non-conformity and to the targeted questions.

In the previous conclusion (Conclusions 2018), the Committee noted that in Republika Srpska, employees in the police, judiciary and public administration may not receive any information through a workers’ consultation body as they have no right to establish such a body. The Committee therefore asked the next report to clarify whether all employees in the police, judiciary and public administration who do not have the right to establish such bodies are public servants.

In reply, the report indicates that the legal framework of the right to be informed and consulted in Bosnia and Herzegovina includes employees in public institutions and bodies, public companies and legal entities established by the Bosnia and Herzegovina public institutions. According to the report, all employees in the police, judiciary and public administration do not have the status of civil servants, and they can have the status of holders of judicial functions (judges, prosecutors etc.), police officers, officers at the armed forces.

The report indicates that in Republika Srpska, the Labour Law which guarantees the right to information and consultation, also applies to employees in public institutions and bodies, local self-government bodies and public services, unless otherwise determined by a special law.

The report indicates that in the Federation of Bosnia and Herzegovina, the employees’ councils are regulated in the Law on Employees’ Council. The Committee finds that according to the translation of Article 2 of this law provided by the ILO, employees who work in a company with at least 15 employees, with the exception of persons employed by the Army, the police, bodies of administration and administrative services, have the right to participate in employees’ councils and participate in decision-making regarding matters related to their social and economic rights.

In the previous conclusion (Conclusions 2018), the Committee also found that the previous report did not provide any information concerning the personal scope of the right in the Federation of Bosnia and Herzegovina and the Brčko District and reiterated its request for information in this respect.

According to the report, in Brčko District, the Labour Law provides for the right to consultation, and that this applies to all undertakings without exception.

In order to have a clearer picture of the situation, the Committee asks that the next report confirms that in the Federation of Bosnia and Herzegovina and Republika Srpska, the right to be informed and consulted applies to workers also in state-owned enterprises formed to produce goods or provide services for financial gain.

In the previous conclusions (Conclusions 2018), the Committee also reiterated its previous request 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.

In reply, the report indicates that, at the state level, there is no data available, as the matter is regulated by entity regulations. In the Federation of Bosnia and Herzegovina, in undertakings with at least 15 employees, except for employees in the Army, police, administrative bodies and administrative services, employees have the right to participate in decisions regarding their economic and social interests.

According to the report, in Republika Srpska, the law does not provide for any threshold in this respect. In Brčko District, under the Labour Law, in companies that regularly employ at least 15 employees, an employees' council can be established by the decision of at least one third of the employees.

Concerning, Brčko District, the Committee previously noted that under the provisions of the Labour Law, the employer who employs more than 15 employees has the obligation to adopt a rulebook regulating wages, work organisations and other issues relevant to the relationship between the employees and the employer. It asked whether employees are consulted prior to the adoption of the rulebook.

In reply, the report reiterates the matters which are subject to information and consultation in all three entities, which the Committee took note of in the previous conclusion. In addition, the report indicates that in Republika Srpska, under the provisions of the Law on Employees' Councils, an employees' council has the right to give opinions and suggestions to the employer in order to improve working conditions and safety at work, providing meal for workers during the working day, organising transportation of workers to and from work, providing material assistance to workers of lower financial status, and other issues that the council considers important for the exercise and protection of workers' rights. Further, the council may consider individual requests and proposals of employees regarding the exercise of their rights, on which it gives its opinion to the employer and inform the applicants.

The report further indicates that the employer is obliged to inform the council about the state of safety at work and working conditions of workers, the movement of wages and other issues of importance for the material and social position of workers. The employer is obliged to consider opinions and proposals of the council when making decisions, and if they do not accept these opinions, the employer is obliged to inform the council in a timely manner about the reasons for non-acceptance.

As to the question raised in the previous conclusion on whether the employees are consulted prior to the adoption of the rulebook mentioned in the previous report (Brčko District) (see, § 14 above), the Committee understands that the Labour Law provides for the consultation of employees prior to the adoption of the rulebook which regulates salaries, organisation of work and other issues important for the relationship between employees and the employer.

