



**BOSNIA AND HERZEGOVINA**  
**COUNCIL OF MINISTERS**  
**OF BOSNIA AND HERZEGOVINA**

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**INITIAL REPORT**  
**ON IMPLEMENTATION OF PROVISIONS OF THE INTERNATIONAL CONVENTION**  
**ON PROTECTION OF ALL WORKERS MIGRANTS AND MEMBERS OF THEIR**  
**FAMILIES IN**  
**BOSNIA AND HERZEGOVINA, 2003-2006**

**SARAJEVO, June 2007**

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## **INTRODUCTION**

1. On 13th December 1996 Bosnia and Herzegovina (hereafter BiH) became the member of the International Convention on Protection of All Migrant Workers and Members of Their Families, which was enforced on 01 July 2003. According to the Article 73, paragraph 1 of the said Convention the State members are obliged to inform the relevant UN Committee on legislative, judicial, administrative and other measures undertaken to implement the Convention provisions.
2. BiH is among rare European countries that have to date signed this important Convention. However, due to objective reasons: short time, material and technical incapacity for the topics and issues seeking answers, lack of unique database for the entire BiH, and other reasons that need to be thoroughly analyzed from the point of view of existing practice in this field, BiH has not been able to address the questions to the responsible UN committee within strictly scheduled time.
3. Migrational phenomenon has lately overwhelmed a great number of countries in the world, including BiH. Since a number of BiH citizens left the country due to economic, social, political and other reasons as result of war activities, this Convention was signed in wish to protect the rights of the migrant workers and members of their families. It is known that in the majority of countries rights of workers and their families are not enough protected, which indicated the need of adequate international protection. That is why BiH undertook commitment towards Convention provisions to protect rights of the workers and members of their families staying and working in BiH.
4. In accordance with the Article 73 of the Convention which provides obligation for the state members to submit the report on implementation of the Convention provisions, BiH has fulfilled its international duty by making, adopting and submitting this report.
5. We would like to stress that this document contains usual information on political structure, foundations of the judicial system and statistical figures characteristic of the country, because these are contained in the BiH CORE document submitted to the Office of the High Commissioner for Human Rights under no. HRI / CORE / 1 / A dd 89 / rev.1
6. Abiding by the Provisionary Guidelines regarding the form and content of initial reports submitted by the state members according to the Article 73 of the Convention, the making of the document involved state level experts, entities and The Brcko District of BiH. Besides the BiH Ministry for Human Rights and Refugees that coordinated the report construction, other state-level bodies involved in the matter were: Ministry of Security of BiH, Ministry of Foreign Affairs of BiH, Ministry of Justice of BiH, Ministry of Finance and Treasury, State Border Police of BiH, Statistics Agency of BiH, Foreign Trade Chamber of BiH, Labour and Employment Agency of BiH. Responsible ministries and institutions from entities and The Brcko District of BiH involved in the making of this report are: Federal Ministry of Justice, Federal Ministry of Interior, Federal Ministry of Culture and Sport, Federal Ministry of Education and Science, Federal Ministry of

Labour and Social Policy, Federal Ministry of Health, Association of Independent Unions of FBiH, Federal Statistics Institute, Ministry of Justice of RS, Ministry of Interior of RS, Ministry of Education and Culture of RS, Ministry of Health and Social Care of RS, Ministry of Labour and Veteran-Invalid Care of RS, Republic Statistics Institute of RS; Government of The Brcko District of BiH-Brcko District Police, Department of Education and Department of Labour and Employment.Institute

7. Great contribution in making of the Initial Report was also given by some economic associations, associations of the employed and non-governmental organizations - national and international, who sent relevant information and rendered technical support in concept of the this document, and they are: Trade Chamber of FBiH and Trade Chamber of RS, Association of Employers of BiH, Association of Employers of RS, Association of Unions of RS and World Association of Diaspora of BiH, Association "Your Rights of BiH", Association of Employers of BiH. So, apart from the information supplied by the report-making bodies the expert team directly also included the representatives of some NGOs.

8. Since some questions to be addressed under the Convention had been earlier elaborated and reviewed through the reports BIH had submitted to responsible UN Committees, this report shall not contain wider observations and explanations regarding the same issues. It primarily affects the following documents: Initial Report on Economic, Social and Cultural Rights in BiH (ICESCR), Initial report on Civil and Political Rights in BiH (ICCPR), Report of BiH on Legislative and other measures for implementation of principles embodied in the Provisionary Convention on Protection of National Minorities, the first report of BiH on child' rights (CRC), Report on elimination of all forms of racial discrimination (CERD) and Initial report of BiH against torture and other cruel, inhuman or degrading treatment and punishment (CAT).

9. The Ministry for Human Rights and Refugees of BiH, as the report construction bearer, has undertaken comprehensive preparation and organized several working and consultative meetings with experts and professionals in this field. Experts from the UN Committee in Geneve also rendered their assistance through exchange of experience and know-how by organizing joint seminars.

10. The attachments to the report contain tabular statistical reviews, list of regulations, list of agreements and abbreviation legend.

## **A. First Part**

### **GENERAL INFORMATION**

#### **Constitutional and legislative framework**

##### **a) Constitutional framework**

11. Responsibility for issues of migration, visas and asylum, is entrusted per the BiH Constitution to government authorities, i.e. BiH level institutions. These issues were under the competency of the Ministry for Human Rights and Refugees of BiH, but after the constitution of the Ministry of Security of BiH the latter one, as responsible body, has overtaken full competence and responsibility for above mentioned issues. It means that these issues have been given full constitutional-legal framework, especially by formation of the State Border Police of BiH, Service for Foreigners and other institutions who are more closely tasked with the protection of fundamental human rights and freedoms, of both the BiH citizens and foreign citizens staying in BiH, either as tourists or workers employed in it. We would like to stress that the rights and freedoms enshrined by the European Convention for Protection of Human Rights and Fundamental Freedoms and its protocols, are directly implemented in BiH by the BiH Constitution and that these acts enjoy priority over all other laws.

12. The BiH Constitution also sets forth special guarantees and mechanisms for exercise of rights and freedoms, providing that there shall be no discrimination among the BiH citizens, in both entities and The Brcko District of BiH, on any grounds or reason.

Constitutions of FBiH, RS and the Statute of The Brcko District of BiH offer equal guarantees regarding protection of human rights and fundamental freedoms same as the BiH Constitution.

13. The Convention refers to migrant workers and members of their families in BiH and is applied regardless of sex, race, skin colour, language, religion or belief, political or other opinion, national, ethnic or social origin, citizenship, age, economic status, property, marital status, birth or any other status. The Convention is applied during entire period of migration of workers and their families, during their departures, transit and remunerated activities in the State of employment, as well as during return to the State of origin or State of habitual residence, which is regulated by the Article 6 of the Law on Movement and Stay of Foreigners and Asylum, „non-discrimination“ ("Official Gazette of BiH", no. 29/03 and 4/04). „No discrimination shall be made to foreigners under any grounds, including sex, race, skin colour, language, religion, political and other opinions, ethnic and social origin, affiliation to national minority, property status, age, psycho and physical disability, status at birth or any other status.”

14. **Rights and freedoms of foreigners and stateless persons.** These are persons who exercise their rights in accordance with the Constitution and laws of BiH and international treaties and conventions. Foreigners in BiH enjoy rights and freedoms established by the Constitution, law and international treaties and conventions. Moreover, foreign citizens and stateless persons may regulate their residence under certain terms prescribed by the BiH legislation and on different grounds, including refugee status and asylum.

### **Citizenship of BiH**

15. The BiH Constitution, Article I, point 7, regulates citizenship in BiH. Given the state structure and BiH organization consisting of two entities and The Brcko District of BiH, there is BiH citizenship, regulated by the law passed by the Parliamentary Assembly of BiH and citizenship of each entity, regulated by the entities legislation. It should be emphasized that according to the Constitution all citizens of any entity are automatically BiH citizens. No person can be arbitrary deprived of BiH citizenship or entity citizenship, or left stateless on any other ground. No person can be deprived of BiH citizenship or any entity on any ground such as sex, race, colour, language, religion, political or other opinion, ethnic or social origin, affiliation to national minority, property, birth or any other status. Persons being BiH citizens immediately before enforcement of the Constitution are BiH citizens. The citizenship of persons naturalized after 6 April 1992, and prior to enforcement of this Constitution will be regulated by the Parliamentary Assembly of BiH, which is under its way currently.

16. **The Law on Citizenship of BiH** („Official Gazette of BiH“, number: 4/97, 13/99, 41/02, 06/03, 14/03 and 82/05), Article 3, provides all BiH citizens with equal rights. The Article 5 of this Law regulates that the BiH citizenship is acquired by: descent, birth in the territory of BiH, adoption, naturalization and under international agreement. The Articles 7 and 24 of this Law explain more closely some questions concerning rights to acquire and lose the BiH citizenship, both for BiH citizens and foreign citizens and members of their families. The following issues are regulated therein: acquisition of citizenship by birth on the territory of BiH, adoption of children, acquisition of citizenship by naturalization, facilitated naturalization, matter of loss of BiH citizenship, loss by operation of law, renunciation, release, withdrawal etc.

17. The Article 40 of the Law on Modifications and Amendments of the Law on Citizenship of BiH ("Official Gazette of BiH, no. 82/05) regulates the constitution of **National Commission for revision of decisions on naturalization of foreign citizens after 06 April 1992, and prior to 1st January 2006.** The citizenship of persons naturalized after 01 June 1992, and prior to enforcement of BiH Constitution, has been regulated and is regulated by the Parliamentary Assembly of BiH. In



connection with this matter the Council of Ministers formed the Commission in February 2006. The task of this Commission is to consider individual application for citizenship on grounds of naturalization approved in the period mentioned in the Article 40, paragraph 1 of the said Law. The Commission reviews the individual information supplied by persons concerned and checks procedural correctness of citizenship acquisition procedure. Upon request by the Commission, the persons concerned must supply timely the required information, and special responsibility for this lies with relevant authorities of BiH, entities and The Brcko District of BiH. If a person does not respond to the Commission's summons, then the Commission may withdraw his/her citizenship. Furthermore, if the Commission finds that the regulations in force on the BiH territory at the time of naturalization had not been applied and if it is clear that the applicant was conscious that he/she did not meet the naturalization requirements, he/she loses the BiH citizenship. If such a person, until the moment of the Commission's decision, has fulfilled the naturalization requirements or facilitated naturalization defined by active legal regulations, he/she shall be considered BiH citizen in accordance with the law.

18. The Commission can withdraw citizenship to persons in the following cases: if the regulations in force on the BiH territory at the time of naturalization had not been applied; if the BiH citizenship was acquired by fraudulent conduct, false information or concealment of any relevant fact, if such behavior is attributable to the applicant, or in case of lack of real connection between BiH and the citizen not habitually residing in BiH or in other cases.

If a person, due to above mentioned reasons, does not stay without citizenship, the Commission can submit a proposal to the Council of Ministers to withdraw the BiH citizenship in any case mentioned in the Article 23, line 4, 5 and 6 of the said Law. The decision by the Council of Ministers is final and cannot be appealed, but administrative suit can be initiated with the law of jurisdiction. Evidence that there is no real connection from the paragraph 4, point c of this Article, can be especially failure to register residence including address of stay in BiH. Evidence can be also failure to apply for issuance of identity card of the BiH citizen in accordance with regulations on registration, residence and stay, and the identity card of a BiH citizen.

19. The BiH citizenship will not be withdrawn when a person concerned fulfills requirements for naturalization or facilitated naturalization, pursuant to the said Law, until the moment of the Commission's decision and when it is clear that the person concerned is not conscious that regulations had not been applied, nor had he/she pursued the behaviour justifying withdrawal of the citizenship pursuant to the Law, or had consciously hidden any relevant fact.

20. According to current information with the Commission, it is expected that results they achieve will be based upon active regulation, without discrimination on any grounds.

Out of total of 16 000 reviewed files of the persons who acquired BiH citizenship 1 230 are disputable. Due to delicacy and subtleness of the work of the Commission as it regards destiny of people and their families, the work of the Commission was prolonged for a year in order to resolve these delicate issues pursuant to justice and protect human rights of the persons whose citizenships are reviewed.

BiH citizens can have dual citizenship in compliance with decisions on ratification of agreements between BiH and other countries. At this moment such agreements have been ratified with R Croatia, R.Serbia and Kingdom of Sweden, while a few with other states are in preparation.

21. Foreigners in BiH are obliged to behave in conformity with the Constitution, laws and international treaties.

22. The legal framework of the home legislation regulating the scope of obligations in this field for BiH, FBiH, RS and The Brcko District of BiH, consists of constitutions, laws and other legal provisions regulating this matter in BiH.

All provisions of these laws are founded upon principles advocating no discrimination against workers who are not BiH citizens on grounds of citizenship affecting working conditions, remuneration for the work or dismissal from it.

In principle, the persons who are not Bosnia and Herzegovina citizens are granted all rights arising from work and on the ground of work under equal terms as for BiH citizens if they are documented on the territory of BiH and employed under regulations for employment of foreigners.

### **b) Legislative framework**

23. Besides BiH Constitution, entities constitutions and the Statute of The Brcko District of BiH, the legislative framework regarding visas, border crossings, (legal and illegal) asylum and migration, which are contained in the Convention, consists of a whole range of laws and bylaws (a list of regulation is attached to this Report).

24. *The Law on employment of foreign citizens and persons without citizenship of the entities and The Brcko District of BiH* sets forth that foreign citizens or stateless persons can make a work contract under terms provided for in this Law and provisions of the entity laws on employment of the foreigners, which all define terms under which foreign citizens and stateless persons can be employed in BiH. The provisions of the said laws stipulate that a foreigner can be employed or work in BiH if he has a work permit, fulfills general and special requirements given by the laws. At the BiH level there are the Law on Civil Service in BiH Institutions and the Law

on Labour in BiH Institutions, which regulate rights and duties of BiH citizens on grounds of work and employment and which encompass only civil servants employed in BiH institutions.

25. *The Law on Movement and Stay of Foreigners and Asylum* ("Official Gazette of BiH", number: 29/03 and 4/04), got in force on 14 Oct 2003. This Law regulates terms and procedure of entry and residence of foreigners in BiH, reasons for refusal of entry and residence, reasons for withdrawal of residence and of deportation of foreigners from the territory of BiH, procedure of application for asylum, approval of assylum and termination of asylum in BiH, authorities competency for implementation of this Law, as well as other issues regarding asylum, residence and movement of foreigners in BiH.

Basic reasons for enacting this Law are creation of conditions and environment for improvement of coordination among responsible government bodies, separation of visa regime from residence and work permits, separation of business permit instrument and the category of persons to whom it is issued, and demarcating *the business* (for foreigners who own a registered business in BiH or manage business in their own registered company) from *the work* permit.

Furthermore, one of the main objectives of that Law is transparent establishment of the bodies for determining a quota of work permits and defining the regime of work permits issued only to foreigners employed under work contract, and clear designation of responsible bodies and time limits for issuance etc.

26. Activities on construction of Modifications and Amendments to the Law on Movement and Stay of Foreigners and Asylum have been currently completed and they are entirely conformed with the Convention and EU standards. A major goal of the Law regarding work of foreigners in BiH is transparent designation of the bodies for defining yearly quota of work permits, sorts of business not requiring work permits, and establishment of the regime of work permits issued only to foreigners employed under work contract, and clear designation of responsible bodies and time limits for issuance etc.

The provisions of the Convention on Human Rights and Fundamental Freedoms with Protocols, Convention on the Status of Refugees, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on Rights of a Child, and Protocols dealing with prevention of organized crime were consulted and applied in appropriate scope in the procedure of construction of the Law on Movement and Stay of Foreigners and Asylum, and its modifications and amendments. So, the Law contains "protective provisions" that urge and commit the competent bodies to treat with utmost care all cases in which a foreigner expresses justifiable fear from persecution or other forms of degrading treatment. With aim to enable thorough and comprehensible check of the foreigner's allegations regarding possible persecution in his own

country, the Law sets forth that in such cases the decision is executed as per legal validity. Possibility of the court check is also undisputable in all other administrative procedures, but the Law uses possibility of introduction of exception regarding the moment of validity in all matters where it is likely to have a drastic violation of human rights under the Convention. The process of construction of the existing Law and its modifications and amendments involved active participation of the representatives of the European Commission, Delegation for BiH, OHR, OHCHR, UNHCR and IOM, given the mandate they have in BiH. The European Union standards concerning movement and stay of foreigners were built in the text of the Law.

### **c) Judicial framework in BiH**

27. Since there were more details on the **judiciary in BiH** and its organization in the Article 14 of the Initial Report on Implementation of the International Treaty on Civil and Political Rights (pages 60 to 87), here we shall only point out characteristic examples.

The BiH courts do not maintain separate registries (logs) for the cases where the proceeding parties are migrant workers and members of their families. Proceedings with courts in BiH, in cases where one or more parties in the proceeding are foreigners, natural or legal entities, hence, migrant workers or members of their families, are conducted under the home legislation in which provisions of adopted international instruments are applied.

Consequently, the proceedings with BiH courts are conducted upon principles that grant non-discrimination on any grounds against parties in the proceedings involving also BiH citizens.

28. As an example, we give here some figures and cases registered with the BiH Court, regarding settlement on cases concerning human rights, specifically asylum, movement and stay of foreigners.

In conformity with the Article 5 of the Convention on Human Rights and Fundamental Freedoms, anyone arrested or deprived of his liberty, shall be without delay taken to the judge or any other official officer designated by the law to exert judicial function and shall have right to be trialed within reasonable period or be released to enjoy liberty until the trial. Anyone who was arrested or deprived of his liberty, which is opposite to the said Convention, has right to compensation.

29. The data of the BiH Court (Department for administrative procedures) say that: in **2003** there were 18 cases in litigations instituted against negative decision of the Ministry for Human Rights and Refugees of BiH, to which the foreign citizens filed complaint (brought administrative litigation) to BiH Court. After the court procedure had been conducted 13 complaints were refused and 5 rejected.

In **2004** there were 13 complaints against the Ministry of Security, expulsion litigations (deportation), residence and asylum ones. One complaint was refused and 12 rejected.

In **2005** there were 31 complaints against the Ministry of Security and one against the Ministry of Civil Affairs of BiH. The following cases were proceeded: expulsion from BiH; 4 complaints; residence in BiH, 12 complaints; asylum - 15 complaints and withdrawal of citizenship - one complaint. Ten complaints were rejected, four complaints were refused, 17 complaints are in process and one complaint is in preparation.

In **2006** there were 10 complaints against the Ministry of Security of BiH, 4 complaints against the Council of Ministers, 5 complaints on asylum and 9 complaints on residence. One complaint was refused, 2 complaints are in process and 11 complaints are in preparation.

### **Foreigners in BiH judiciary**

30. The Article IV of the BiH Constitution provides for the composition of the BiH Constitutional Court. The Court has nine members, four elected by the House of Representatives of FBiH, two members elected by the National Assembly of RS. The three members left are elected by the president of the European Court for Human Rights in agreement with the BiH Presidency. The judges elected by the European Court for Human Rights cannot be citizens of BiH or any other neighbouring country. Pursuant to these constitutional provisions, three foreign judges participate in the work of the Constitutional Court. However, according to the same Article of the BiH Constitution, the Parliamentary Assembly of BiH can foresee by the law a different manner of election of the three judges elected by the president of the European Court for Human Rights. That right has not been used to date.

31. Now there are 39 judges at the BiH Court, 23 national and 16 international ones. It should be noted that there is no special registry for foreigners against whom court proceedings are conducted, and the cases are filed and marked according to the sort of case, for example criminal, legal proceedings and they have the same rights as the BiH citizens.

Participation of international judges at BiH courts is primarily aimed not only to assist the BiH courts in deciding on numerous cases, especially ones concerning war crimes, organized crime and corruption, but also to contribute to overall reorganization of courts in compliance with international rules.

32. According to data by the Federal Prosecutor's Office of FBiH, out of total of 173 cases involving 264 persons in 2000 in first instance proceedings under jurisdiction of this Prosecutor's office 11 were foreigners of which number 5 of them from R.Croatia, 1 from Tunisia, 1 from SRYugoslavia, 2 from Slovenia, 1 from the Netherlands and one person for terrorism.

In 2001 there were 131 cases involving 205 persons in first instance proceedings, out of which 14 were foreigners, most of them from Algeria, and in 2002 there were no foreigners among total of 6 cases. In 2003 there were 18 cases involving 55 persons, out of which 4 were foreigners, and in 2004 there were no foreigners in proceedings.

33. Until 2006 entity regulations by which magistrate courts were established were in force in BiH, but enforcement of Modifications and Amendments of the Law on High Judicial and Prosecutorial Council ("Official Gazette of BiH, no. 25/04 and 93/05 in Art. 94), modifications and amendments of the Law on Courts of RS ("Official Gazette of RS", no. 37/06) and modifications and amendments of the Courts in FBiH ("Official Gazette of FBiH, no. 22/06) established a special department for magistrate court at regular courts. Both in previous and existing Law, the shortened proceeding was conducted against a foreigner who committed offence (i.e. on duty magistrate judge conduct legal proceeding on weekends and holidays in order not to deprive a foreigners of his liberty and limit inordinate freedom of movement and hold back of the foreigner.

34. The Table 1 gives review of instituted criminal and legal proceedings against foreign citizens by the police in The Brcko District of BiH. In the said period there were 31 criminal proceedings registered and 126 legal proceedings, which makes total of 157 criminal and legal proceedings.

#### **ATTACHMENT: Table no.1**

Human rights are respected and freedoms guaranteed in proceeding at this court by the Constitution, laws and international conventions, and the same provisions are applied to all BiH citizens.

Human rights are respected and freedoms guaranteed in proceeding at the BiH courts by the Constitution, laws and international conventions, and the same provisions are applied to all BiH citizens.

#### **Offence procedures instituted**

35. The fact that there has been great increase of activities on control and security of the state border is shown by the figure that in 12 months of 2005 there were 41,24% or 3366 offences instituted less than in 2004, which especially refers to crossings of the state border and movement in border line. The offence structure shows that the majority were related to the following:

- regulations providing for manner of crossing of state border and movement in border line (1528)
- regulations providing for international traffic (2080)
- regulations in connection with traffic security (989)
- regulations on movement and stay of foreigners and asylum (353)
- regulations for customs offences (342).<sup>1</sup>

The greatest number of recorded persons are BiH citizens - 4299, then come citizens of neighbouring countries, namely citizens of Croatia - 302 and DZSiCG - 271.

The evident decrease of committed offences can be explained by the professional work of the BiH State Border Police members in the field and their engagement on following-up, discovering, suppression and prevention of commitment of all forms of illegal actions, which affected all offence perpetrators not to offend the provisions regarding the state border control.<sup>2</sup>

### **Offence procedures**

36. In 2006 total of **4.298** offences were committed which is less by 852 offences or **16,54%** than in 2005 when there were 5 150 offences registered. Total of **4.051** (5 752 in 2005) offences were charged, which makes 744 offences or **15,51% less** in this reporting period than in 2005. Total of **5.219** persons were charged ( 5 752 in 2005) which makes 533 persons or **9,26% less** of charged persons than in 2005.

Number of registered persons per offence structure is:

- 0** Law on Supervision and Control of State Border Crossings **1.627 persons (31.17%)**
- 1** Law on Movement and Stay of Foreigners and Asylum **363 persons (6.95%)**
- 0** Law on Travel Documents **6 persons, total (0,12%)**

In the citizenship structure of registered persons it is visible that the majority of them are BiH citizens, followed by citizens of surrounding countries, SiCG and Croatia, and Albania. Other registered persons are mainly citizens of: Slovenia, Macedonia, Moldavia, Romania, Ukraine, Germany, Australia, Bulgaria, Turkey, Hungary, Czech Republic, Slovakia and Belorussia.

### **Smuggling and criminal prosecution of illegal immigrants**

37. In 2006, based on figures by the services responsible for implementation of the law and the Prosecutor's Offices, there were 63 reports against 126 persons on committed crimes of smuggling of migrants from the Article 189 of the Criminal Code of BiH. One case was reported on committed crime of smuggling of migrants in connection with the Article 250 of the Criminal Code of BiH (organized crime).

<sup>1</sup> Report on work of the State Border Police of Bosnia and Herzegovina for the year 2005, page 13

<sup>2</sup> Ibid.

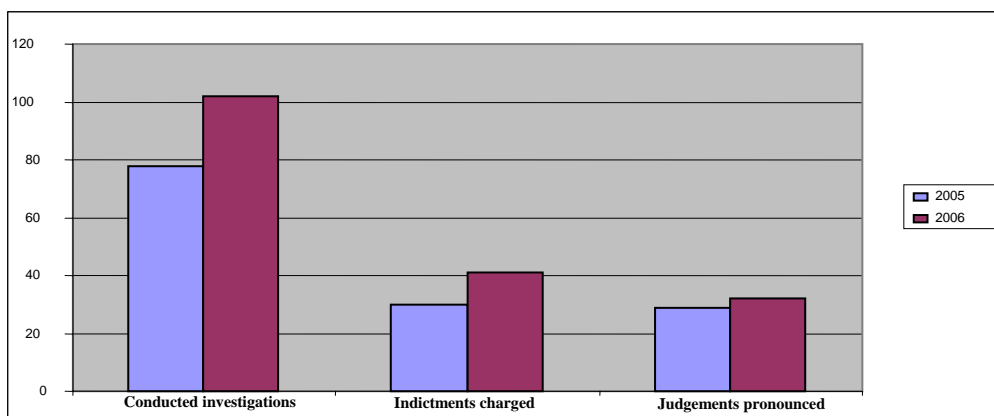
In 2006 the Prosecutor's Offices conducted 102 investigations on crimes of smuggling migrants, with 57 investigations left from the previous period and 45 new investigations opened.

In the reporting period the prosecutors brought 3 orders on non-conduct of investigation and stopped investigation in 5 cases. In the reporting period 41 indictment were brought, of which 39 were confirmed and 2 rejected.

The courts passed judgements on 32 cases against 35 persons. There were 21 persons convicted with consent on guilt, 12 to suspended sentence and 9 imprisonment. There were 13 persons convicted without consent on guilt, 10 to suspended sentence and 3 imprisonment. One person was released.

The following graph shows the relation among conducted investigations, indictment brought and pronounced sentences for smuggling of migrants in 2005 and 2006:

**Graph no. 1.**



38. As for the migration and protection of trafficking in persons victims it is important to emphasize the following: in 2002 CARDS provided resources for foundation of the Centre for reception of illegal migrants. Construction of the project documentation is in progress, for building the Centre at the designated location. The Rules on standards and operation of the immigration centre have been passed. Activities to put the reception centre into full operation are currently under way.

39. Government bodies started dealing with the issues of trafficking in persons in 2001. On 06 December 2001 the Council of Ministers of BiH adopted the Action Plan for prevention of trafficking in persons in BiH. Furthermore, the State Commission was formed for implementation of the Action Plan for prevention of trafficking in persons in BiH. Since the legislation did not know the protection of trafficking in persons victims at that time, on 06 September 2002 the Ministry for Human Rights and Refugees of BiH made Interim guidelines for treatment of



trafficking victims, and now there are in force the Rulebook on protection of foreign trafficking victims and the procedures and protocols defining cooperation among institutions and international organization in connection with the said matters. The named instruments set forth rules and manners of treatment by all state and entities government bodies under whose competency are activities on prevention and suppression of trafficking in persons, and by the associations of citizens signatories of the Agreement on Understanding on Trafficking Victims care, all with aim to ensure efficient protection of the trafficking victims in accordance with international standards on protection of human rights.

40. In April 2005, the Council of Ministers of BiH adopted a new National Action Plan for combat against trafficking in persons and illegal migration in BiH for the period 2005-2007, Operational Plan of activities for 2005, and the Action plan for combat against children trafficking, which all set out the strategy for operation of government representatives in cooperation with non-governmental and international partner organizations in this field. These instruments formulated three-year strategic goals and defined measures and activities on support, prevention, protection of victims in shelters (safe houses) for accommodation of human victims of trafficking and witnesses in criminal investigations against perpetrators of trafficking in persons crimes. Their implementation will enhance entire process of coordination of activities and improve situation in prevention and combat against trafficking in persons and illegal migration in BiH, which would fully comply with the provisions of the Palermo Protocol (in connection with the Convention on Transnational Crime).

41. The Action Plan for prevention of trafficking in persons in BiH is realized through four key activities, such as: legislative measures, strengthening of operational activities of the bodies involved in implementation of the Action Plan, protection of victims - safe house shelter for victims and awareness programme.

42. In August 2003, based on recommendations by the international and national organizations the Council of Ministers of BiH adopted the Decision on procedures and manner of coordination of activities related to prevention of trafficking in persons and illegal migration in BiH and establishment of the post of the State Coordinator for BiH ("Official Gazette of BiH", number 24/03).

In July 2005 the procedures were defined for action of the competent government authorities (Ministry of Security BiH, Prosecutor's Office BiH, SIPA, Service for Foreigners) in cooperation with NGO (safe houses for accommodation of trafficking in persons victims and the Association

"Your rights BiH" for rendering free legal assistance to trafficking in persons victims and IOM), who undertake repatriation into the States of origin.

The Law on Movement and Stay of Foreigners and Asylum provides for the manner and requirements for approval of temporary residence for humanitarian reasons for victims of organized crime or trafficking in persons, with aim to give protection and assistance in their rehabilitation and return to the State of origin.

43. The said Law defines responsibility of the Ministry of Security of BiH to ensure special protection and assistance to victims of trafficking in persons for their recovery and return to the State of residence, as well as obligation to provide bylaws with rules and standards for treatment, and other issues in connection with admission of the trafficking victims, their rehabilitation and return. Furthermore, the provisions of the Law provide for the possibility of establishment of specialized institutions for reception of foreigners, accommodation of trafficking in persons victims, asylum centres, centre for temporary shelter (Albanians from Kosovo) and special institutions for reception of foreigners which already exist in both entities ("Lara", Bijeljina, "La strada", Mostar, "Medica", Zenica...)

44. The database on the foreign citizens - Ministry of Security of BiH is responsible for maintenance of central database on foreign citizens in BiH. In cooperation with CIPS the Ministry completed a project entitled "Informatization of foreigners' affairs". The European Commission approved financing from the CARDS programme, by mediation of IOM, of a project "Informatization of foreigners' affairs" which enables informatization of affairs related to foreigners. The project involves establishment of nets for exchange and formation of database in which all data will be inserted from the moment of submitting the application for visa in a DKP, down to entry, certificate of registration and departure of a foreigner from the country. The database users are all state and entity bodies dealing with foreigners issues in any segment.

#### **International bilateral agreements on police cooperation or agreements on readmission**

45. In 2006 BiH made 20 **international bilateral agreements on police cooperation and readmission agreements**, which created adequate legal framework for efficient international cooperation of police and immigration services in the field of combat against all kinds of crimes, especially organized crime, and fight against trafficking in persons and illegal migrations. In 2006 BiH also initiated conclusion of such additional 35 agreements and started activities to conclusion end. There is more detailed information on agreements made and activities for conclusion of new agreements in the chapter on international cooperation. It is essential to note that by the end of

2006 the negotiations started with EU on two agreements such as: Readmission Agreement and Agreements on Liberalization of Visa Regime for BiH citizens.

46. Bilateral agreements that BiH made and ratified with other countries are given in attachment to this Report. Moreover, according to data of the Ministry of Civil Affairs of BiH, Ministry of Security of BiH, the list of a whole range of agreements is attached to this Report.

47. By the end of 2005 the two-year regional CARDS project "Establishment of legislative, regulatory and institutional framework in the field of visas, migration and asylum, conformed with the legal order of the European Union" in which all BiH institutions responsible for visas, migrations and asylum participated. In the course of the project the European legal order was closely presented as well as best European practice in mentioned fields, and a final project document was made entitled "Roadmap for conformity of the legislative, regulatory and institutional framework in the field of visas, migrations and asylum for the countries of South-East Europe". Upon completion of this project an inter-departmental steering group was formed with a task to make a draft of modifications and amendments of the Law on Movement and Stay of Foreigners and Asylum which would to as great extent as possible conform this Law with the European Union legal order and best European practice. In 2006 the Steering group succeeded to conform majority of modifications and amendments of the mentioned Law and will endeavour to finalize its work in the shortest time possible, after which the Draft on modifications and amendments will be forwarded to the Council of Ministers and the Parliamentary Assembly for procedure.

48. In 2006 the Ministry of Security of BiH passed appropriate bylaws based upon this Law (Attached to this report).

49. In 2006 the State Border Service of BiH (now the State Border Police of BiH) completed activities on establishment and upgrading of the legal framework arising from the Law on Supervision and Control of the State Border Crossings. It concerns passing of the bylaws, here attached as the list of regulations.

50. In connection with impediment of recognition of evidence validity in the regional country where the criminal proceedings are conducted pursuant to active laws of another regional country, it is necessary to initiate the regional agreement to be signed by representatives of the regional governments that will define duties of the competent authorities to accept and recognize in their criminal procedure codes the validity of evidence collected in compliance with the active code of another regional country.

51. The Ministry of Justice of BiH and ministries of justice in the regional countries should bring guidelines providing for urgent treatment in cases of international legal assistance in proceedings against perpetrators of crimes of trafficking in persons, and forming contact teams or persons for urgent treatment in procedures of international legal assistance and exchange of information among them.

It would contribute to strengthening of national/state capacities for the purpose of better and more efficient utilization of possibilities of internationally established regional institutions, and using more constructively liaison officers at the embassies of the European Union countries.

52. It is necessary to initiate, through responsible institutions of the Council of Europe, establishment of the regional centre for combat against transfrontier organized crime that would involve regional prosecutor's offices besides police forces.

There is also need to sign and ratify the European Convention on International Assistance in Criminal Matters with two additional Protocols (from 1959 and 2001).

For the sake of fuller implementation of the UN Convention against Transnational Organized Crime, adoption of the regional programme could not only contribute to conform implementation of relevant international instruments but also to establish unique standards for victims compensation, their protection, and protection of victims and other participants in criminal proceedings against trafficking in persons traders, and to harmonize standards regarding period of 'reflection/considering' for the victims and its length that should be 90 days from the date of identification of the victim and not from the date of entry of the victim in given country, which does not exclude establishment of unique standards for situations where this deadline could be longer than 90 days.

53. In order to render greater protection to trafficking in persons victims, the need for free legal assistance was accepted, the hearings of the victims as witnesses in criminal proceedings were shortened to minimum, specialist doctors were actively included to help as experts not only in proving the consequences of the punishable acts but also to offer aid in psycho recovery of the traumatized victims and sophisticated use of technical facilities (video link) for testimonies of victims witnesses wherever it was practically possible.

In order to ensure that the trafficking victims enjoy right to compensation, it is necessary to undertake synchronized measures for the countries of the region to ensure compensation for the damage victims suffered, both material and non-material, during the conduct of the criminal proceeding against the traffickers. The countries in the region should engage themselves far more in allocation of resources from the government budgets in order to ensure rights of the trafficking

in persons victims, in view of active practice in implementation of the Italian Law on Foreigners (Article 18 - allocation of resources from the state budget) especially for the operation of safe houses so they do not depend only on donations.

In connection with more efficient suppression of trafficking in persons, BiH shall work on establishment of unique educational programmes of all government authorities institutions, judicial, police and other bodies involved in the fight against trafficking in persons and raise of authorities responsibility to higher level.

54. In 2006 BiH joined the international project entitled "Ilareia" created by the Ministry of Public Order of the Republic of Greece supported by the European Commission - General Directorate for enlargement and the Unit for technical assistance and exchange of information. The Project will be realized through implementation of the Action Plan for police cooperation in transfrontier combat against trafficking in persons. Besides Greece and BiH the following countries will take part in the project: Albania, Austria, Bulgaria, France, Germany, Italy, Croatia, Cyprus, Montenegro, Moldavia, Ukraine, Hungary, Portugal, Macedonia, Romania, Serbia, Slovenia, Turkey and Finland and the international organizations: European Commission, EUROPOL, EUROJUST, FRONTEX and INTERPOL. The purpose of the project is to find a model for improvement of transfrontier police cooperation at bilateral and multilateral levels. In order to achieve this purpose methods and manners of strengthening of transfrontier cooperation in combat against phenomenon of trafficking in persons should be established in South-East Europe and in wider region. The planned activities under the project, among others, will be focused on establishment of permanent expert network of the participating countries; realization of joint operations and development of joint actions; formation of common, *ad hoc*, investigation teams; transfrontier supervision operations; use of concealed police officers; direct exchange of intelligence information during joint operations, use of police liaison officers network; joint conduct of detailed financial investigations; joint analysis of the phenomenon; conduct of joint exercises and training of operational personnel involved in the combat against trafficking in persons. Special activity under the entire project will be establishment of an Emergency Group of police heads of South-East Europe who will meet two times a year with major objective of strengthening cooperation in operational planning at regional level and coordination of activities of services for implementation of the law in the fight against organized crime, trafficking in persons, drugs, arms and terrorism.

55. In 2006 BiH was also involved in the international project entitled "Hera" - Network for fight against trafficking in persons in the Central and South Europe, which is implemented by the Centre for European Public Law from Athens supported by the Ministry of Foreign Affairs of Greece. Besides BiH the following countries participate in the project: Albania, Bulgaria, Cyprus,

Macedonia, Moldavia, Romania, Serbia, Turkey, Greece and Ukraine. The project goal is making closer the legislative and institutional framework in selected countries to the legal standards of the European Union in the field of trafficking in persons and developing cooperation between administration, judicial and prosecutor's institutions and service to implement law of these countries in order to achieve the project goals. The project includes making of a study on phenomenon of trafficking in persons in countries participants that will encompass the following elements: social dimensions of the phenomenon including causes and evolution; legislative and institutional framework with special view on prevention, protection of the victims and criminal prosecution, statistical figures; technical needs; and proposals for elimination of the phenomenon in each of these countries.

56. In 2006, besides Albania, Bulgaria, Croatia, Macedonia, Moldavia, Montenegro, Romania, Serbia and Kosovo territory, BiH joined the project of support to development of a transnational mechanism of directing victims of trafficking in South-East Europe which is implemented by the International centre for development of migration policy supported by the Agency for international development of the United States of America. The goals of this project are development of mechanisms required for comprehensible transnational support to victims of trafficking in persons and institutionalization of cooperation in transnational cases between South-East Europe countries. In middle term the project should contribute help victims of trafficking to become stronger at the beginning of their independent life and raise of awareness on their rights and the role they can have in the criminal proceedings conducted against perpetrators of trafficking in persons crimes. The long term goal and overall purpose of the project is to contribute to the combat against trafficking in persons and reduction of this phenomenon in the region of South-East Europe, through development and implementation of transnational mechanisms.