In the previous conclusion (Conclusions 2018), the Committee noted that in the Federation of Bosnia and Herzegovina, a fine is imposed on the employer who fails to inform and consult with the Employees' Council in accordance with Law on Employees' Council. However, in the absence of further information on this point in the previous report, the Committee reiterated its request. It considered that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect.

In reply, the report indicates that at the state level in Bosnia and Herzegovina, the protection of employees' rights is regulated by the Labour Law. Accordingly, an employee who believes that the employer has violated their rights can make a request to the employer for the protection of that right. The employer is obliged to address the request in writing, within 30 days. Submission of this request does not prevent the employee from seeking protection of the violated right before the courts. Furthermore, the parties to the dispute may also entrust the settlement of labour dispute to arbitration council. The composition, procedure and other issues important for the work of arbitration council is regulated by law.

According to the report, in the Federation of Bosnia and Herzegovina, in accordance with the legal provisions at state level, the employees' council has at its disposal a mechanism that includes applying to the competent court for finding the nullity of the employer's decision made contrary to the law. In Republika Srpska, an employee who believes that their employer has violated their labour rights may submit a written request to the employer in this respect. The request may be submitted within 30 days of finding out about the violation of the right in question. The employer is obliged to decide on the employee's request within 30 days from the submission of the request. The employees have also the possibility to submit a proposal for peaceful settlement of a labour dispute to the competent authority or a lawsuit to the competent court for the protection of that right.

The report further indicates that in Republika Srpska, the Law on Employees' Councils provides that an employer will be fined from BAM 500 to 3,000 for a misdemeanour in case they fail to ask the opinion of the employees' council.

The report does not provide any answer concerning Brčko District and the information provided concerning the legal provisions at state level are not sufficient for the Committee to conclude that the situation is in conformity with the Charter in Brčko District. Therefore, the Committee concludes that there is nothing to establish that there are legal remedies in Brčko District when the rights to be informed and consulted under Article 21 are not respected.

In the previous conclusions (Conclusions 2018), in the absence of any information provided in the previous report with regard to the state level, the Federation of Bosnia and Herzegovina and the Brčko District, it concluded that it had not been established that the supervision of respect of the right to information and consultation was guaranteed.

In reply, the report indicates that at the state level in Bosnia and Herzegovina, administrative and inspection supervision over the application of the Labour Law is performed by the Ministry of Justice. The Administrative Inspectorate of the Ministry of Justice has the power to review by-laws and individual acts, records, and other documentation; listen to and take statements from employees, employers, or trade union representatives; take other measures and actions provided by law. The Administrative Inspectorate draws up a report on the performed inspection and makes a decision on its basis. The employer and the employees may file an appeal against the decision of the Administrative Inspectorate within 15 days from the receipt of the decision. A lawsuit can be filed against the final decision of the Ministry with the courts.

The report further indicates that in the Federation of Bosnia and Herzegovina, the Employees' Council monitors the application of laws, collective agreements and other regulations that are of interest for the exercise of employees' rights. The President of the Employees' Council is obliged to convene a meeting of employees to inform them on issues related to labour rights, including economic and social interests of employees, safety at work and measures to improve the working conditions, at least twice a year in equal time periods.

In Republika Srpska, supervision over compliance with the Law on Employees' Councils, other labour regulations, collective agreements and labour regulations governing the rights, obligations and responsibilities of employees is performed by the Administration for Inspection Affairs. Inspection over compliance with this Law and implementing regulations is performed by labour inspectors and inspection over compliance within administrative bodies and local self-government units, is performed by administrative inspectors who are authorised to take measures indicated in the legislation.

As to Brčko District, the report does provide any information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. The report limits its submission to indicating that during the reference period, there have been no decisions in this regard issued by the competent authorities.

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

For this cycle, the Committee requested information on specific measures taken during the COVID-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report does not reply to this question.