57. By the end of 2006 the implementation of the project "Development of communication systems and exchange of information on illegal migration in the West Balkans region" started. The project is implemented by the Ministry of Justice and Law Implementation of Hungary supported by the European Commission from the Aeneas programme. BiH joined this project besides other five countries of the West Balkans. The chief purpose of the project is assistance to six countries of the West Balkans in their efforts to improve management of illegal migration flows and strengthen bilateral and multilateral cooperation in this field. Other purpose of the project is support in establishment of effective and preventive policies in the combat against illegal migrations including trafficking in persons and smuggling of migrants followed by development of relevant legislative and best practices. Specific goal of the project is in development of bilateral

and multilateral systems and mechanisms of communication and exchange of information between the countries in the region.

58. After successful completion of the regional CARDS project "Harmonization of legislative, regulatory and institutional framework compatible with the European Union standards in the field of visas, migration and asylum", in 2006 Swedish Migration Administration got support by the European Commission from the Aeneas programme to continue activities in this field. BiH decided to participate with other five countries from the region in the continuation of the above project entitled now "Strengthening of capacities of institutions in the field of asylum, migration and visas". Chief goals of this project are: practical implementation of actions (acquis) of European Union and best practices of the European Union countries in the field of visas, asylum and migration, and enhancement of national institutions and services for development of a platform for regional cooperation already established under CARDS projects.

59. The migration situation is analyzed through statistical and other figures collected by the Ministry of Security of BiH and its organizational units: Migration sector, Asylum sector, State Border Police of BiH, and the Ministry of Foreign Affairs of BiH.

#### **d) Institutional framework**

60. Institutional framework ensuring application of migration regulation and regulations related to rights of migrant workers and members of their families at the state level includes:

- Ministry of Security of BiH: Service for Foreigners, Sector for Migrations and Sector for Asylum;
- Ministry for Human Rights and Refugees: Sector for Human Rights and Department for International Reporting;
- Ministry of Civil Affairs of BiH;
- Ministry of Foreign Affairs of BiH;
- State Border Police of BiH;
- State Investigation and Protection Agency,
- Office for Cooperation with Interpol,
- Intelligence-Security Agency,
- State Commission for Revision of Decisions of Foreign Citizens Naturalization,
- State Coordinator for combat against trafficking in persons and illegal migration,
- Work and Employment Agency of BiH and
- Statistics Agency of BiH.

61. There are also responsible entity and cantonal ministries, and institutions of The Brcko District of BiH:

- Employment Bureau of RS,
- Employment Bureau of FBiH,
- Employment Bureau of the Brcko District of BiH,
- Ministry of Interior of FBiH,

- Cantonal Ministries of Interior,
- Ministry of Interior of RS,
- Police of Brcko District BiH,
- Entities and The Brcko District of BiH Funds for health and pension-invalid insurance.

Report on application of the ILO conventions (International Labour Organization) is attached to this Report and it shows that BiH has been a full ILO member since 02 June 1990 and that it is a signatory of 68 ILO conventions and recommendations.

**Attachment: List of ILO Conventions**

**MIGRATION FLOW in BiH**

**a) Some aspects of migration flow in BiH**

62. Irregular migration, an important and familiar phenomenon in Europe in last decades, leaves its base, routes and traces in BiH. Movement of foreign citizens from the east to the west across BiH territory is expressed and recognized as a major problem, both for BiH and the region. Many foreign citizens of the past years entered BiH in legal and illegal manner with intention to depart to West Europe countries, and by the analysis of available data it can be concluded that a great number of these persons had materialized such intention. Recently being only the transit country BiH now begins to appear as a country of final destination primarily regarding work migration of population.

63. Instable political, security, economic and social situation in the countries of the former Yugoslavia and wider, of the past years, has resulted in, besides others, high migration of surrounding countries citizens into BiH. One of the reasons for such trend is seeking international protection in BiH. Although causes are gone, and the political situation has tendency of stabilization, certain number of persons still enjoy international protection and belonging rights to their care, accommodation, education, health care and social protection. Although BiH receives financial aid from the international community, all said above makes the difficult economic situation of this country even more complex. Remarks given above refer to refugees from R.Croatia, Serbia and Montenegro that had found shelter in BiH.

64. Regional activities are coordinated under auspices of the Stability Pact for Southeast Europe, within Regional Initiative for Migration, Asylum and Refugees (MARRI). Visible steps forward were clear after signing of the Declaration at the Summit of the countries participants in the process of stabilization and association of European Union held in Zagreb 24 Nov 2000. Representatives of the countries assessed asylum, migration permitted by law and migration prohibited by law, control of borders and visa and entry permit issuance policy as important fields



for cooperation, and in connection with this, they undertook obligations of mutual assistance and cooperation on behalf of the countries participants of the Stabilisation and association process.

65. The countries participants in the Stabilisation and association process (SAP) have at the same time undertaken to accept all their compatriots who are in an irregular situation on the territory of a EU state member and bound themselves to conform their legislation with relevant international conventions.

66. All activities in the field of migration and asylum are mainly managed under supervision and in cooperation with the European Union, through European Commission in BiH, and UNHCR. Cooperation is important for BiH and other SAP members not only for opening of possibilities to participate in EU funds but also for possibility of access to experience and special know-how of EU experts. Knowledge applied in the process of association of other countries to European Union are used and supplied to SAP members in order to reduce costs and route necessary transformation activities. By the end of 2003, the European Commission informed on progress that BiH achieved in the stabilization and association process. "Managing asylum and migration" is emphasized as the priority field of activities. The reform of legislation, formation of and training of the State Border Police of BiH, training of police and formation of units specialized to fight against organized crime, constitution of the Ministry of Security, reform of the judiciary and a whole range of other activities have been carried out in cooperation with international institutions present in BiH, which is directly connected to requirements of international conventions including this Convention.

**67. Information on situation in the field of migration and asylum**, adopted by the Council of Ministers of BiH in March 2001 and 2002, sets forth the following migration types:

- Legal entry into BiH and illegal crossing into Western Europe countries,
- Illegal entry into BiH and transit to Western Europe countries,
- Illegal residence in BiH,
- Request for asylum and temporary shelter as possibility for illegal transit to Western Europe countries.

According to information mentioned above the factors that influenced the situation in this field are the following:

- Flexibility/porosity of state borders,
- Existing visa regime,
- Lack of complete legislation,
- Non-existence of centres for sheltering illegal immigrants and asylum centres,

- Lack of readmission agreements,
- Lack of financial resources for adequate admission, sheltering and deportation of foreign citizens.

68. According to figures by the Ministry of Security of BiH, Service for Foreigners, the following activities are listed as realized in 2006:

- Registration in/out of residence of foreign citizens
  - 5412 applications for approval of residence
  - 2522 applications for approval of temporary residence
  - 2890 applications for extension of temporary residence
- Decisions made to approve/extend 5120 temporary residences
  - 2387 certificates of temporary residence
  - 2733 extensions of temporary residence
  - 158 decisions on rejection of application for approval of temporary residence
  - 71 decisions on rejection of decision on temporary residence
  - 232 rulings on procedure of approval of temporary residence
  - 89 rulings on termination of procedure
  - 43 rulings on stoppage of procedure
  - In procedure of consideration of admissibility of submitted applications for extension of temporary residence 294 rulings made
  - 280 on termination of procedure
  - 14 on stoppage of procedure
- 172 applications for designation of personal identity number for foreigners submitted
  - 163 identity numbers designated
  - 9 applications under deciding procedure
- 164 applications for permanent residence submitted
  - 152 cases of approved permanent residence
  - 3 cases of rejected application for permanent residence
  - 9 applications under deciding procedure
- Inspection surveillance of movement and stay of foreign citizens
  - 1963 inspection surveillances of control of foreigners
  - 1186 at the residence address of foreigners
  - 409 in catering and tourist premises
  - 356 in legal entities/enterprises
  - 9 in night bars
- Measures undertaken against foreigners in 842 cases
  - 565 extradition from BiH of foreigners
  - 157 request for offence procedure
  - 31 forcible expulsion of a foreigner, ruling on execution of the decision
  - 65 decisions on withdrawal of temporary residence
  - 18 decisions on withdrawal of permanent residence
  - 6 decision on placing under surveillance
- Measures undertaken against legal entities and natural persons offering accommodation services

- 21 measures
  - 14 natural persons
  - 7 legal entities
- Assistance to victims of trafficking in persons in 22 cases

### **Situation with illegal migration**

69. Situation in legal and illegal migration is analysed in statistical and other information collected from the Ministry of Security of BiH and its organizational units: Sector for migration; Sector for asylum, State Border Police of BiH, and the Ministry of Foreign Affairs of BiH.

In 2005 there were 48 872 820 registered crossings of persons at the state border check points, entering 25 028 541 and departing 23 844 279. Compared to the same period in 2004 it is increase of crossings of the state border of 3 065 554 persons or 6,27%.<sup>3</sup>

70. In 2006 the crossing of total of 48 540 884 persons across the state border was registered, entering 24 754 788 and exiting 23 786 096 persons. Compared to 2005 it is decreased by 331 936 persons or 0,68% as opposed to the total registered crossings.

### **Refused entries into BiH**

71. The number of refused crossings to foreigners<sup>4</sup> in 2005 is lower by 2 711 or 25,8%.<sup>5</sup> The State Border Police BiH gives the following reasons for this fall:

- the terms for entry and stay in BiH and sanctions for failure to respect provisions on movement and stay of foreigners are objectified and specified, and make realistic foundation, within scope of internal provisions and rules of the State Border Police BiH, for orderly and lawful treatment by police officers working on control of crossings of the state border, without voluntarism in procedure of execution of border formalities.
- the character and quantity of measures undertaken during 2004 and 2005 against foreigners not fulfilling prescribed requirements for entry and stay in BiH, had preventive effects and the potential perpetrators gave up to try to enter in BiH contrary to valid regulation.
- the introduction of non-visa regime for newly accepted EU countries had influence on the number of refused entries since in 2004 and the first half of 2005 the citizens of the Republic of Hungary, Czech Republic, Republic of Poland and Republic of Slovakia greatly participated in the number of refused entries to foreigners in BiH (in 2004 entry was refused to 2 317 citizens of the named States).<sup>6</sup>

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<sup>4</sup> Entry into BiH is refused to foreign citizens who do not fulfill some of requirements for entry and stay in BiH, in compliance with the Article 11 of the Law on Movement and Stay of Foreigners and Asylum in BiH. Based on failure to meet the requirements provided by the said article, and in accordance with the Article 20 of the Law, the decision on refusal is issued.

<sup>5</sup> In 2004 the number was 10.469, and in 2005 it was 7.758

<sup>6</sup> Report on work of the State Border police of BiH for 2005, page 2

## Foreign citizens with refused entry into BiH

72. In 2006. there was a **rise** in number of refused entries in BiH by 71 persons or **0,92%**. Out of the total number of registered foreign citizens **7.829** were not approved to enter BiH, based on the Article 20 of the Law on Movement and Stay of Foreigners and Asylum, and in connection with the Article 11 of the same Law, because they did not meet the prescribed conditions:

Non-possession of valid travel document	4.365 persons or 55,75%,
Non-possession of visa	1.934 persons or 24,70%
Giving false information	715 persons or 9,13%,
Non-possession of support resources	564 persons or 7,20%,
Non-possession of work permit	236 persons or 3,01%,
Threat to national security of the country and expulsion measures	15 persons or 0,19%.

73. Citizenships of persons refused entry are as follows:

DZSCG <sup>7</sup> .....	1.904 persons or 24,31%	- Brazil.....	160 persons or 2,04%
R. Croatia .....	1.690 persons or 21,58%	- Mexico.....	133 persons or 1,70%
Slovenia.....	543 persons or 6,94%	- Slovakia....	132 persons or 1,69%
Bulgaria.....	501 persons or 6,39%	- Italy.....	108 persons or 1,38%
Romania.....	496 persons or 6,34%	- Argentine.....	105 persons or 1,34%
Switzerland.....	450 persons or 5,74%	- DZSCG/UNMIK....	99 persons or 1,26%
Turkey.....	343 persons or 4,38%	- Albania.....	90 persons or 1,15%
Macedonia.....	263 persons or 3,36%	- Izrael.....	83 persons or 1,06%
etc.			

It is evident that almost half of refused entries in BiH (45,89%) refers to citizens of neighbouring countries: Serbia and Montenegro 1 904 persons or 24,31% and Croatia 1 690 persons or 21,58%.

74. By further analysis of figures it was found that the reasons for refusal of entries in BiH are different per citizenships. So, for example, entry is refused to citizens of Slovenia and Switzerland mainly on grounds of non-possession of travel documents, most probably due to lack of information, as they might consider that they do not need travel documents because they do not need them for R.Croatia. Entry is refused to citizens of Romania and Bulgaria mainly on grounds of non-possession of travel documents and visa. Entry is refused to citizens of R.Croatia mainly on grounds of non-possession of valid travel documents. Entry was refused to citizens of DZSiCG on different grounds including non-possession of valid travel document, giving false information, non-possession of support resources and non-possession of work permit.

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<sup>7</sup> Citizenship of DZSCG is used in the report because this state existed for the major part of the reporting period so the records were kept in it.

**Reasons for refusal of entries in BiH as comparative figures for 2004 and 2005 are given in the table below**

**Table no. 1.**

Reasons to deny entry	NON-POSSESSION				Giving false information	Threat to national security of the country and other measures	Total
	Travel documents	Visas	Support resources	Work permits			
<b>TOTAL ' 04.</b>	4.991	4.584	367	158	354	15	10.469
<b>TOTAL ' 05.</b>	4.402	2.564	431	139	210	12	7.758
<b>Difference +/- &amp; in %</b>	-589 or 11,80%	-2.020 or 44,06%	64 or 17,44%	-19 or 12,02%	-144 or 40,68%	-3 or 20%	-2.711 or 25,89%

*Source: State Border Police of BiH (Report on work of State Border Police of BiH for 2005)*

75. In July 2005 the Council of Ministers of BiH adopted the Strategy of integrated border management that defines details on establishment of efficient control and protection of BiH frontiers, especially regarding cooperation of relevant institutions, aiming to achieve free flux of people, goods, capital and services, and simultaneously to prevent all forms of trans-frontier crimes. Activities have started to reconstruct the Strategy in accordance with guidelines submitted by the Delegation of European Commission in BiH, and to commence construction of the Action Plan for full implementation of this Strategy. The Working Group was formed for implementation of the Strategy, which will establish better cooperation between institutions responsible for frontier-related matter based upon regional guidelines distributed by the European Commission to all countries in the South-East Europe region.

76. In August 2005 the Law on Service for Foreigners was passed establishing Service for Foreigners and providing its authorities, organization and management as well as other issues relevant to its work and lawful operation. The Service will be administrative organization within the Ministry of Security of BiH with operational independence for conduct of affairs and addressing matters under its jurisdiction and it is established in order to carry out administrative and inspection matters defined by the Law on Movement and Stay of Foreigners and Asylum. Establishment of the service and its full capacity will ensure unique and coordinated implementation of the Law on Movement and Stay of Foreigners and Asylum, which now is under authority of entity and cantonal ministries of interior.

77. In December 2005 the Minister of Security with ministers of interior of FBiH and RS and the head of The Brcko District of BiH police the Protocols on the manner of handover of personnel, documentation, equipment, material-technical assets and premises for purpose of establishment of the Service for foreigners. Signing of these protocols is one of the key conditions that the Ministry of Security of BiH and other institutions must fulfill in order to establish the Service in full capacity by mid of 2006.

78. In 2005 BiH concluded the readmission agreement with Sweden, Norway, Denmark and Romania, and activities started to make such agreements with more countries in the region and wider, to mention Moldavia, Macedonia, Albania, Bulgaria and Turkey. In 2006 BiH started negotiations, signed or concluded readmission agreements with: Norway, Romania, Italy, Slovenia, Bulgaria, Austria, Greece, Benelux countries, Spain, Slovakia, France and Macedonia. Activities for conclusion of such agreements started also with: European Union, Albania and Turkey, and the countries of the Africa-Asia region.

79. Throughout 2005 the officers of the Ministry of Security of BiH and the Ministry of Foreign Affairs of BiH actively participated in implementation of the regional CARDS project entitled "Establishment of legislative, regulatory and institutional framework in the field of migrations, asylum and visas harmonized with European Union standards". During implementation of the project a detailed analysis was made of harmony of laws, bylaws and BiH institutions with European Union standards in these three fields. Then comparative analyses were made in cooperation with international organizations implementing the project, experts from some European Union countries and servants from responsible ministries of BiH on imperfections, which resulted in completion of three separate documents containing concrete recommendations to responsible authorities of BiH on the manner they should improve and harmonize their laws, bylaws and establish appropriate institutions. At the end of the project, in December 2005, in Brussels, all regional countries were supplied with the Roadmap for integrated management of migrations which contains concrete recommendations related to establishment of the system of integrated migration management. Having in mind importance of the above mentioned final project documents and their concrete contents, the Ministry of Security of BiH decided, at the end of 2005, to commence full harmonization of the Law on Movement and Stay of Foreigners and Asylum with the European Union standards. The Working Group was formed and it started to work at the beginning of 2006. It will certainly have great impact on the phenomenon of illegal migration and trafficking in persons and the combat against them, and at the same time impact on protection of victims and respect for their rights.

80. The situation with legal migration in BiH for the year 2005 confirms that there are no characteristic divergencies as compared to the migration situation of the previous period.

81. In 2005 the Ministry of Security of BiH - Sector for migration, and competent Departments for foreigners in the ministries of interior issued total of 4 928 decisions on approved temporary or permanent residence for foreign citizens. Out of that number 177 decisions refer to approved permanent residence of foreigners, and 4 751 decisions refer to approved temporary residence of foreigners.

Out of total 177 foreigners who were approved of permanent residence the greatest number are citizens of: China (61), Croatia (27), Macedonia (15), Syria (11) and Ukraine (8), which makes 69% of total approved and processed permanent residences in the reporting period.

Out of total 4.751 foreigners approved of temporary residence last year the greatest number are citizens of: Serbia and Montenegro (1.720), China (866), Croatia (448), Turkey (303) and Macedonia (189), which makes 74% of total approved and processed temporary residences in the reporting period.

82. As for the grounds for the temporary residences it is characteristic that the highest number of temporary residences is approved on grounds of work permit (28,75%), next is grounds of marriage (27,28%), profitable business (16,08%), family reunion (11,91%) education (9,91%), which makes 93,93% of total approved and processed temporary residence in the reporting period.

83. In the reporting period in the structure of temporary residences issued on grounds of work permit the greatest number was approved to citizens of Serbia and Montenegro (528), China (242) and Croatia (141).

In the reporting period in the structure of temporary residences issued on grounds of marriage the greatest number was approved to citizens of Serbia and Montenegro (521), Croatia (225) and Macedonia (116).

In the reporting period in the structure of temporary residences issued on grounds of profitable businesses the greatest number was approved to citizens of China (502), Serbia and Montenegro (96), Turkey (39).

In the reporting period in the structure of temporary residences issued on grounds of family reunion the greatest number was approved to citizens of Serbia and Montenegro (178), China (99), Turkey (41).

In the reporting period in the structure of temporary residences issued on grounds of education the greatest number was approved to citizens of Serbia and Montenegro (332), Turkey (64), Croatia (18).

84. Figures on Approved Residence on grounds of humanitarian reasons (information supplied by the Ministry of Security of BiH):

The total number of temporary residences in BiH in 2006 is **5.274**.

- Permanent residence **153**.
- Issued residence on work grounds **1.494**.
- Temporary work in the territory of BiH **113**.
- **Highest residence rates on work grounds:**
  - Serbia and Montenegro – **568**
  - China – **269**
  - Turkey – **160**
  - Croatia – **152**
- Active as of 21/12/2006 **1.187**, out of which:
  - SCG – **471**
  - Turkey **112**
  - R Croatia **130**
  - China **180**
- Deportation: pronounced measure of deportation of foreigners from BiH with ban of entry (from 1 to 10 years, in 2006 there were 565 cases, out of which 31 forceably expelled (Ruling on permit of execution of the decision on deportation). There were 157 requests for offence procedure.

85. In the mentioned period there were 190 397 foreigners registered including short stays, according to reports from the field centres for foreigners. In average, around 200 applications for permanent residence are submitted yearly in BiH and 80% of them are settled positive. As for the illegal immigration, the figures from 2000 indicated that BiH became the transit centre of well organized international crime dealing with smuggling of people. In the first quarter of 2001 the Information on situation in the field of immigration and asylum was made and it presented factual situation in the field, identified types of illegal migration, causes that led to current situation and proposal of measures to overcome the given situation. On 10 May 2001 the Council of Ministers discussed and adopted the named information, and it became a good starting point for further work on putting the illegal movement of population under control. Well done analysis of the situation represented base and directions for procedure, and realization of a part of proposed measures resulted, according to the figures with the State Border Police of BiH, in fall of the number of migrants who want to go illegally to West Europe countries across the BiH territory by more than 50% in 2001 as compared to 2000. The decreasing trend is evident in 2002 and figures from 2003 indicate that falling trend (in approximately same percentage) kept going on, so any coincidence is excluded.

86. The listed figures are comparative data from different periods and are based upon the number of entry-exit from air border points and upon number of readmitted illegal migrants from R.Croatia under the readmission agreement between R.Croatia and BiH.



## Residence permits

87. In 2006 the Sector for migration with the Ministry of Security of BiH received and processed 5 427 decisions on approved residence of foreigners in BiH, 153 out of that number refers to approved permanent residence, and 5 274 to approved temporary residence.

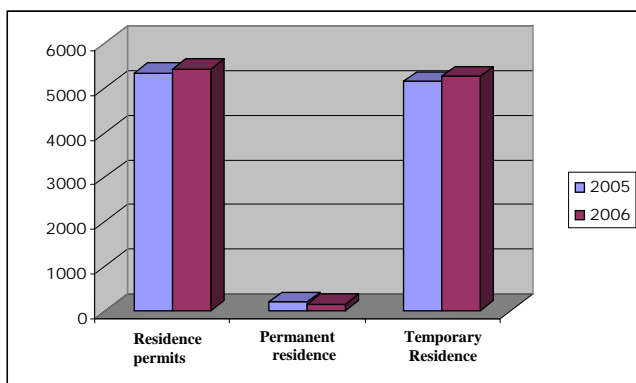
Of total 153 who were approved of permanent residence in BiH the greatest number were citizens of: China (42), Croatia (19), Turkey (16), Macedonia (10), Ukraine (7), Germany (7), Moldavia (7) which makes 70,9% of total approved and processed permanent residences in the reporting period.

Of total of 5 274 foreigners who were approved temporary residence last year the greatest number were citizens of: Serbia and Montenegro (1.839), China (823), Croatia (544), Turkey (480), Macedonia (228) which makes 74,21% of total approved and processed temporary residences in the reporting period.

88. The highest number of approved temporary residence were issued on grounds of work permit (28,33%), marriage (26,45%), family reunion (13,48%), education (12,40%) and on grounds of profitable business (10,56%), which makes 91,22% of total approved and processed temporary residence in the reporting period.

Comparison of the number of issued decisions on residence of foreigners in Bosnia and Herzegovina for <sup>8</sup> and 2006 is given in the following graph:

**Graph no. 2.**



As mentioned in the text above, in 2006 the Ministry of Security of BiH, i.e. the Sector for migration, approved temporary residence for eleven victims of trafficking in persons.

## Entry of high risk migration countries citizens through airports into BiH

<sup>8</sup> The number of processed cases showed in the report for 2005 is lower than the real one. The balance occurred due to subsequent entry of figures at the beginning of 2006 for 2005 by the Sector for Migration.

89. In connection with the number of persons, citizens of the high migration risk countries that entered/departed in/from BiH across international airports in 2005, majority of the persons registered at entry in the reporting period are citizens of R.Turkey (10.911), DZ SiCG (5.451), Lebanon (1.100), NR China (949).

As you can see from the following table, it is noticeable that in 2005 there was rise of number of citizens of R.Turkey, NR China, IR Iran, Syria and India, and fall of number of citizens of Lebanon, Serbia and Montenegro.

**Table no. 2.**

S.no.	Citizenship	TRANSIT VIA AIRPORTS TOTAL 2004.			TRANSIT VIA AIRPORTS TOTAL 2005.		
		entry	exit	balance	entry	exit	balance
1	Armenia	34	33	1	34	34	0
2	Afganistan	4	6	-2	11	10	1
3	Algerie	45	54	-9	26	28	-2
4	Bangladesh	25	25	0	8	7	1
5	China	752	578	174	949	883	66
6	India	187	183	4	228	227	1
7	Iran	288	275	13	438	445	-7
8	Iraq	38	32	6	49	44	5
9	Lebanon	2.109	2.187	-78	1.100	1.110	-10
10	Morroco	14	14	0	19	20	-1
11	Pakistan	137	109	28	101	95	6
12	Sri Lanka	10	10	0	10	11	-1
13	Romania	379	394	-15	414	396	18
14	Syria	83	86	-3	157	153	4
15	Tunisia	29	28	1	32	34	-2
16	Turkey	7.718	7.504	214	10.911	10.888	23
17	DZ SiCG	5.749	5.487	262	5.451	5.549	-98
18	Zimbabwe	0	0	0	1	1	0
<b>TOTAL</b>		<b>17.601</b>	<b>17.005</b>	<b>596</b>	<b>19.939</b>	<b>19.935</b>	<b>4</b>

*Source: State Border Police of BiH (Report on work of the State Border Police of BiH for 2005)*

90. It is important to say that the potential illegal immigrants from the high risk migration countries decide in smaller number to try to enter BiH via airports and continue transit to destination countries. This can be explained by reconciliation of control procedures with active regulation and international standards, as well as with activities undertaken by the police officers in the State Border Service of BiH, to prevent illegal migration.<sup>9</sup>

### **High risk migration countries citizens crossing state borders through international airports**

<sup>9</sup> Report of State Border Service (Border police) of BiH for 2005, page 4

91. The number of **47.127** persons who in 2006 crossed the BiH border from the high migration risk countries via international airports shows **visible** increase by 7.253 persons or **18,19%** as compared to 2005 (39.874).

In the reporting period the entry of 23.672 persons was registered, and exits from BiH were 23.455, so that the balance entry/exit is **217** persons or **0,92%** of the total number of registered entries.

The citizenships are as follows:

R. Turkey entry – 14.219 persons, exit – 13.932 persons, balance+287 persons

India entry – 346 persons, exit – 298 persons, balance + 48 persons

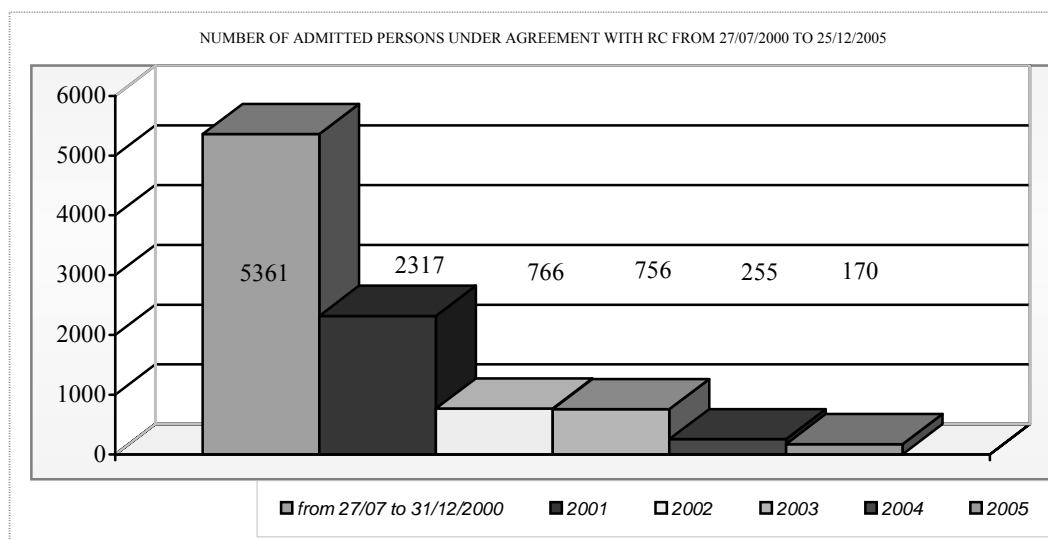
Armenia entry – 24 persons, exit - 100 persons, balance + 24 persons.

It is important to say that the balance with citizens of other countries is little or negative (more departed than entered), so the given figures show that the international airports in BiH are not used as channels for illegal migration.

### **Admission of third countries citizens under the agreement with R.Croatia**

92. It can be seen from the following graph that there is slight trend of fall of persons, illegal migrants, who are admitted under the agreement with R.Croatia, presented per years from the signatures of the agreement 27 July 2000 to 27 July 2005:

**Graph no. 3**



93. It could be concluded from all said above that illegal migrations are put under control of the State Border BiH, by application of appropriate operational-tactical measures and action, by improvement of sector and intelligence work, putting accent on preventive work on supervision, protection and control of crossings of the state border and intensifying of the visa regime and terms to enter in BiH in accordance with valid regulation, and by consistent application of the Law on Movement and Stay of Foreigners and Asylum.<sup>10</sup>

### **Visas issued by the State Border Police of BiH at border crossings**

<sup>10</sup> Ibid. page 5

94. It is also important to point out drastic fall of 63,68% of total number of visa issued at border crossings in 2005, compared to 2004, which fully justified foreseen expectations of application of electronic system for visa issuance. If we compare the statistical figures, 51,49% visas were issued at border crossings at airports, and other visas were issued at land border crossings.

Based on figures from 2004 and 2005 it can be noted that the number of visas issued at border crossings is increased by 72,97% for citizens of Albania. Since the citizens of Albania are regularly found as admitted persons from Croatia, we think that a number of persons misuse the right to entry on grounds of visa in order to go to Croatia and further on to the West.<sup>11</sup>

### **Persons deported into and from BiH**

95. In 2005 the BiH State Border units recorded at the border check points 1 533 persons, BiH citizens who were deported in BiH on different grounds from West Europe and other countries, which is less by 611 or 28,50% than in the same period of 2004 when the number was 2 144. Out of the above mentioned number of deported persons in 2005, 792 or 51,67 were deported with police escort and 741 persons or 48,33% without it.

96. The State border police of BiH gives the following main reasons for the deportation:

- illegal stay - 1.325 or 86,43%,
- execution of different crimes - 52 or 3,39%,
- misuse of opiates – 13 or 0,85% i
- other reasons - 143 or 9,33%.

97. The greatest number of BiH citizens have been deported from the following countries:

- Republic of Croatia - 426 or 27,79%,
- Federal Republic of Germany – 363 or 23,68%
- Kingdom of Sweden – 210 or 13,70%
- Switzerland – 108 or 7,04%
- Kindom of Denmark – 67 or 4,37%
- Kingdom of Norway – 57 or 3,72%
- Republic of France – 55 or 3,59% i
- Other countries – 247 or 16,11%.<sup>12</sup>

During 2005 there were 60 deportations of foreign citizens registered, which is decrease of 22 or 26,83% than in the same period of 2004 when the number was 82.

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<sup>11</sup> Ibid, page 5

<sup>12</sup> Ibid. page 6

98. The State Border Police of BiH gives the following reasons for deportation as major ones:
- illegal crossing of the state border - 51 or 85%, which is by 17 or 50% more than in the same period in 2004,
  - illegal residence in BiH - 5 or 8,33%, which is by 40 or 88,89% less than in the same period in 2004,
  - committment of punishable acts of robbery, theft, imposture - 2 or 3,33%, while in last year there were no deportations registered on such grounds
  - other reasons - 2 or 3,33% , which is equal to the number of registered foreigners who were deported from BiH on these grounds in 2004.<sup>13</sup>

The figures of the State Border Police of BiH show that in 2006, 48 540 884 persons crossed the state border, 24 754 788 persons entered BiH, and 23 786 096 persons departed from BiH. Total of 17 241 267 persons crossed the state border by transport means (private car, transport vehicle, bus, plane, train and ship). Entry was rejected for 7.829 foreigners, and 1.289 persons were stopped in illegal crossing of the BiH state border and 402 persons were deprived of their liberty under investigations.

99. The greatest number of deported foreigners were citizens of Serbia and Montenegro - 42 or 70%, which is less by 16 or 27,58% than in 2004, then Albania - 11 or 18,33%, which is higher by 3 or 37,5% than last year and R.Croatia - 7 or 11,67%, which is less by 4 or 36,36% than last year.<sup>14</sup>

As main reasons DGS gives "lack of institutions specialized for admission of foreigners who should be put under control, in accordance with the active regulation, and failure to form the Service for Foreigners".<sup>15</sup>

**Deportations, extradition, repatriation; admission and extradition of persons under the Agreement with R Croatia**  
**Deported BiH citizens in BiH**

100. In the reporting period members of the DGS recorded at the border crossings **1 350** persons, citizens of BiH who were deported on different grounds into BiH from Western Europe and other countries, which represents decrease by **11,9%** (183 persons) in compariosn to 2005 when 1 533 BiH citizens were deported.

Out of the above number 737 persons were deported with police escort and 613 without it.

The most common reasons for deportation of BiH citizens are:

- illegal residence and work in third countries 983 or 72,8 %
- committed serious crimes (murders, rapes, thefts, robberies, cheatings, prostitution) 106 or 7,9%

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<sup>13</sup> Ibid. strana 6

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

- misuse of opiates 27 or 2,00%
- other reasons 232 or 17,2 %

BiH citizens have been deported from 21 countries, such as follows:

- |                         |             |                              |             |
|-------------------------|-------------|------------------------------|-------------|
| - from R. Croatia ..... | 507 persons | - from Austria .....         | 63 persons  |
| - from Germany.....     | 234 persons | - from Switzerland .....     | 67 persons  |
| - from France.....      | 107 persons | - from the Netherlands ..... | 52 persons  |
| - from Sweden.....      | 89 persons  | - from Italy .....           | 39 persons  |
| - from USA .....        | 38 persons  | - from other countries....   | 154 persons |

### **Foreign citizens deported from BiH**

101. The number of foreign citizens deported from BiH in 2006 was **95**, which is more by **35,84%** (35 persons) than in 2005 (2005-60 persons).

Reasons for deportation are:

- |  |                         |
|--|-------------------------|
| illegal crossing of state border ..... | 70 foreigners or 73,68% |
| illegal residence in BiH.....          | 12 foreigners or 12,63% |
| execution of crimes.....               | 1 foreigner or 1,05%    |
| misuse of opiates .....                | 1 foreigner or 1,05%    |
| other reasons.....                     | 11 foreigners or 11,58% |

Out of the above number 85 persons were deported with police escort and 10 without it.

Foreign citizens deported from BiH had citizenship of 16 countries, including:

Albania	35 persons	- China	2 persons
DZ SCG	21 persons	- Romania	2 persons
DZ SCG/UNMIK	16 persons	- Slovenia	1 person
Croatia	8 persons	- Turkey	1 person
Macedonia	2 persons	- France	1 person
Tunisia	1 person	- SCG and RH	1 person
RH and Macedonia	1 person	- Morocco	1 person
Moldavia	1 person	- G.Britain	1 person

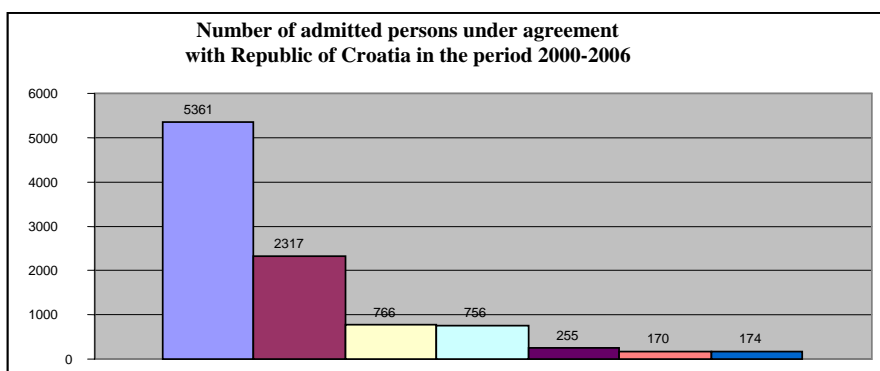
### **Admission and extradition of persons under the Agreement with R. of Croatia**

102. In the reporting period total of **363 persons** were admitted under the agreement with R.Croatia, out of which citizens of BiH make **189**, foreign citizens **174**, on grounds of illegal entry and stay in R.Croatia, and who entered the R.Croatia territory from BiH.

The number of foreigners admitted under the Agreement with R.Croatia (**174**) in comparison to 2005 (170 persons) was increased by 4 persons or **2,35%**.

The following graph shows the number of foreign citizens admitted under the readmission agreement with R.Croatia in the period from 2000 to 2006:

## Graph no. 4



\* Number of admitted persons (5361) from 2000 refers to the period from 27/07 – 31/12/ 2000)

103. The number of foreigners admitted per citizenship is the following:

- DZ SiCG	74 persons or 42,53%	- Macedonia	32 persons or 18,39%
- Albania	31 persons or 17,82%	- Republic of Turkey	10 persons or 5,75 %
- Nigeria	1 person or 0,57%	- DZSCG/UNMIK	26 persons or 14,94%

In 2006 the extradition from Bosnia and Herzegovina of **14** foreigners was carried out, which is **rise** of **1** foreigner compared to 2005 when 13 foreigners were delivered.

The citizenships of the delivered persons are as follows:

6 citizens of Croatia,  
 6 citizens of DZSCG (one owned dual citizenship of R.Croatia),  
 1 citizen of Macedonia/R.Croatia  
 1 citizen of Slovenia.

104. Number of persons admitted from R.Croatia under the agreement is at the same level as last year, while structure of citizenships of admitted persons stays more or less unchanged.