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 there are legal remedies in Brčko District when the rights to be informed and consulted are not respected;
- it has not been established that the supervision of respect of the right to information and consultation is guaranteed in Brčko District.

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 and Herzegovina.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

In its previous conclusion, the Committee found that the situation in Bosnia and Herzegovina was not in conformity with the Charter on the grounds that the right to participate in the decision-making process within undertakings with regard to working conditions, work organisation and working environment was not effectively guaranteed, and that the right of workers to take part in the determination and improvement of the protection of health and safety was not effectively secured.

The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and questions raised in its previous conclusion, and to the targeted questions.

Legal framework

In the previous conclusion (Conclusions 2018), in the absence of answer to its previous request for information on whether the rights guaranteed under Article 22 apply to both private and public undertakings and whether there are any thresholds in order to exclude undertakings which employ less than a certain number of workers (at the state level, in the Federation of Bosnia and Herzegovina and Brčko District), the Committee concluded that the situation was not in conformity with the Charter.

In reply, the report indicates that the Labour Law at the state level of Bosnia and Herzegovina, does not contain any restrictive provisions regarding the application of Article 22 of the Charter. According to the report, in the Federation of Bosnia and Herzegovina, the rights secured under Article 22 apply in all undertakings, both in private and public sectors. Moreover, the labour legislation does not provide for any threshold concerning the number of employees in the undertaking for the application of this right. The report further indicates that in the Federation of Bosnia and Herzegovina, the Labour Law also applies to members of the armed forces and police officers unless there are special regulations on safety and health at work for members of the armed forces and police officers.

According to the report, in Republika Srpska and in Brčko District, the rights guaranteed under Article 22 apply in all undertakings both public or private, and no threshold with the regard to the number of employees have been provided in respective legislations of those entities, for the applicability of the rights guaranteed under Article 22 of the Charter.

Working conditions, work organisation, working environment

In Conclusions 2014, the Committee recalled that workers and/or their representatives (trade unions, workers’ delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in Article 22, such as the determination and improvement of the working conditions, work organisation and working environment. The Committee therefore asked whether the abovementioned form of participation was in line with its case law.

In Conclusions 2018, the Committee reiterated this question and considered that if the requested information was not provided in the next report, there would be nothing to establish that the situation is in conformity with the Charter in this respect.

In reply, the report indicates that in the Federation of Bosnia and Herzegovina, according to the provisions of the Law on Occupational Safety, in case there are 30 or more workers in an undertaking, the workers elect a commissioner for occupational safety, who is a workers' representative with special powers.

The Committee observes that the information presented in the report with regard to the Federation of Bosnia and Herzegovina and the Republika Srpska concerns only health and safety at work and does not cover all matters referred to in Article 22 of the Charter. The report indicates that no information is available with regard to Brčko District. Therefore, the Committee concludes that it is not established that the right to participate in the decision-making process within undertakings with regard to working conditions, work organisation and working environment, is effectively guaranteed.

Protection of health and safety

In the previous conclusion (Conclusions 2018), the Committee reiterated its request for information on how the protection of health and safety is ensured in the private sector in the Brčko District. It also reiterated its request for information on the right of workers to participate in the decision-making process as regards the protection of health and safety within the undertakings in Brčko District. It concluded that the situation was 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 was not effective.

The Committee takes note of the information provided in the report, as regard the rights and duties of the commissioner for occupational safety in the Federation of Bosnia and Herzegovina, which covers both private and public sectors (see §11 above).

The report further indicates that in Republika Srpska, involvement in decision-making processes, planning and implementation of measures for protection and health at work is enabled through the commissioner for protection and health at work. According to the report, in the case there are fifty or more workers in the undertaking, a Committee for Occupational Safety and Health is established as an advisory body to the employer. In case the undertaking counts more than 250 workers, the employer is obliged to establish a Central Committee for Protection and Health at Work, whose task is to improve the state of protection and health at work. The commissioner has the rights to participate in planning of the improvement of working conditions, to monitor the introduction of new technology, to encourage the employer to implement occupational safety and to inspect and to use documentation related to protection and health of workers. The employer is obliged to provide the commissioner with conditions for the uninterrupted performance of that duty, to give him all the necessary information and provide insight into all regulations and documents related to occupational safety. The employer may not assign the commissioner to another job or another employer, terminate their employment contract, reduce their salary or otherwise.