### Persons delivered to International Organization for Migration (IOM) – repatriation

In the reporting period total of **54** persons were delivered for voluntary repatriation in the States of origin or former residence to International Migration Organization (IOM), which is by 141 persons or **72,30% less** than in the same period of 2005 (195 persons). The reason for decrease is lack of financial resources in the Organization for Migration (IOM) so since June 2006 the International Organization for Migration (IOM) had no possibility to implement in full the scheduled programme of assistance to the State Border Police of BiH. Out of the above total number **52** cases or 96,29% refers to illegal immigrants, and in two cases it refers to other reasons.

Citizenship of persons delivered to IOM:

DZ S and C G .....	30	- Turkey .....	3
Albania .....	10	- Macedonia.....	2
DZSCG/UNMIK.....	8	- China.....	1

**Persons discovered while trying to cross the BiH state border illegally (2004, 2005 & 2006)**

105. In 2005 the number of persons trying to cross the state border illegally or after illegal entry in BiH and discovered in the border line was 655, which is less by 220 or 25,14% than in the same period of the last year when the number was 875. Out of that number, 68,85% were caught in try to enter illegally, and 31,15% in try to depart BiH illegally.<sup>16</sup>

Majority of tries of illegal crossings of the state border was registered with persons who are citizens of BiH, Republic of Serbia and Republic of Montenegro, R.Croatia and citizens of the west part of the Republic of Albania (63,82%).<sup>17</sup>

The following table contains the structure of persons per citizenship and place of discovery at try to pass illegally the BiH state border in 2004 and 2005.

**Table no. 3**

S.NO.	CITIZENSHIP	2004.			2005.		
		CAUGHT IN TRY OF			CAUGHT IN TRY OF		
		IL.ENTRY	IL.DEPARTURE	TOTAL	IL.ENTRY	IL.DEPARTURE	TOTAL
1	ALBANIA	37	4	<b>41</b>	35	4	<b>39</b>
2	AUSTRIA	0	1	<b>1</b>	1	0	<b>1</b>
3	BANGLADESH	-	-	-	4	0	<b>4</b>
4	BiH	260	295	<b>555</b>	164	119	<b>283</b>
5	BRAZIL	-	-	-	1	0	<b>1</b>
6	BULGARIA	4	1	<b>5</b>	1	0	<b>1</b>
7	CZECH REPUBLIC	11	1	<b>12</b>	-	-	-
8	DZ S&CG	89	64	<b>153</b>	104	36	<b>140</b>
9	NETHERLANDS	1	0	<b>1</b>	-	-	-
10	CROATIA	43	21	<b>64</b>	106	23	<b>129</b>
11	IRAQ	-	-	-	6	0	<b>6</b>
12	ISRAEL	2	1	<b>3</b>	-	-	-
13	CAMERON	-	-	-	0	2	<b>2</b>
14	CHINA	1	8	<b>9</b>	1	0	<b>1</b>
15	HUNGARY	4	0	<b>4</b>	-	-	-
16	MACEDONIA	0	3	<b>3</b>	1	12	<b>13</b>
17	MEXICO	0	2	<b>2</b>	-	-	-
18	GERMANY	-	-	-	2	0	<b>2</b>
19	POLAND	1	2	<b>3</b>	-	-	-
20	ROMANIA	10	3	<b>13</b>	6	1	<b>7</b>
21	RUSSIAN FEDER.	0	1	<b>1</b>	-	-	-
22	SINGAPORE	0	3	<b>3</b>	-	-	-
23	SLOVAKIA	-	-	-	0	1	<b>1</b>
24	SLOVENIA	-	-	-	2	1	<b>3</b>
25	TURKEY	1	1	<b>2</b>	0	1	<b>1</b>
26	UNMIK				17	4	<b>21</b>
<b>TOTAL</b>		<b>464</b>	<b>411</b>	<b>875</b>	<b>451</b>	<b>204</b>	<b>655</b>

*Source: State Border Police of BiH, Report on work of the State Border Police of BiH for 2005*

<sup>16</sup> Ibid.

<sup>17</sup> Report on work of the State Border Police of BiH for 2005, page 5



106. In 2006 there was a rise of **96.79%** of number of persons (**1.289**) discovered at illegal crossing of the state border (entry and exit) compared to 2005 when 655 persons were registered.

Out of total 800 persons discovered while trying to cross the state border for illegal entry in BiH, 483 persons were discovered at border crossings, and 317 out of border crossings. The analysis of statistical figures indicates that the greatest number of illegal entries in BiH was discovered at:

border with Serbia (490 persons)  
border with Croatia (247 persons) and  
border with Montenegro (63 persons).

In the same period 489 persons were caught in try of illegal departure from BiH out of which at border points 270, and of border points 219 persons. The highest number of illegal departures from BiH was recorded at the border with:

R. Croatia (351 persons)  
Serbia (132 persons) and with  
Montenegro (6 persons).

107. Persons discovered in illegal crossing of the state border had citizenship of 27 countries. Most persons discovered in illegal crossing of the state border (entry and exit) are BiH citizens (730 persons).

Foreign citizens discovered in illegal crossing of the state border are citizens of:

DZSICG .....	256 persons	Macedonia .....	35 persons
Albania .....	89 persons	Romania .....	32 persons
Croatia. ....	67 persons	Bulgaria .....	16 persons
Turkey .....	15 persons	DZCG/UNMIK .....	15 persons etc.

The number of citizens of R.Croatia is greatly decreased as compared to 2005 (2005.-129, 2006.-67), Iraq (2005.-6, 2006.-0), Bangladesh (2005.-4, 2006.-1) and UNMIKA (2005.-21, 2006.-15), while the number of citizens of all other countries caught in illegal crossing of the state border is much higher.

These statistical figures refer to illegal entries and exits from BiH, citizenship of persons discovered in illegal crossing of the state border, and registered illegal crossings with neighbouring countries and they clearly show that the BiH territory kept on being used as transit area for illegal migration from east to west. namely, the highest number of tries of illegal entries in BiH was registered on the east border in the area of the border part of municipalities between Visegrad and Trebinje. The highest number of tries of illegal exits was registered on the west border in the area of the border part of municipalities of Grude, Bihac and Velika Kladusa.

### Discovered forged documents

108. In 2005 members of the State Border Police of BiH confiscated 334 documents under suspicion of forgery, and this is less by around 27% than in the same period last year, when 458 documents were confiscated.

The following tables show clearly great decrease of total registered cases except number of confiscated stay permits and documents from the category of others, and the relation of the total number of discovered forged documents in 2005 and the same period of 2004, which again shows that the highest number of documents were from BiH, Serbia and Montenegro, Germany, Croatia and Italy, then come Macedonia, Slovenia, Turkey and Austria:

**Table no. 4**

DOCUMENT	TOTAL NUMBER		
	2005	2004	+ - % in 2005
Passport	65	81	-19%
Vehicle licence	45	49	-8%
Driving licence	42	57	-26%
Identity card	20	35	-43%
Visa	11	12	-9%
Residence permit	8	5	+60%
Car authority	6	20	-70%
Travel sheet	2	4	-50%
Vehicle insurance	52	115	-55%
Other	83	80	+4%
<b>Total</b>	<b>334</b>	<b>458</b>	<b>-27 %</b>

Source:  
Border  
BiH,  
work of  
Border  
BiH for

State  
Police of  
Report on  
the State  
Police of  
2005

**Table no. 5**

STATE	2005	2004
BIH	145	150
SiCG	71	90
GERMANY	29	66
CROATIA	19	28
ITALY	15	27
SLOVENIA	13	14
AUSTRIA	11	19
TURKEY	7	8
CZECH REPUBLIC	7	1
MACEDONIA	5	22
OTHERS	12	33

Source: State Border Police of BiH (Report on work of the State Border Police of BiH for 2005)

### Counterfeited documents

109. In 2006 the members of the State Border Police of BiH confiscated temporarily **434** documents suspected of being counterfeited, which is **increase** of **29,94%** in comparison to the same period last year when 334 documents were confiscated. The consequence of confiscation of

these documents was registered 280 crimes of "counterfeit of documents", which again is by 20% less than in the same period last year when there were 350 registered punishable acts.

On the one hand there was increased number of confiscated documents suspected of being forged, and on the other hand the number of registered crimes decreased in this field. The balance in number of discovered documents (434) and number of registered punishable acts (280) is the result of application of ICAO standards, more documents found with one person, forwarding the case to competent bodies etc.

The number of confiscated documents, per sorts relevant to this field, is as follows:

**Table no. 6**

DOCUMENT	Number of documents		+/- %
	Year 2005	Year 2006	
Passport	65	84	+29.23%
ID card	20	20	<b>0</b>
Visa	11	20	<b>+81.81%</b>
Residence permit	8	17	<b>+112.5%</b>
Travel sheet	2	0	-

It is noticeable that the total number of temporary confiscated counterfeited passports, residence permits and visas is much greater than last year, which is positive trend concerning performance of members of the State Border Police of BiH.

### **Trafficking in persons**

110. Based on the figures by the law implementing services and prosecutor's offices in 2006 there were 34 registered perpetrators of crimes of trafficking in persons and 77 persons for similar crimes. In two cases criminal charges were brought for trafficking in persons crimes in connection with the Article 250 of the Criminal Code of BiH (organized crime).

In 2006 the prosecutor's offices conducted total of 90 investigations related to trafficking in persons and similar crimes. In 2006, out of total number 42 investigations were ordered to be conducted and 48 investigations were continued from the previous year. There were 14 orders on non-conduct of investigations, and 13 investigations were stopped.

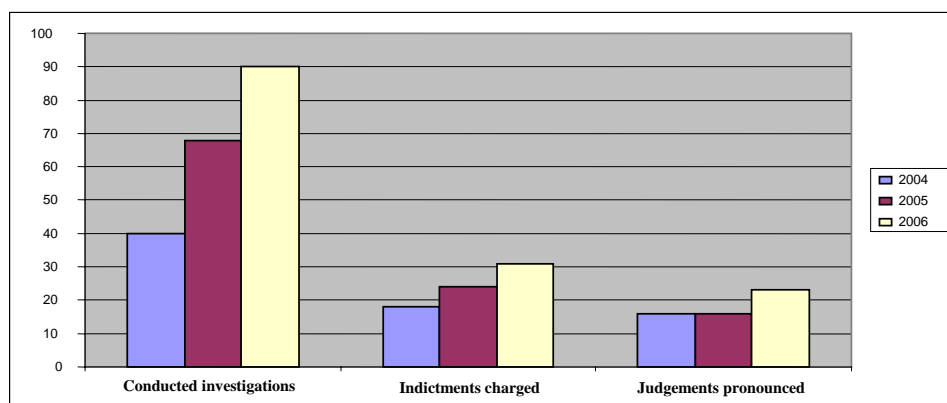
In the reporting period 31 charges were brought, and courts confirmed 33 charges (two charges brought in 2005 were confirmed in 2006). Courts pronounced first instance judgements against 30 persons, out of which 23 convictive. According to consent on guilt 10 persons were convicted, i.e. 1 suspended sentence, 2 fines and 7 imprisonment. Thirteen (13) persons were convicted without consent on guilt, 2 suspended sentence and 11 imprisonment, 3 rejected and 4 released. Twelve (12) appeals were lodged against first instance judgements.

111. The number of identified victims of trafficking in persons in 2005 was 54, according to police reports, and in 2006 42. At the same time it can be also noted that in 2006 there were more

investigations processed, 90 of them (instituted new 42 ones and unresolved 48 from the previous period), which is more than in 2005 when there were 68 investigations (37 instituted in 2005 and 31 investigations continued from the previous period, i.e. 2004). In 2006 there were also 31 indictments filed, and 32 confirmed by the court, and in 2005 24 indictments were brought, and the courts confirmed 26 indictments.

The following graph shows rates of the number of conducted investigations, indictments charged and pronounced first instance judgements against the persons who committed crime of trafficking in persons and similar crimes.

**Graph no. 5**



112. Looking at the relation between imprisonment sentences and suspended sentences and fines it can be concluded that the criminal policy became tighter. So, per consent on guilt 7 persons were sentenced to imprisonment, and without agreement imprisonment was pronounced for 11 persons. Fines were pronounced only for 2 persons upon reaching consent on guilt. Regarding the total number of convicted persons, for 3 persons rejected sentences were brought, and 4 persons were released. First instance judgements in 2006 were appealed in 23 cases, out of which the prosecutor filed against 12 persons, and 11 appeals were lodged by the accused. Deciding upon these appeals the second instance court brought total of 17 enforcable judgements, imprisonment for 10 persons, for 2 persons suspended sentence, for 1 person fine, and for 3 persons rejecting judgement and one person was released. The number of convicted persons who started to exercise their sentences is 9 and 8 of enforcably convicted ones are waiting exercise of imprisonment.

The following table shows the structure of crimes of trafficking in persons and similar crimes, and comparative relation in 2005 and 2006:

**Table no. 7**

Crime	Number of reported crimes		Number of reported persons		Number of victims	
	2005	2006	2005	2006	2005	2006
Establishment of slavery relationship Article 185. KZ BiH	-	2	-	2	-	1
Trafficking in persons Article 186. KZ BiH	15	17 <sup>18</sup>	35	45	27	23
International wooing for prostitution Article 187. KZ BiH	-	3	-	9	-	3
Article 188. KZ BiH	3	2	3	6	3	5
Inducing prostitution Article 210. KZ FBiH	10	8	10	13	14	8

<sup>18</sup> Perpetrators are unknown in four cases.

Trafficking in persons for purpose of prostitution Article 198. KZ RS	6	1	8	1	6	2
Inducing prostitution Article 207. KZ Brčko Distrikta BiH	1	1	2	1	3	1
Misuse of child for pornography Article 208. KZ The Brcko District of BiH	1	-	1	-	1	-
<b>TOTAL</b>	<b>36</b>	<b>34</b>	<b>59</b>	<b>77</b>	<b>54</b>	<b>43</b>

### **Some aspects of illegal migrations into BiH**

113. On 02 March 2005 **two citizens of China** were found with irregular residence in Banja Luka. They neither possessed valid visas for residence in BiH nor did they apply for issuance of certificate of temporary residence to authorized Department for foreigners, and on 25 August 2005 the inspectors of the Department for foreigners of the CJB Banja Luka found **one female citizen of China** without valid travel document in Prijedor. The motive of coming to BiH for the Chinese citizens was of economic nature with aim to stay in BiH or depart for the countries of Western Europe to find job. In given cases decisions were made on deportation of foreign citizens from the territory of BiH.

114. The mentioned figures show that the members of police of RS MUP discovered and cut off several international channels of transfer of illegal migrants. In the observed period **on the territory of RS 83 illegal migrants were discovered, 39 from Albania, 33 were citizens of SiCG, 6 of Iraq, 3 were citizens of China and 2 of Cameron.** By analysis of the matter we can conclude that RS and BiH became one of the major transit centre for illegal transfer of citizens from high migration risk countries to countries of West Europe, and that the members of the police of RS MUP achieved good results in prevention and suppression of illegal migration in these areas.

115. Pursuant to statistical figures submitted by the responsible bodies of The Brcko District of BiH the following could be stated:

- in the period from 30/06/2003 to 31/12/2006, 1 332 work permits were issued in this area,
- in the same period 11 730 residences of foreign citizens were registered on the territory of The Brcko District of BiH. Temporary residence to one year was approved for 1 363 foreign citizens and permanent residence was refused for 39 foreign citizens,
- a review on number of pupils attending scodary and other schools was given, 62 pupils in total.

**Attachment: tables no. 2, 3 and 4**

The RS Republic Statistics Institute gave a review of qualification structure of foreign workers to whom work permits were issued ranging professions from qualified worker to university graduate and higher titles, for the year 2006 and per branches.

**Attachment: tables no. 5, 5a approved temporary residence on different work grounds, 5b approved permanent residence on different work grounds.**

**b) Current situation regarding practical implementation of the Convention**

116. Since the police by nature of its work is more oriented to following-up of illegal than legal migration, and as BiH is in a way very interesting transit area on the way to West Europe for many migrants, we shall give here a few information in connection with it. In comparison with 2000 when the matter of illegal migration culminated in BiH (it is estimated that in that year 50 000 migrants passed through BiH) or compared to 2001 when the number of illegal crossings of the State Border of BiH was greatly reduced, the figures clearly show that in 2002 reduction trend continued in number of delicts and total scope of illegal migration in 2005 is per some parameters (primarily per number of deported migrants from neighbouring Croatia) at the level lower than the one from 2002. However, it does not mean at all that the issue of illegal migration is almost solved, but on the contrary, illegal migration across BiH continue and will surely keep on in near future, thus being a special security problem.

117. In 2000 the Iran citizens prevailed in the structure of migrants (it mainly concerns economic migrants), in 2001 Turkish citizens, and in last two years most migrants were of Albanian nationality from Kosovo and less from Macedonia and Albania. There is constant but somewhat less number of citizens from Bangladesh, Pakistan and especially China. It is characteristic of the Chinese that a number of them stays for shorter or longer time in BiH where they undertake legal or illegal sales of Chinese goods. Indians, Pakistanians and Chinese often fly to BiH, mainly to Sarajevo airport (just as Iranian migrants did in 2000) with regular visas obtained in the BiH embassies and consular missions on grounds of (summarizing) guarantee letters.

118. After entering BiH, illegal migrants are overtaken by organized groups who mediate at illegal transfer, provide beds and transfer migrants further on. There were also cases of providing so called "Schengen" visas with embassies of some EU countries (Greece), which migrant used to enter the countries of West Europe.

Recently, Albanian migrants from Kosovo and Macedonia enter BiH mainly illegally from Serbia and Montenegro, and through organized channels in BiH are transferred via organized channels across Croatia and Slovenia most often to Italy and other European countries. Prices for transfer of

Albanian migrants to Italy usually go from 1.000 to 3.000 EUR. For vast majority of migrants Croatia is the second country to go across on the way out from BiH, and Germany is definitely the most desirable country for many migrants.

119. The Ministries of Interior are still confronted with numerous problems regarding this line of work:

- difficult identification of migrants due to lack of any identification documents,
- language barriers and deficit of interpreters for minority languages,
- presence of migrants as suffering parties in different crimes and offences where sometimes their fundamental rights are violated by BiH citizens and very often smuggling organizers of their origin,
- lack of reception centres for illegal migrants (only some of them who want to go back to the State of origin voluntarily are encompassed by IOM programme and repatriated), etc.

120. In the last three years we have been confronted with higher (illegal) migration of BiH citizens (especially from the Tuzla Canton) into EU countries, where France was the major destination in which our citizens mainly asked for asylum. These networks of our citizens were greatly suppressed by activities of the State Border Police of BiH and the police.

The structure of registered persons committing the crime of "Human smuggling" involved mostly BH citizens, although smuggling of foreign citizens via BiH prevails in the total number of human smuggling via BiH, the same as with the smuggling organizers operating on the territory of BiH with origin out of BiH (Kosovo and Turkey) whose number prevails over the domicile smuggling organizers. It is important to say that the operation of the Prosecutor's Office and BiH Court and the new incrimination "Human smuggling" in the BiH Criminal Code conformed to the Palermo protocol on human smuggling and additionally improved last year, has created good prerequisites for criminal prosecution of human smugglers and their collabourators in BiH. There are tens of charges brought yearly - reports on crimes of human smuggling mainly by the State Border Police of BiH. It is also interesting to note that the police in FBiH has so far recorded only one case indicating trafficking in persons for purpose of labour exploitation, i.e. slave relationship, where the victim was the migrant from Kosovo working in a pie shop of his compatriot in Gorazde, but this case was processed with the BiH Court due to lack of evidence.

121. We estimate that after the Ministry of Security of BiH has fully overtaken migration issues under its competency (by overtaking Departments for Foreigners from current KMUP-s and CJB-s) and after the computer networking compatible to CIPS project, the situation will improve in this field and implementation of existing and newly passed bylaws in this field will be more efficient. Furthermore, since the State Border Police is already under competency of the Ministry of Security



of BiH, it means that in future the Ministry of Security of BiH will be able to dispose of full information on the matter, and that it will systematically, elaborately and comprehensively research it, which is not the case now. We also emphasize the need of stronger involvement of our state in international cooperation against illegal migration, where SECI Centre in Bucharest takes important place.

122. The special problem of the last years in BiH that has additionally made treatment of this matter complex is lack of readmission agreement with SiCG, because the persons deported from Croatia could not return and they crossed illegally from Serbia and Montenegro in BiH. In order to enable and facilitate this admission there should be more efforts to work on it with Serbia.

**c) Information on measures undertaken by BiH for dissemination and promotion of the Convention and cooperation with civil society in promoting and respecting rights enshrined by the Convention**

123. In last three years the police from entire BiH has established full cooperation with the IOM Office BiH in Sarajevo as regards care for migrants in an irregular situation and their voluntary return to their states, while IOM officers take high care for respect of their human rights during conduct of the programme. Cooperation is also good with a whole range of NGOs operating in BiH, especially the ones involved in combat against trafficking in persons.

**B. Second Part INFORMATION REGARDING DIFFERENT ARTICLES OF THE CONVENTION**

**a) GENERAL PRINCIPLES**

124. The Constitutions of BiH, entities and the Statute of The Brcko District of BiH set forth in their provisions ban of all kinds of discrimination and they contain intergrated the paragraphs from the active International convention stated in the preamble of the said Convention. The Law on Movement and Stay of Foreigners and Asylum, Article 6, provides for ban of discrimination and especially emphasizes: " Foreigners must not be subject to any kind of discrimination on any grounds, including sex, race, skin colour, language, religion, political and other opinions, national and social origin, affiliation to national minority, property status, age, psychio or physical disability, status by descent or any other status".

Right to efficient remedy is anticipated in several provisions of the Law on Movement and Stay of Foreigners and Asylum, and we particularly cite here the Article 8, paragraph 2 which sets forth rights in procedure before government bodies: " At all stages of the procedure foreigners will be informed on rights and duties arising from this Law, on the right to appeal, on all possible claims for damage compensation, and all necessary requirements for exercise of their rights".

125. Issuance of work permits to foreign citizens is regulated by provisions of the Labour Law at entity and The Brcko District of BiH level, and by laws on movement, stay of foreigners and laws on employment of foreigners (and stateless persons). Per current legislation work permits are issued for limited time, up to one year the longest, with possibility of extension.

126. Constitutional and legislative framework of BiH grants all rights to both all home and foreign citizens who meet the requirements to stay on its territory, without prejudice or discrimination on any grounds. The Constitution of BiH, Article II, paragraph 4, defines that enjoyment of all rights and freedoms provided by this article and by international agreements listed in the Constitution is entitled to all persons in BiH, with no discrimination on any grounds. The Constitution also sets forth special guarantees and mechanisms for exercise of rights and enjoyment of freedoms, where it is defined that there should not be any discrimination among BiH citizens in both entities, on any grounds or attribute.

By the context of the said Constitutional provisions, by legislation of BiH, both its entities and The Brcko District of BiH it is ensured that all persons whose rights and freedoms are violated have right to appeal, including cases where violation is committed by persons exercising official duties (Article 83 of the Convention).

### **Non-discrimination**

127. BiH has made great progress by respecting rights of all migrant workers and members of their families, regardless of race, sex, language, religion, belief, political or other opinion, national, ethnic or social descent, citizenship, age, economic status, property, marital status or any other status, because the Constitution of BiH, entities and the Statute of The Brcko District of BiH grant to all persons to enjoy without discrimination all rights and freedoms. These documents give special guarantees and mechanisms for protection of human rights and fundamental freedoms to all citizens of BiH. These guarantees, together with additional legislation, refer to equal rights and freedoms of foreigners who reside or work on the BiH territory.

### **Right to effective remedy**

128. Each country of this Convention is bound to ensure remedy for any person whose rights are violated, including the case in which violation was committed by persons exerting official duty. Relevant provisions of the Law on Movement and Stay of Foreigners and Asylum provide for remedies, in some cases for appeal, and in other cases right to file complaint by care of administrative proceeding at the Court of BiH. Remedies are most often used in case of rejection of application of foreign persons for entry into the country, rejection of application for approval of residence on different grounds, rejection of application for asylum, withdrawal of residence etc. The foreign citizen-worker has right to appeal against the said decisions to the Ministry of Security

of BiH within 15 days from the date of receipt (higher instance), with all kinds of legal assistance. It is important to say that the appellant on any issue cannot be expelled, nor forcefully evicted from the country until the appeal term has not expired, that is until the responsible body has made the final decision under the appeal. This is especially defined by the appropriate provisions of the said Law which regulates the manner of forceable eviction of the foreigner from the country, under official duty. The ruling on permit on execution is issued immediately, and not later than seven days from the date of the decision finality. The ruling sets the manner, time and place of the decision finality, and appeal does not lay away the decision enforceability. In cases when a foreign person is put under supervision, the provision 70 of the said Law provides that the foreigner can file an appeal to the Ministry of Security of BiH within three days from the date of receipt of the decision. The Ministry of Security of BiH is bound to make decision upon appeal within seven days from the date of receipt of the appeal.

### **Commitment to implement the Convention**

129. Pursuant to provisions of the Convention, BiH has adopted appropriate laws and other legal acts regulating the issue of foreign worker migrants and members of their families. They include, among others, the Law on Movement and Stay of Foreigners and Asylum, laws on employment of foreigners passed at entities level, as well as a whole range of bylaws necessary to implement the laws. This field is also treated by the the criminal codes passed at all levels, BiH, entities and The Brcko District of BiH. The procedure of exercise of rights and duties of foreign citizens is regulated by the laws on administrative procedure and laws on administrative dispute.

### **b) THIRD PART OF THE CONVENTION: Human rights of all migrant workers and members of their families**

130. Protection and freedom of the foreigners is applied to the same extent as for the BiH citizens. This matter is regulated by the Law on Movement and Stay of Foreigners and Asylum of BiH. Pursuant to the Article 6 of this Law, there should be no discrimination against foreigners on any grounds. The foreigners granted stay for humanitarian reasons, in accordance with the Article 35 of the Law, have right to work and are entitled to education, health and social care under the same conditions as the BiH citizens. The BiH legislative frame provides that foreigners cannot be exposed to torture or any other cruel and inhuman or degrading treatment or punishment, nor can they be in slavery or captive status. According to the said Law the foreigners can be denied entry and stay only in case he has not met necessary requirements as provided by the Law. The foreigner has right to appeal against such negative decisions, which he can submit to the Ministry of Security of BiH.

131. According to BiH legislation, if foreigners are deprived of their liberty they must be treated in a human way and with respect of dignity of their personality. Foreign persons cannot be detained on grounds of failure to fulfill contractual obligations, they have the right of equal liability and rights at courts, right to equal and just trial at competent, independent and impartial court constituted by the law in cases of any criminal charges and rights and duties in the proceedings. Foreigners are protected against arbitrary and unlawful interference in their privacy, family, home or correspondence, they have right to freedom of thought, consciousness or religion and right to freedom of opinion and expression of it. They have right to peaceful gathering and freedom of association, they have right to enjoy their own culture, practice and promote their own religion, use their language, right to marriage etc. Foreigners' children enjoy special legal protection required by their minor status. Per the BiH legislation, the above listed rights of the foreigners can be limited only in lawful manner precized by the Law on Movement and Stay of Foreigners and Asylum. This Law guarantees rights in procedures at government bodies, which is defined by the provisions of the Article 8 and it refers to obligation of the body to inform the foreigner on rights and duties arising from the Law, on right to appeal and right of procedure in the foreigner's mother language. The Article 5 of the Law on Movement and Stay of Foreigners and Asylum guarantees to foreigners freedom of movement and freedom of choice of place of residence.

Foreigners with refugee status have right to stay in BiH. For that purpose they are issued approval of residence for refugees and in that period they have right to work, right to education, health and social care, under the same conditions as for the BiH citizens. A foreigner cannot be deported not forceably expelled from BiH before enforceability of the decision on termination of validity of asylum from the Article 76 of the said Law.

Pursuant to the BiH legislation foreigners can freely dispose of their remunerations, savings and property.

### **Freedom to leave any State including State of origin, and to return into it**

132. The Article 8 of the Convention provides for the liberty to leave any country including the State of origin and to return in it and it is implemented in certain Articles of the Law on Movement and Stay of Foreigners and Asylum in BiH.

133. Foreigners residing in BiH under conditions defined by the said Law enjoy right to free movement in the country and free choice of the place of their residence, unless regulated otherwise by this or other special law.

134. The provisions of the said Law (from 9 to 26) regulate the rights of foreigners regarding entry and departure to any country including the State of origin.

During their stay on the BiH territory, foreigners must possess documents in order to prove their identity and right to enter and stay in BiH, and show them to competent body (Article 9 of the Law - evidence of identity).

135. Foreigners can pass the BiH border at border check points open to international traffic or at the points designated for traffic between two states, unless it is otherwise regulated by agreements between BiH and neighbouring countries (Article 10 of the Law - border crossing).

136. A foreigner who wants to enter or leave BiH is subject to control by officials authorised for control of the state border, and he is obliged to subdue to control his luggage and transport vehicle. The foreigner who wants to enter or leave BiH is bound to answer correctly and fully to all questions and produces all documentation upon request from the paragraph 2 of this Article, and to fill in all additional questionnaires, upon the official's demand.

137. A foreigner may be approved entry to BiH (Article 11 of the Law - general entry terms) if he meets the following requirements:

- to possess valid travel document or other document based on decision by the Council of Ministers of BiH,
- to possess valid visa for entry, stay or transit across BiH territory, i.e. certificate of residence defined by this Law,
- to possess support resources for entry, stay and departure from the country, including resources for health insurance regulated by the Article 14 of this Law,
- to possess entry visa for neighbouring country to which he travels or whose territory he transits for further journey, if visa is required
- that he has not been under measure of deportation, withdrawal of residence or ban of entry on the BiH territory, at the time of pronounced measure,
- that his presence on the BiH territory does not present threat to national security, legal order or public order in BiH.

138. The Council of Ministers of BiH can prescribe special conditions for entry of foreigners, when it is required for protection of national security and legal order of BiH, or other reasons arising from international commitments.

A foreigner can be granted entry even in case he does not fulfill requirements from the Article 11, point A) and B) of this Law, if it is defined by the international treaty to which BiH is a party, or by the special provision by the Council of Ministers (Article 12 of the Law - entry under special conditions).

139. The Council of Ministers, upon proposal by the Ministry of Security of BiH and Ministry of Foreign Affairs, designate the countries whose citizens need visa to enter BiH (hereafter: non-visa regime countries) and the countries whose citizens can enter BiH with other travel document besides passport. The Council of Ministers of BiH is also responsible to exempt of visa persons to whom other countries recognized the refugee status in accordance with the Convention on Rights of Refugees from 1951 (Article 13 of the Law - exemption of visa).

140. The foreigners who, as per this law, are free of getting visa for entry on the territory of BiH have right to stay in the country (furthermore non-visa residence) up to 3 months, unless a shorter period has been defined by the international agreement to which BiH is a party or by the special provision of the Council of Ministers of BiH, passed in conformity with the Article 12 of this Law. The foreigners have no obligation to obtain visa to enter BiH if they have a sticker certificate of temporary or permanent residence in their passports, during validity of such a certificate.

141. Possession of support resources for the foreigner from the Article 11, paragraph 1, point c) is proved in one of the following ways:

- a) by possession of cash in local or foreign convertible currency,
- b) possession of paper payment facility accepted by the BiH banking system, and guarantees by the bank from BiH recognizing paper payment facilities the foreigner owns,
- c) guarantee letter or invitation,
- d) presentation of evidence of accommodation paid through tourist agency, or
- e) possession of other means (real estate in BiH on account of which it is possible to provide support resources during stay in BiH, resources on account of direct foreign investment, production-technical cooperation, etc.).

142. The guarantee letter for entry of the foreigner in BiH can be issued by the BiH citizen or a foreigner granted permanent residence in BiH. The guarantee letter can be accepted as a certificate on possession of support resources if it contains a statement that the guarantor overtakes obligation to provide accommodation, pay cost of medical treatment, provides support and other costs that might incur during the stay of a foreigner in BiH as well as costs of departure of a foreigner from BiH (Article 15 of the law - guarantee letter).

143. Guarantee from the previous paragraph must be certified by the competent administration authority and the organizational unit of the Ministry of Security of BiH as per place of residence, i.e. business seat of the guarantor.

The invitation has form of a guarantee letter by which home or foreign legal person registered in BiH invites a foreign partner for a business visit at specified time intervals.

The invitation contains the statement on payment of costs in regard of the Article 15 of this Law.

The invitation must be certified by the Economy Chamber of BiH and by the competent administration authority and the organizational unit of the Ministry of Security of BiH as per business seat of the guarantor (Article 16 of the Law).

144. The foreigners who wants to enter BiH with intention to work or carry out other profitable business subject to taxing can be approved of entry if he has work permit or any other equivalent issued by the responsible administration body, and in concord with special regulation ruling employment, banking, investment and direct foreign investment policies and business-technical cooperation, production and cooperation (Article 17 of the Law - work permit).

It is considered that a foreigner who owns work permit satisfies requirements regarding possession of support resources.

145. Diplomatic-consular missions (DKP) issue visas. Application for visa is submitted in advance and personally. The visa application can be exceptionally submitted before entry in BiH, which will be regulated by a bylaw of the Ministry of Foreign Affairs of BiH, and it is decided upon, on recommendation of this Ministry, by the organizational unit of the Ministry responsible for control of crossings of the state border.

Exceptionally to the previous paragraph, the organizational unit of the Ministry of Security BiH responsible for control of crossings of the state border can independently, as appropriate, issue a visa to a foreigner for transit across BiH territory (Article 24 of the Law - visa issuance).

146. The Ministry of Foreign Affairs of BiH makes and conducts the decision on extension of visa, in regard of the Article 23, paragraph 5 and 6 of this Law.

The appeal is not permitted against the decision on application (extension) of a visa, and the decision must be explained

147. A visa will be void if subsequently it is found out that it was issued contrary to requirements from this Law (Article 23, paragraph 2 and Article 25, paragraph 2).

A visa is annulled based on the enforceable court decision or decision on visa annulment made by the Ministry of Foreign Affairs of BiH in seat.

The visa is annulled by the body who made the decision on annulment, namely the competent organizational unit of the Ministry of Security BiH or MUP, on whose territory the foreigner resides, on grounds of information and receipt of enforceable decision by the body who annulled the visa. The visa is annulled in the manner that a stamp is affixed onto the visa sticker in the foreigner's travel document with mark **ANNULLED** (Article 26 of the Law - visa annulment).

148. If the organizational unit of the Ministry of Security of BiH, responsible for control of the state border crossings, finds out at the control of entry of a foreigner across the border that his visa is falsified, it is bound to annul it immediately.

The decision on visa annulment does not stand appeal, and it must be argued.

Application of the named articles is connected to the Constitution provisions and criminal regulations at BiH level.

### **Asylum**

149. In 2005, on the territory of BiH, 97 applications for asylum were submitted for 145 persons. Out of applications submitted in 2005 and earlier, 91 cases were decided: 59 applications for 77 persons were decided by termination, 29 applications for 51 persons were refused, and 3 applications for 9 persons were rejected. Not a single asylum was approved of in 2005.

150. In 2006 the Ministry of Security of BiH - Sector for Asylum received 37 applications for asylum for 68 persons, out of which 27 were decided for 46 persons, and 10 applications for 22 persons are in process. Four complaints were lodged against decisions on applications, two of which were decided by confirmation of the Ministry decision. Other complaints are in process.

The legislation providing for the status of temporary admission in BiH is defined by the Guidelines on the status of persons from DZSiCG who are temporarily admitted into BiH, and from 30 June 2004 by the Guidelines on extension of the temporary admission status in BiH of the persons from DZSiCG with last residence in Kosovo. Temporary admission was extended until 31 Dec 2006. A number of 3 057 persons have right to temporary admission. cases decided upon in the above mentioned period are: giving consent to extension of the temporary admission status, establishment of the temporary admission status for new born children (25 received and 25 decided) and issuance of certificates on the facts from the official records ( 9 applications received and 9 certificates issued).



151. In order to ensure adequate services provided for by the legislation to beneficiaries of the asylum system, the Ministry of Security of BiH signed the Protocol on free legal assistance (application of the Protocol in 2006 was satisfactory); the Protocol on care and maintenance of the sheltering centre financed by UNHCR in BiH; the Protocol between the Ministry for refugees and displaced persons of RS and UNHCR on reregistration of refugees from R.Croatia living in RS.

There were 5 427 decisions on approval of residence of foreigners received and processed. Out of that number 153 refer to approved permanent residence of foreigners, and 5 274 to approved temporary residence of foreigners. Files were processed and stickers of temporary residence were issued. As for the grounds of temporary residence, it is characteristic that the greatest number of approved temporary residences was on grounds of work permit (28,3 %), marriage (26,45%), family reunion (13,48%), education (12,40%) and profitable business (10,56%).

152. In the same period the Sector for asylum directly participated in construction and implementation of the protocols: on programme of voluntary return of foreigners to the States of origin (so called AVR programme), which has been harmonized in its greatest part with IOM as holder and implementator of the programme: on takeover of personnel, documentation and premises of MUP of RS, FBiH cantons and Police of The Brcko District of BiH, for needs of establishment of the Service for Foreigners; on cooperation in providing adequate and safe accommodation and care of foreigners, victims of trafficking in persons, in BiH with five non-governmental organizations; on cooperation in implementation of the programme on protection of victims of trafficking in persons and their voluntary return to the States of origin or States of residence signed between the Ministry of Security of BiH and IOM and on rendering free legal assistance concluded with the association "Your rights".

In realization of administrative-legal supervision in 2006 as the first instance body, there were 346 applications received, 330 (95,38%) of them were settled, and 16 (4,62%) are in process of deciding. Out of 330 decided applications, 324 were settled within orderly deadlines while six were settled after because the assessment of the competent prosecutor was waited for. The number of settled applications for approval of temporary residence was 295 (approved); 19 applications for approval of temporary residence were refused; three were rejected by ruling as untimely; six procedures upon applications were terminated and seven cases were returned under competency of the field centres for foreigners. Six proposals for renewal of the procedure were received, out of which four were settled (refused) and two are in process of settlement.

153. Acting as the second instance body in settlement procedure there were 88 appeals, 86 were settled (97,73%) and two appeals (2,27%) are under settlement process. Upon request of the BiH

Court 18 answers to complaints were completed and two answers to request for reconsideration of judicial judgements. All judgements made by the BiH Court confirmed the decisions made by the Ministry.