With regard to Brčko District, the report refers to the Law on Safety and Protection of Workers' Health which is applicable in private and public sectors and which prescribes the duties and obligations concerning safety at work. The Committee takes note, on the basis of a translation of this Law provided by ILO, of the duties of the worker or organisation responsible to follow-up and to verify the prescribed work-safety measures, including the maintenance of the good conditions of equipment, ensuring the proper use of the protective equipment in the prescribed manner and measures concerning the training provided for employees concerning safety at work (Articles 37 and 39 of the Law).

However, the Committee also finds that this Law does not contain any provision on the right of workers to take part in the determination and improvement of the protection of health and

safety. Therefore, the Committee reiterates its request for information in this regard concerning Brčko District. It maintains its previous conclusion that the situation is not in conformity with the Charter on the ground the right of workers to take part in the determination and improvement of the protection of health and safety in Brčko District is not effective.

Organisation of social and socio-cultural services and facilities

In the previous conclusion (Conclusions 2018), the Committee noted the absence of information, in the previous report, with regard to organisation of social and socio-cultural services and facilities. It recalled 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. The Committee considered that if the requested information is not provided in the next report, there would be nothing to establish that the situation is in conformity with the Charter on this point.

The report still does not provide any information in this respect. The Committee therefore reiterates its request for information and concludes that it has not been established that the right of workers to participate in the organisation of social and socio-cultural services and facilities is guaranteed in practice.

Enforcement

In the previous conclusion (Conclusions 2018), the Committee reiterated its previous request for information concerning sanctions applicable in case the employer fails to fulfil their obligations under Article 22 of the Charter, in the Federation of Bosnia and Herzegovina and in Republika Srpska.

The report refers to the penal provisions which are listed in the Law on Safety and Security of Workers at Work of the Brčko District and which the Committee took note of in the previous conclusion. The report further states that criminal provisions of the Law on Labour at the state level in Bosnia and Herzegovina, do not prescribe any sanction in case the employer fails to fulfil their obligations under Article 22 of the Charter. It states that the Law on Misdemeanours may apply in these cases. The Committee requests information concerning the sanctions provided in the Law on Misdemeanours in case of failure by the employer to fulfil their obligations in this respect.

The report does not provide any information concerning sanctions applicable in the Federation of Bosnia and Herzegovina and in Republika Srpska. The Committee reiterates its request and also requests information on legal remedies available to workers when the rights secured under Article 22 are not respected.

The Committee concludes that it is not established that there are sanctions for employers who fail to fulfil their obligations with regard to the right of workers to take part in the determination and improvement of working conditions and working environment in the Federation of Bosnia and Herzegovina and in Republika Srpska.

In its targeted questions, the Committee requested specific information on the situation during the COVID-19 pandemic and on arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services. The report does not provide any information in this respect. The Committee 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:

- it has not been established that the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is effectively guaranteed in all three entities;
- the right of workers to take part in the determination and improvement of the protection of health and safety in Brčko District is not effective;
- it has not been established that the right of workers to participate in the organisation of social and socio-cultural services and facilities is guaranteed in practice;
- it has not been established that there are sanctions for employers who fail to fulfil their obligations with regard to the right of workers to take part in the determination and improvement of working conditions and working environment in the Federation of Bosnia and Herzegovina and in Republika Srpska.

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.

The Committee recalls that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In previous conclusion (Conclusions 2018), the Committee concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 28 of the Charter on the grounds that the protection granted to workers' representatives in the Brčko District was not extended for a reasonable period after the expiry of their mandate and that it had not been established that facilities afforded to workers' representatives were adequate in all three entities of Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District). In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the previous conclusion of non-conformity.