In 2006 the Sector for migration of the Ministry of Security of BiH processed cases regarding conduct of proceeding at the second instance in matters provided by the material law; conduct of the proceeding at the first instance in matters under the Sector jurisdiction; supervision and control of legality of acts brought at the first instance in which permanent or temporary residence was approved to foreign citizens on the territory of BiH, and approvals of issuance of approved residence stickers, production of stickers and their distribution in the field; checks from official records regarding entries, movement, residence and status issues of foreigners with NGO in connection with accommodation and illegal immigrants and victims of trafficking in persons and other acts and correspondence. Total of 88 appeals were received (according to field centres for foreigners - four appeals were received in 2005).

**Table no. 8** - Review of received cases and their status in 2006:

Ser. no.	Case	Received	Resolved	In process
1.	Appeals lodged against first instance decisions on <b>refusal of entry</b> to BiH to a foreigner	0	0	0
2.	Appeals lodged against first instance decisions on <b>refusal of temporary residence</b> of foreigners in BiH	24	24	0
3.	Appeals lodged against first instance decisions on <b>refusal of permanent residence</b> of foreigners in BiH	1	1	0
4.	Appeals lodged against first instance decisions on <b>withdrawn residence</b> of a foreigner in BiH	2	2	0
5.	Appeals against decisions on <b>expulsion</b> of foreigners from BiH	60	58	2
6.	Appeal against decision on putting a foreigner under surveillance	1	1	0
7.	Applications for approval of <b>temporary residence</b>	346	330	16
8.	Request for <b>reopening</b> of a case	6	4	2
9.	Processed first instance decisions on approved <b>permanent residence</b> of foreigners in BiH-issued <b>stickers</b> for permanent residence	153	153	0
10.	Processed first instance decisions on temporary residence of foreigners in BiH-issued stickers for <b>temporary residence.</b>	5274	5274	0
11.	Electronic and written applications of the Department for foreigners – Field offices – of the Field centres for approval of temporary or	2.958	2.958	0

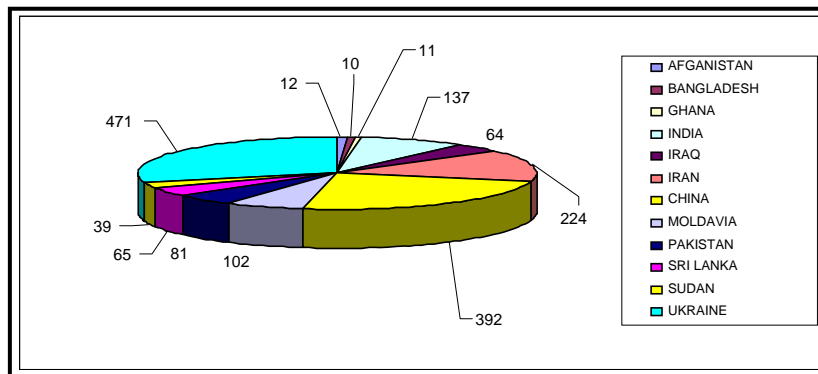
	permanent residence of foreigners in BiH - checks in ROS			
12.	Electronic applications of DKP and DGS for issuance of entry visas for BiH, for approval of residence of foreigners and admission of foreigners in BiH citizenship - checks in ROS	14.668	14.668	0
13.	Filling information in ROS database per final and enforceable decisions on deportation, withdrawal of residence, announcement of unwelcome foreigners and withdrawal of BiH citizenship	1099	1099	0
14.	Request for expert opinion, recommendations and instructions for procedure in application of material provisions	48	48	0
15.	Request for procedure under Readmission agreements	38	38	0
16.	Announced-executed deportation of BiH citizens in BiH	1320	1320	0
17.	Procedure upon requests for readmission of victims of trafficking in persons	22	22	0
18.	Decisions on payment of costs of deportation	14	14	0
19.	Extradition of found travel documents in conformity with the Rulebook on travel sheet	6	6	0
20.	Request for additional checks of data by MIP for issuance of visa	10	10	0
21.	Extradition of found travel documents in conformity with the Rulebook on travel sheet	9	9	0
22.	Requests of Embassies of other states, mediation of MIP and other bodies, for checks of movement and stay of foreigners in BiH (Iraq and India citizens) with INTERPOL and OSA	82	82	0
23.	Other correspondence	445	445	0

### Visas

154. In 2005 the total of issued visas was 13 589 for citizens of other countries who need visa to enter BiH. Out of the total number 11 540 were issued in diplomatic- consular missions of BiH, while 2 049 were issued at border crossings.

By continuous control of work of diplomatic-consular missions on issuance of visas, possibility to passing from legal to illegal migration over the BiH territory has substantially decreased. Checks of female persons of the high risk group aged from 17 to 25 have been strengthened. By mid and end of 2005 the number of applications by persons of the said risk group has been greatly diminished, which indicates that the goal of prevention of trafficking in persons and illegal migration has been achieved. The following graph gives review of issued visas for the high risk countries:

**Graph no. 6**



155. In 2006 a new trend of illegal immigration was noticed with migrants trying to obtain visas for legal entry in BiH and then stay in BiH or use BiH territory as a transit area in their efforts to enter the West Europe countries. The most common way of these activities is by trying to obtain visa on grounds of education in BiH, scientific conferences, sport or cultural and other manifestations. It can be noticed that internet websites are used to get information on coming events and potential illegal migrants apply by electronic mail to the faculties or for participation at those events. The following graph shows that in 2006 the number of visas issued to high migration risk citizens for entry to BiH from Egypt, India, Palestina and Uganda increased, while the number of visas issued to citizens of Iran, China, Moldavia, Pakistan, Sri Lanka, Sudan and Ukraine greatly decreased.

156. Based on the statistical figures of the State Border Police of BiH, in 2005 and 2004 the greatest number of rejected entries in BiH referred to the citizens of:

- |   |  |
|---|--|
| - Republic of Croatia – 1.687 or 21,75% | - Switzerland – 461 or 5,94%           |
| - DZ SiCG – 1681 or 21,67%              | - Bulgaria – 429 or 5,53%              |
| - Republic of Slovenia – 584 or 7,52%   | - Romania – 428 or 5,52% <sup>19</sup> |

Although reasons for denial of entry into BiH are different, it can be observed that:

- “citizens of R. Croatia, R. Slovenia and Switzerland are denied entry mainly due to lack of travel document
- citizens of DZ SiCG are denied entry due to more reasons such as:
  - lack of valid travel document
  - giving false information
  - lack of support resources and
  - lack of work permit

<sup>19</sup> Report on work of the State Border Police of BiH for 2005, page 3

- citizens of Romania and Bulgaria are denied entry due to lack of visa
- the number of citizens of new EU members has dropped greatly”.<sup>20</sup>

### **Right to life; prohibition of torture; prohibition of inhuman or degrading treatment**

157. Right to life, as fundamental human right, takes the first place in the Constitution of BiH, entities and the Statute of The Brcko District of BiH. It is inviolable and no one has right to deprive anyone of his life.

In 2002 BiH also signed the European Convention on Prevention of Torture, Inhuman and Degrading Treatment or Punishment. In accordance with its authorities and standards the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made the first periodic visit-monitoring to BiH from 27 April 2003 to 09 May 2003. CPT visited places where persons were deprived of their liberty out of their will (prisons, psychiatric hospitals, police stations and Border police detention places).

158. After completed monitoring in coordination with the BiH liaison officers and entities liaison officers on 09 May 2003, there was a meeting of ministers and senior officers of authorised ministries of BiH, entities and The Brcko District of BiH. At that occasion the attendees were informed by the CPT delegation that the European Committee on prevention of Torture and Inhuman or Degrading Treatment or Punishment will be advised on conducted monitoring in written form with instructions for procedure to responsible Ministries of BiH, entities and The Brcko District of BiH.

The Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment has become an integral part of the BiH legal system.

159. There are several provisions in the Criminal Code of BiH, Criminal Code of FBiH, Criminal Code of RS and Criminal Code of The Brcko District of BiH that foresee crimes for acts containing features in regard of definition of torture given in the Article I/1 of the Convention.

It should be mentioned that the ban of torture is raised at the level of constitutional law, both in BiH Constitution and Constitutions of entities and Statute of The Brcko District of BiH.

The right of persons not to be subject to torture or unhuman or degrading treatment or punishment is anticipated by the Article II/3 of the BiH Constitution.

The Article II/A/2/1/f of the Constitution of FBiH foresees that all persons on the territory of Federation enjoy right to ban of torture, cruel or inhuman treatment or punishment.

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<sup>20</sup> Ibid.

160. The Article 14 of the Constitution of RS stipulates: "Noone can be subdued to torture, cruel, inhuman or degrading treatment or punishment. Any coercion of confessions and statements is forbidden and punishable. It is forbidden to do any medical and other scientific experiments to any person without his consent."

Persons alleging to be victims of torture or other cruel, inhuman or degrading treatment or punishments can turn to the Ombudsmen institution to protect their rights, i.e. to FBiH Ombudsmens, or RS Ombudsmen, depending on what authority level the person or persons committing offence from the Convention belong to, as long as these three institutions do not merge into one institution. Such process is now under way in accordance with the Law on modifications and emendments of the Law on Ombudsmen for human rights of BiH and it is expected to see its full implementation by the end of 2007.

161. Persons who allege that they are victims of torture or other cruel, inhuman or degrading treatment or punishment, can use for protection of their rights, besides Ombudsmen institution, all legal means permitted by the law, such as:

- they can file criminal charges to competent prosecutor against responsible persons,
- they can file complaint to court of jurisdiction against responsible natural or legal person for compensation of damage,
- they can launch administrative proceeding by complaint against final administrative acts,
- they can use all remedies envisaged by the law such as regular and special legal remedy,
- they can submit appeal to the Constitutional Court of BiH if all remedies defined by the law are exhausted,
- they can request instituting of disciplinary proceeding against responsible persons.

162. The Criminal Code of BiH incriminated the crime of torture and other forms of cruel, inhuman or degrading treatment committed by the official or other person ( Article 190 of the Criminal Code of BiH).

163. The Criminal Code of FBiH provides for the procedure of extradition of accused and convicted foreigners. The procedure is launched upon petition of the foreign state, and it should be accompanied by evidence on identity, citizenship, crime, excerpt from the criminal code.

164. If the proceeding is conducted at national court, the RS Constitution sets forth that everybody has right to equal protection of his rights before the court or other government body, and the Criminal Proceeding Code provides for the rules of procedure ensuring that noone innocent is

convicted, and that the guilty one is sentenced under terms anticipated by the Criminal Code and pursuant to lawfully conducted procedure.

The Court is bound to conduct the procedure without delay and to disable all misuse of rights belonging to persons participating in the proceeding.

165. Pursuant to provisions of the Code on Criminal Procedure of RS, if a court finds out that legal prerequisites for extradition of a foreigner are not fulfilled it makes decision to refuse the request for extradition. Enforcable decision by which the extradition is refused must be submitted to foreign country and this is the end of procedure.

The Article 44, paragraph 2 of the Constitution of RS guarantees to foreign citizens and stateless persons right to get asylum in RS if they are persecuted for participation in movements for social and national liberation, advocacy of democracy, human rights and fundamental freedoms or freedom of scientific and art work.

166. The procedure, and the rights during conduct of the proceeding are regulated by the Law on Criminal Procedure of The Brcko District of BiH. The extradition procedure is supervised by the Court, and it is conducted via responsible institutions of BiH in accordance with the provisions of interstate agreements and Convention on Extradition.

The provisions of the Law on Criminal Procedure, Article 412, paragraph 2, set forth that ceding of criminal prosecution and trial is not permitted if it causes exposing a foreigner to unjust procedure, inhuman or degrading treatment or punishment.

### **Prohibition of slavery and forced labour**

167. According to the constitutional and legal regulations, at BiH level, as well as at levels of entities and the level of the Brcko District of BiH, neither migrant worker nor the member of his or her family shall be held in slavery or subjected to do forced labour or compulsory labour. Certainly, the legislation of each country, so BiH legislation, does not exclude possibilities of performance of hard labour in pursuance of a sentence, emergency or calamity threatening the life or well-being of the community. Therefore, all citizens are equal, as well as migrant workers and members of their families, to get equally into solution of actual situations in emergencies, to the extent which refers to the citizens of the respective state, all for the purpose of saving human lives and welfare, certainly under control and protection of competent state authorities and organizations.

168. The Provision of the Article 185 of the Criminal Code of BiH says: "The person, who, by breaking rules of the international law, puts someone else into slavery or some similar situation or

holds him in slavery, who buys, sells, hands over a person to some other person, or mediates in buying, selling or handling over such a person or induces someone else to sell his or her freedom or the freedom of the person whom he supports or takes care about, shall be sentenced to prison up to five years at least.

The person, who, by breaking rules of the international law ....buys, sells a person under-age because of adoption, organ transplantation, work exploitation, or because of some other illegal purposes, shall be sentenced to prison up to five years at least.

The person, who, by breaking rules of the international law, transports persons hold in slavery, or in some similar situation, shall be sentenced to prison from six months to five years.

169. However, as the state of transit, in the last ten years BiH has been burdened with appearance of organized crime and trafficking in persons, as the new methods of subordination and victim slavery, mostly women and children. As the answer to appearance of this kind of slavery, Criminal Code of BiH, in the Article 186, reads: "The person, who takes part in canvassing, transporting, giving asylum or accepting of a person, by threatening or using force or some other kinds of compulsion, kidnapping, deception, deceit, misuse of authority or someone else's weakness, or giving or receiving payments or privileges, in order to get the acceptance of the person who controls the other person, for the purpose of exploitation of the person, shall be sentenced to prison from one to ten years. The person, who commits the criminal offence from the Paragraph 1 of this Article towards the under-age person, shall be sentenced to prison up to five years at least.

USA State Secretary pointed to the seriousness of this phenomenon in its annual report, published in April, 2005, by which BiH is ranged in the category 2 (countries which have not completely fulfilled minimal standards, but they are making an effort to fulfill them), which means progress in comparison to the previous year, when BiH was ranged among countries on the list under special supervision. The similar estimate was given by the UN Committee in the combat against torture, which, along with the acknowledgement of everything done in BiH on the field of prevention of trafficking in persons, expressed anxiety because of the fact that in BiH a small number of cases of trafficking is investigated and processed, and for those which are processed, mainly fines and small penalties are passed.

170. Accepting mentioned estimates, BiH authorities, in the second part of the 2005, undertook extensive measures on the prevention and controlling of trafficking in persons. Detailed analyses of the previously accepted Action Plan have been done, as well as estimates of the actual situation and making of a new State Action Plan has already begun. This Plan has precisely stated strategic



aims for the period of three years (205-2007), and measures and activities which are necessary to be undertaken in the area of discovering victims and traffickers as well as in the area of prevention, training and protection (victims and witnesses) and criminal prosecution of perpetrators of the criminal offence of trafficking in persons.

171. Since the broad legislative reform that contributed to solutions of the trafficking in persons and illegal migration was done in the previous period, with the recommendation of the authorized international committees and others legislative bodies and for the purpose of identification of gaps and defects in the existing legal and other acts, their modifications and passing of new ones have started. So during the 2005, the amendments and modifications were done for: BiH Criminal Code; Law on Witnesses Protection Under the Threat and Endangered Witnesses; Book of Regulations on terms and procedures of foreign entry and residence came into effect, which is a bylaw of the Law on Movement and Stay of Foreigners and Asylum; BiH Council of Ministers adopted Strategy of integrated border control, with the purpose of establishment of efficient control and protection of BiH borders, especially in the sense of corporation of relevant institutions, so the circulation of people, goods, capitals and services could go undisturbed and at the same time prohibiting trans-border crime. In the second part of 2005, the Law on Foreigners came into effect, by which the Service for Foreigners was founded, and its competence, organization and control established, as well as other issues significant for work and legal functioning. The Council of Ministers of BiH and ministries actively participated and still participate in implementation of CARDS project called "Establishment of legislation, regulative and institutional framework in the area of migration, asylum and visa, harmonized with the standards of the European Union", which influenced the beginning of the complete harmonization of the Law on Movement and Stay of Foreigners and Asylum with the EU standards. The Council of Ministers of BiH, during the 92 session held on 15/09/2005, accepted "Strategy of coordination of institutional and legal framework with EU for BiH in the area of migration, and the Reports on asylum and visas for BiH were accepted and signed. It will certainly have a big influence on the access to the phenomenon of illegal migration and trafficking in persons and the combat against them along (and at the same time) with the protection of victims and respect for their rights. They began preparation and adoption of procedures for behaving toward victims of trafficking in persons in BiH. Because of lack of accommodation and assistance to the victims of trafficking in person, the Protocol on cooperation and ensuring adequate and safe residence and catering of foreign victims of trafficking in persons is signed among the Ministry of Security of BiH and five NGOs. The similar Protocol was also signed with The International Organization for Migration-the Mission in BiH.

Considering the fact that BiH became signatory country of UN Convention against corruption, it is expected that in the following period BiH will lead even more decisive combat against corruption which is also connected with the phenomenon of trafficking in persons and illegal migration, which were in noticeable connection in the last period.

172. Another obvious problem of forced labour refers to appearances of vagrancy on streets in which most often involved are children, older persons, invalids and persons with disabilities. For now, this problem is recognized and defined in BiH as the problem of disturbing of public peace and order (as the offence), although there are some relevant indicators that in some cases it is about organized crime networks in which the mentioned categories are exploited as workforce. According to some estimates and data it is mostly Roman population that lives in BiH and comes from one neighbour's country.

173. Difficult social-economic situation is the main reason for the abuse of the mentioned population for economic purposes. Besides the police intervention and occasionally the intervention of inspection authorities and authorized services, the centre for case work, some other measures against vagrancy are hardly used. It means that in BiH, still, there are not enough social and state mechanisms for prevention and protection from vagrancy consequences, of which participants and victims are most often Romans and Roman Children. Alarming fact is that vagrancy as the aspect of economic exploitation in BiH does not have tendency of decreasing in comparison to the previous condition. Authorities arrest, register and finally leave beggars without passing criminal sanctions. It usually happens because the majority of beggars come from neighbouring states or from some parts of BiH, because they do not have permanent residence. It is estimated that about 20% of beggars come organized from neighbouring countries to bigger cities in BiH, what, in the coming period, will be one of the tasks for BiH authority in order to prevent the current situation and to bring the vagrancy within tolerable frames.

### **Right to freedom of thought, conscience and religion**

174. Freedom of thought and expression are guaranteed by the Constitution of BiH, Article II, paragraphs 2 and 3.g which emphasizes that BiH directly implements all rights and freedoms that are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as its Protocols, and many others international instruments (conventions, charters, contracts). These official documents have priority over all other laws.

Certificate on condition of rights, both for domestic people and foreigner, to freedom of information and expression, is given in the Article IV 4.a of BiH Constitution and the Law on

Freedom of Access to Information in BiH (“Official Gazette of BiH”, No. 28/00). The mentioned Law in its Article 4 establishes that each natural and legal person has the right to access to information, which is under the control of authorities. Each authority has the suitable obligation to announce/publish such information. The right to access to information can be limited only in the way and under conditions established in the Articles 6, 7 or 8 of the Law, on complete information or part of it, and in the case when information published is not of public interest. If information published is of public interest, the authority will announce the required information.

175. The same laws were passed in both BiH entities. In the Federation of BiH, the Law on Freedom of Access to Information in FBiH was adopted in 2001 (“Official Gazette of FBiH, 2001, of FBiH”, No.32/01, and in the Republika Srpska the Law on Freedom of Access to Information was passed (“Official Gazette of RS”, No.20/010).