Types of workers' representatives

In the previous conclusion (Conclusions 2018), the Committee took note of different types of workers' representatives in Bosnia and Herzegovina. It asked that the next report provide more detailed information concerning types of workers' representatives in the Federation of Bosnia and Herzegovina and in the Brčko District.

According to the report, in the Federation of Bosnia and Herzegovina, "a trade union commissioner" is a worker who is authorised to represent a trade union organised within the undertaking in accordance with the rules on organisation and operation of trade unions. Moreover, in the Federation of Bosnia and Herzegovina, where there are more than 30 employees in the undertaking, the employees have the right to establish an "employees' council" to act on their behalf with the employer in protection of their rights and interests. According to the Labour Law of Republika Srpska, "employee representative" is considered a representative of the employees elected in the workers' council or in the trade union bodies.

As to the Brčko District, the report does not provide the requested information and limits its submission to indicating that "employee representative" is defined by the Law on Safety and Protection of Workers at Work. The Committee concludes, however, on the basis of the translation of this law provided by the International Labour Organisation, that this law concerns security at work and security measures that should be taken by the employer, but does not contain any explanation of, or definition of the types of workers' representatives in the Brčko District. The Committee reiterates its request that the next report provide information concerning types of workers representatives in the Brčko District, with precise references to the relevant legislation. It considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with Article 28 in this respect.

Protection granted to workers' representatives

In the previous conclusion (Conclusions 2018), the Committee noted that in the Federation of Bosnia and Herzegovina, trade union representatives may be dismissed while in office and 6 months after the end of their mandate, only with the prior approval of the Federation's Ministry of Labour. It also noted that members of the Employees' Council may be dismissed only with the prior consent of the Council. The Committee also noted that in Republika Srpska, the

Labour Law guarantees protection from dismissal to workers' representatives during the duration of their mandate and one year after its termination. The Committee also noted, however, that in the Brčko district, the protection against dismissal for workers' representatives was afforded during their mandate and during three months after the expiry of their mandate. Recalling that this protection should extend for at least six months after the end of the mandate (Statement of Interpretation, Conclusions 2010 and Conclusions 2010, Bulgaria), the Committee concluded that the situation was not in conformity with the Charter in this respect.

The report indicates that there were no legislative changes in Brčko District during the reference period with regard to protection of workers' representatives against dismissal. The Committee therefore reiterates its previous conclusion that the situation is not in conformity with Article 28 on the ground that the protection granted to workers' representatives against dismissal in Brčko District is not extended for a reasonable period after the expiration of their mandate.

In the previous conclusion (Conclusions 2018), the Committee also noted that the previous report did not contain any answer to its questions raised in Conclusions 2014, namely, whether protection against prejudicial acts other than dismissal was granted to all types of workers' representatives in all entities of Bosnia and Herzegovina and whether the protection against dismissal in Brčko District extended to members of the employees' councils. In the previous conclusion, the Committee reiterated its questions and considered that if the next report does 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.

In reply, the report indicates that the Labour Law in Bosnia and Herzegovina protects employees from discrimination on any ground. The report specifies that in the Federation of Bosnia and Herzegovina, the prior approval of the Ministry of Labour is also required where the employer offers the workers' representative a less favourable employment contract. The report also indicates that in Republika Srpska, the Labour Law provides for maximum protection to trade union representatives against prejudicial acts short of dismissal.

According to the report, the legislation in the Brčko District does not provide protection for workers' representatives against prejudicial acts other than dismissal. Therefore, the Committee concludes that the situation is not in conformity with Article 28 on the ground that workers' representatives, in Brčko District, are not protected against prejudicial acts short of dismissal.

Concerning Republika Srpska, the Committee considers that the information provided is not sufficient to conclude that the protection afforded against prejudicial acts short of dismissal is adequate. It asks for updated and detailed information concerning protection afforded in Republika Srpska to all types of workers' representatives against acts short of dismissal, which may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts cut-down or any other taunts or abuse. Pending receipt of this information, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that workers' representatives are afforded adequate protection against prejudicial acts short of dismissal in Republika Srpska.

In the previous conclusion (Conclusions 2018), the Committee asked 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.

The report does not provide any specific answer concerning legal remedies available for workers' representatives in the Federation of Bosnia and Herzegovina, apart from the statement that employees are entitled to file lawsuits with the competent courts against employers' decisions restricting their rights. The Committee reiterates its request for information in this respect and considers that if the requested information is not provided in

the next report, there will be nothing to establish that the situation is in conformity with Article 28 in this respect.

The report also specifies that, in Republika Srpska, if the trade union or the workers' council denies approval to the termination of the employment contract, the employer may request an arbitration decision. The arbitration council is obliged to make a decision within 15 days of its constitution and to submit a report within the specified deadline. The decision of the arbitration council is final and binding on the parties to the dispute.

According to the report, there are no legal remedies in the Brčko District available to trade union and workers' representatives to contest their dismissal or any other prejudicial act. The Committee recalls that remedies must be available to workers' representatives to allow them to contest their dismissal (Conclusions 2010, Norway). Moreover, remedies should also be available to workers' representatives claiming other detrimental treatment on the part of the employer (Conclusions 2018, Armenia). In view of the information provided in the report, the Committee concludes that the situation is not in conformity with Article 28 on the ground that there are no legal remedies in Brčko District to allow workers' representatives to contest their dismissals and other prejudicial acts short of dismissal.

The Committee recalls that where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria). It requests that the next report provide detailed information in this respect concerning all entities of Bosnia and Herzegovina.

Facilities granted to workers' representatives

In the previous conclusion (Conclusions 2018), the Committee concluded that it had not been demonstrated that the facilities granted to workers' representatives satisfy the requirements of Article 28. In the previous conclusion, the Committee noted that the previous report did not submit any information in this respect concerning the Federation of Bosnia and Herzegovina and Brčko District. It also noted that the information provided in the previous report concerning Republika Srpska did not allow to establish that all types of workers' representatives, other than trade union representatives, were covered.

In reply, the report indicates that in Republika Srpska, trade union representatives must be allowed to be absent from work to attend trade union meetings, conferences, sessions and congresses, and to receive training in courses and seminars. Moreover, where there is a need to collect solidarity funds, the representatives of the workers authorised by the trade union have the right to perform this activity in the premises or facilities of the employer. Trade union representatives are allowed to display union notices at the employer's premises in places that are accessible to workers. They are also allowed to use the premises at least two hours per month during business hours for company meetings and two hours per week for other union activities. The employer is obliged to allow union representatives to provide workers with information, newsletters, publications, leaflets and other union documents.

The Committee concludes that the information submitted in respect of Republika Srpska does not allow to establish that all types of workers' representatives, other than trade union representatives, are covered. The Committee therefore asks whether the facilities granted in Republika Srpska also covers the workers' representatives other than trade union representatives. It also reiterates its request for information in this respect with regard to the Federation of Bosnia and Herzegovina.

The report provides for no information concerning the situation in the Federation of Bosnia and Herzegovina and in the Brčko District. The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 28 on the ground that adequate

facilities are not afforded to workers' representatives in all three entities of Bosnia and Herzegovina.

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 against dismissal in Brčko District is not extended for a reasonable period after the expiration of their mandate;
- workers' representatives, in Brčko District, are not protected against prejudicial acts short of dismissal;
- it has not been established that workers' representatives are afforded adequate protection against prejudicial acts short of dismissal in Republika Srpska;
- there are no legal remedies in Brčko District to allow workers' representatives to contest their dismissals and other prejudicial acts short of dismissal;
- adequate facilities are not afforded to workers' representatives in all three entities of Bosnia and Herzegovina.

Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

l'Encadrement (CFE-CGC) v. France, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.