By adopting these Laws at the state level and both entity levels in BiH, it is enabled that all natural and legal persons on the whole BiH territory have the right to access to information which are under the control of authorities at all governmental levels in BiH.<sup>21</sup>

Although the authorities – executive, legislative, administrative and juridical and all legal persons under the control of public authority - are obliged to make adequate preparation for implementation of the Law on Freedom of Access to Information, and also to inform officially BiH Ombudsmen for Human Rights, only some of those authorities fulfilled that obligation. Truly, in both entities appropriate bylaws have been brought (guidebooks, index files, application forms and instruction on costs), but still they do not obey the legal obligation for regular three-monthly report to the Ombudsmen about the number of received requests for access to information and the way in which they have been solved.

176. If the authority, who receives a demand, is not able to satisfy the demand because of the lack of formal conditions that are anticipated by Article 11, Paragraphs 2 and 3, it will, as soon as possible, but not later than eight days from the day of demand submission, inform in written form the demand applicant when such information is obtainable. It is prescribed that an applicant has to be informed about the right to consult the Ombudsmen and to get all necessary information for contacts.

177. By the mentioned laws it is also established that each person has the right to ensure that his personal information, which are under the control of authorities, are true, or depending on the purpose of collection and using information, to be up-to-date, complete, relevant for the legal purpose for which they are preserved, and not to be wrong in any other way. After approving the

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<sup>21</sup> See Initial report on Civil and Political Rights, page 92

access to the personal information, personal data of the applicants could be changed or some comments could be added to the personal information.

178. It should be emphasized that in BiH according to the corresponding articles of the Conventions, some conditions are provided, to protect rights and freedom of thought and expression. On the one hand, the right to thought without disturbing is guaranteed to all citizens, and on the other hand their right to freedom of thought is protected, which, in certain situations permitted by the law, could be liable to specific legal limitations, but always paying attention that giving certain political thought is not the reason for discrimination toward any person, or even for restricting the freedom of a person by the authorities.<sup>22</sup> The legal provisions are also referring to the foreigners and the members of their families that reside, live and work in BiH. It should be emphasized that in BiH the right to freedom of thought and expression has not been denied to any migrant worker or to the member of their family.

179. According to the Article IV.4.a), and in accordance to the Article II, paragraph 3.g) and paragraph 5.a. of the Constitution of BiH, at the beginning of 2004, the Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BiH was passed, ("Official Gazette of BiH," No.:5/04). This Law was passed, first of all, with respects for inheritance and traditional values of tolerance and cohabitation of all people in multinational BiH, and in order to contribute to improvement of international understanding and respect of the rights to freedom of conscience and religion and to establish unique legal framework within which all the churches and communions in BiH would be equal in their rights and obligations without any discrimination.

According to the Article 20, paragraph 1 of the Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BiH, BiH Ministry for Human Rights and Refugees has passed the Instruction on Implementing of the mentioned Law in the middle of 2006. It was pointed that the provisions of that Instruction are aimed to improve the relationships among countries, and churches and communions. It means to strengthen the guarantees of establishing religious freedoms and equalities in rights and obligations of all churches and religious communities. In the special part of this Instruction, about discrimination, on the base of religion or belief it is said: "None of the provisions of the Law can be applied either for of limitation or discrimination or privilege of any religious communities, nor for participating in religious ceremonies and practicing all guaranteed religious freedoms and rights. Both the Law and Instruction by protecting the rights and freedoms of worshippers and communions in BiH also give

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<sup>22</sup> See Initial Report on Civil and Political Rights, pages 93 and 94.

the same rights and freedoms to the foreigners who work and live in BiH, without any discrimination.

180. Migrant workers and members of their families are guaranteed the right to freedom of conscience and religious freedom in accordance to the mentioned Instruction and Law, as it is proclaimed by the highest international standards on human rights contained in the international declaration and conventions on freedom of religion.

181. By the Article 4 of the mentioned Law it is regulated that everyone has the right to freedom of religion and belief, including freedom to practice their religion in public or not to practice it. Also, everyone has the right to adopt a religion or belief of their choice or to change it and freedom - either individually or in community with others, in public or private - to practice their religion or belief in worship by carrying out religious ceremonies, practicing and observing religious rules and teaching. Everyone has the right to religious teaching as in the religious institutions so in the public and private pre-school institutions and primary schools and upper levels of education.

However, freedom to manifest one's religion or belief is limited by the provisions prescribed in the Article 4 paragraph 2 item 3 of this Law and it refers to the fact that churches and religious communities, by its observance, practice and teaching, must not be against the order, public safety, health or morals or the fundamental rights and freedoms of others.

182. In accordance to the provisions of the Article 6, paragraph 2.a) of this Law, and in accordance to the prescribed codex of rights and duties of their members, it is established that they shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice, or to take part in religious rites and ceremonies in their church or religious community. Item b) of the same Article prescribes the prohibition of direct or indirect coercion that people have their religion or belief.

183. Article 7 of this Law prescribes the freedom in public or private to manifest their religion or belief in religious service, worship, observance and teaching. The Law prohibits any form of discrimination against any religion or belief. In connection to this the following acts are prohibited: attacks and insults to religious persons, attacks and damages of religious facilities and other property of church and religious communities, activities and acts that are aimed to stirring up religious hatred against any church or religious community or their members, contempt any

religion, provoke or support religious intolerance and hatred and others.<sup>23</sup> Certainly, in BiH during the war, many religious objects of great cultural values were ruined. Many of them were devastated and plundered. There were attacks on the religious persons. Unfortunately, it also happened after the war, especially in the period of return of refugees and displaced persons in BiH. Luckily, nowadays, great efforts are made in reconstruction and more and more the tolerance and respect of rights to freedom of religion and belief emerge on surface. Within these activities, in 2006, BiH signed the Fundamental Contract with the Holy See and made the first after-war visit to the Serbian Orthodox Church with the seat in Belgrade. Signing of fundamental contract with this church is in preparation. All this is aimed to establish good neighbourly relations among the countries and development of overall cooperation among religious communities in this country.

184. Public promotion and religious practicing and teaching can be limited only on the base of the law, in accordance to the international standards, when the relevant authority proves that it is in the interest of public safety, health, morals or the fundamental rights and freedoms of others, according to the international standards. BiH Ministry for Human Rights and Refugees issues opinion on cases of prohibition of public practice of religion.

185. The Law on primary and secondary education in BiH, the Article 8, provides for the liberty of parents, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Surely, on the basis of this, there is no discrimination against the migrant workers and the members of their families in BiH.

186. Freedom of speech and expression is provided by BiH Constitution, Constitutions of entities and Brcko District Statute which entitles each citizen of the right to criticize in public the work of civil servants and other officials and employees, to submit proposals and petitions, and to get their answers if they ask for it. The citizen can not be called to account for or suffer from other harmful consequences for his views presented in public critic or in submitted proposal, complaint and petition; only in the case he had committed a criminal offence.

Limitations in the sense of freedom of expression refer to the respect the rights and reputations of others, for the protection of national security of the State, public order, public health or morals.

187. Prohibition of war propaganda is also provided by the Constitution and BiH Criminal Code and constitutions and Criminal Codes of entities and the Brcko District of BiH. Calling for and stirring up the war is the criminal offence, for which the 10 years prison sentence is prescribed.

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<sup>23</sup> See Initial Report on Civil and Political Rights, page 90

Any kind of causing and stirring up national, racial, religious and other inequalities, as well as causing national, racial, religious and other hatred and intolerance is unconstitutional and punishable.

188. Advocacy of national, racial, religious and other hatred that constitutes incitement to discrimination, hostility and violence is prohibited by the provisions of BiH Constitutions and by the Law on freedom of religion and legal position of churches and religious communities in BiH (The Article 2, and in connection to the Article 5).

189. By the provision of the Article 6 of the Law on Movement and Stay of Foreigners and Asylum of BiH, any form of discrimination on any grounds is prohibited, including national origin, language, religion, political and other views, national and other origin etc. The foreigner in BiH enjoys all rights that are guaranteed by the positive legal regulations to all BiH citizens, without any form of discrimination.

#### **Freedom to form and join trade unions**

190. The right to form and join trade unions in BiH is regulated by the international conventions signed by BiH (ILO CONVENTION No. 87. -The Convention on Freedom of Associations and Protection of the Rights To Organize, Convention No. 98- Convention on the Right to Organise and Collective Bargaining and No. 68, labour laws in both entities and the Brcko District of BiH and comprehensive bargaining agreement, and although they are generalized, it is obvious that workers have the right to organise unions. They join to trade unions voluntarily.

191. In Federation of BiH the Law on Labour, according to the Article 10, sets forth that employees and employers are free to decide whether to join or not to join the trade union or the employers' association. The employee or the employer can not be put in unfavourable position regardless of whether they are or they are not members of unions or an employers' association.

192. The Article 6 of the Law on Labour in the RS, establishes that the provisions of this law are applied to all workers on the territory of the RS, at domestic or foreign legal, or natural person (hereafter: the employer), as well as to the workers who are sent abroad by their employer. The provisions of this law are applied to civil servants, bodies and organisations of units of territorial autonomy and local self-government and public services, if it is not provided otherwise by the law.

According to the Article 6 of the Law on Labour of RS the workers have the right to organize and join unions without interference, according to the Statute and union rules. The employers have the

right to freely organize and join the employers' association, according to the Statute and rules of associations. The trade union and employers' association are organised without previous consent of any state body. The Article 7, of the Labour Law of RS, provides that "employees or employers are free to leave the trade union or the employers' association", and the Article 9 of the same Law provides that "The legal union activity and employers' association can not be forbidden neither temporarily nor permanently.

193. In the Brcko District of BiH, according to the Article 5, it is provided that the workers have the right to organise and join the trade unions, of their own choice.

The provisions on the right to organise trade unions are described more clearly and in detail in branch collective agreements.<sup>24</sup>

194. According to the mentioned laws, the legal activities of the union chairmen must not be obstructed if they are in accordance to the ratified conventions of the international work organization, law and collective agreement.

The employers and others who act on their own or by care of some other person, member or the representative, are forbidden to:

- a) interfere in establishment, functioning and managing the union,
- b) advocate and assist the union in order to control it.

195. The trade union chairmen who act on their own or by care of some other person, member or the representative, are forbidden to interfere in establishment, functioning and managing the employers unions.

196. In the Federation of BiH the trade union is organized in association called the Federation of the Independent Trade Unions of BiH, and they are organized into 22 branch trade unions and there are in total **277.450** members.

197. In RS the Trade Union is organized in 14 branch unions. The total number of members is **180.310**.

198. In the Brcko District of BiH the Trade Union was established in 2001 in accordance to the Agreement between SSSBiH and SSRS from 2000, as the voluntary interest workers organization.

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<sup>24</sup> See Initial Report on Economic, Social and Cultural Rights, pages from 41-44



199. At the BiH level, the Confederation of the Trade Unions of BiH was established as the higher form of union organization in BiH in order to put together the complete union work and activity. The Trade Unions in BiH are independent from the state bodies, employers, political parties, religious bodies and organizations, including other unions. They agree, plan, coordinate and implement the tasks and activities of common interest for the members starting from the principle of equality, reciprocity and solidarity. It also cooperates and acts along with the unions of BiH entities and unions from the former SFRJ and with the Europe and world unions in order to strengthen the union cooperation. It realizes its aims and tasks through legal use of all methods and means of union activities, starting with public presentation of opinions, initiatives, proposals, and collective negotiations, critics, requesting the resignation and recall, organized protest including the strikes.

It is important to mention that the migrant worker who lives and works in BiH also enjoys all union rights as the workers in BiH.

**Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communication; prohibition of arbitrary deprivation of property**

200. The question of prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communication and prohibition of arbitrary deprivation of property is widely described in the Initial Report on the implementation of International Covenant on Civil and Political Rights in BiH (ICCPR) which was submitted to the competent UN Committees in Geneva.<sup>25</sup>

201. It is pointed out that BiH Constitution, Constitutions of entities and the Brcko District of BiH Statute guarantee the right to privacy to all people. In the Article II of BiH Constitution related to human rights and fundamental freedoms it is emphasized that all people in the state enjoy human rights and fundamental freedoms which include: the right to life, the right to liberty and security of person, the right to legal hearing in civil and criminal offences, the right to private and family life, the right to home and correspondence, the right to marriage and family planning, the right to property, the right to education, the right to freedom of movement and stay etc. All the mentioned rights and those unmentioned, and which are related to the rights of BiH citizens, mainly are implemented without discrimination in practice.

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<sup>25</sup> See Initial Report ICESCR and ICCPR, pages 45 and 95

202. Invulnerability of flat belongs to the constitutional category of human rights and fundamental freedoms, and the ratified conventions and become the instrument for the protection of human rights with the legal force of the constitutional provisions. By the constitutional and legal provisions it is confirmed that the flat is invulnerable, and that no one without the authority permit can enter the flat against the tenant' will, that the flat can be searched only in the presence of two witnesses, that the owner of the flat or his representative can be present to the search and that every illegal entering the flat and other premises and their search is punishable.

203. Criminal Codes in BiH prescribe certain criminal offences which refer to the invulnerability of the flat: criminal offence of violation of invulnerability of the flat; unlawful search; robberies; grand larceny in the abandoned and damaged flats. Beside these criminal offences the Criminal Codes also prescribe criminal sanctions in the case of damaging flats, business buildings and premises, and stealing movable property in them. Because of the war that caused a huge number of refugees and displaced persons in the whole BiH, some drastic violations of human rights took place in the field of housing including violation of vulnerability of the right to flat, the right to peaceful enjoyment and the use of flat. The situation in this field is improving in the whole BiH, because nowadays the related regulations are more respected.

The family life and the right to privacy, family and home, correspondence and other communications are protected by BiH Constitution and the constitutions of both entities and by the Statute of the Brcko District of BiH.

204. Protection of personal data is regulated by the Article 149 of the Criminal Code of BiH which prescribes that the official or responsible person in BiH institutions must not, without the consent of the individual, present, collect, analyze his/her personal data, because it will be contrary to the terms defined by the law and permitted purpose for their collection. If it still happens, the official person will be sentenced to prison up to six months.

This question is described in detail by the Law on protection of personal data ("Official Gazette of BiH", No.32/01), which was adopted in 2001. The primary aim for passing this Law is based on the fact that all persons, no matter of their citizenship or residence, should be ensured to reach human rights and fundamental freedoms, and especially the right to secrecy in a sense of processing their personal data. The Article 3 paragraph a) of this Law provides special category of data that refer to the: a) origin, citizenship, national and ethnic origin, political attitude or political party denomination or trade union membership, religious and other beliefs, state of health, sexual life etc.

Security and protection of the same data are guaranteed by the Article 10 of this Law. Because of this the person who processes data undertakes all technical and organizational measures in order to protect data secrecy.

205. In BiH the laws on expropriation regulate the right to adequate compensation in the cases when the real estate (land, building and other construction facilities) are excluded –excepted- for the sake of public interest (construction of objects of economic infrastructure, electric power industry, PTT, waterpower engineering, mining, transportation, administration of justice, police, exploration and exploitation of mineral and other riches, and because of opening new cemeteries or implementation of regulative plan. The reimbursement to the extent of the market value of the real estate belongs to the owner or the holder of citizens' right for expropriation of real estate. The compensation can be made to the ex owner of the real estate, on his/her request, and if all conditions are fulfilled, by giving into ownership or joint ownership of some other adequate real-estate matches in structure, area, location, housing conditions or business conditions in which the former owner of expropriated real estate dealt.

206. In BiH, its entities and the Brcko District of BiH, according to the available data, there were no complaints to unlawful interference with privacy, home, correspondence and other communication concerning the migrant workers and the members of their families. There were no occurrences of arbitrary deprivation of property (shop, land, things and other construction facilities) that they possess on the territory of BiH. Surely, the above mentioned is valid and refers to the property acquired in accordance with the positive legal regulations in BiH.

### **Right to liberty and security of person**

207. Migrant workers and members of their families in BiH have the right to liberty and security of person, effective protection against violence, physical injury, threats and intimidations, whether by public officials or by private individuals, groups or institutions, which is guaranteed by the constitutional and legal provisions.

208. By the provision of the Article 34 of BiH Law on Judiciary all rights to liberty and security of a suspect and accused are guaranteed. It is also prescribed that no one can be subjected to arbitrary arrest or detention; no one can be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. If there is justified suspicion that a suspect committed criminal offence, he/she has the right to take advocate, and the right that his/her lawyer is present during the public hearing by a competent person. If the suspect is deprived of

liberty, he/she has the right to ask for the lawyer if he/she can not cover the cost of defence. The suspect has the right to choose the advocate on his own and to inform the court about it.

209. Each competent person or police officers have to inform the suspect about his/her rights from the paragraph 2 and 3 of the mentioned law and during the first hearing he must be notified on any charges and suspicions against him. The suspected person must be enabled to give statements about all facts and evidences against him and to present all facts and evidences for his benefit. It is forbidden to coerce confession or any other statement from the suspected or arrested person. It means that the Court cannot base its judgement upon the evidences supplied by violations of human rights and freedoms established by the Constitution and international contract, nor upon the evidences supplied by violations of the mentioned and other laws.

210. Two terms to be met are important: first is the term within which the arrested person has to be brought promptly before a judge, and the second is the term within which the same person can be detained in custody while awaiting trial.

211. Migrant workers and members of their families who have been victims of unlawful arrest or detention have an enforceable right to compensation.

212. The BiH Criminal Code establishes that the unlawful deprivation of liberty by the official or competent person in the Institutions of BiH is criminal offence, and it says: "The person who unlawfully deprives of liberty some other person, subjects him to any form of detention or imprisonment or deprives him of freedom of movement in any other way shall pay the fine or shall be sentenced to three years of prison. The perpetrator will be sentenced to prison from two to eight years in the case that unlawful deprivation of liberty lasted more than thirty days or if it has been done cruelly or if the health of the person who is unlawfully deprived of liberty is violated or if some other difficult consequences occurred. If the person who is unlawfully deprived of liberty lost his life because of that, the perpetrator will be sentenced to five years of prison at least."

### **Protection against arbitrary arrest and detention**

213. According to BiH Criminal Code (Article 190.) : The official or some other person who by advocating or with explicit or secret consent of the official causes physical or mental pain or some serious physical or mental suffering , in order to get from him or some third person information or confession, or to punish him for the criminal offence that he had committed or is suspected for if, or if he frightens him or enforces him for any other reason, will be sentenced to prison from one to ten years.

214. The arrested and condemned persons shall be treated with humanity and with respect for the inherent dignity of the human person (Article II Paragraph 3 of BiH Constitution- catalogue of rights). It is prohibited to coerce confession or any other statement from the suspected, charged or any other person involved in proceedings. Paragraph 2 of the Article 10 of the Law on Criminal Proceedings of BiH says that “the Court can not found its judgement upon the evidences supplied by violations of human rights and freedoms provided by the Constitution and international contracts that BiH ratified, nor upon the evidences got on grounds of breach of this Law." So, the Court cannot base its judgement upon evidences obtained on grounds of evidences from the Paragraph 2 of the Article 10 of the Law on Criminal Proceedings in BiH.

215. The criminal offence of torture or other similar inhuman acts are incorporated in the special part of BiH Criminal Code which deals with criminal offences against humanity and values protected by the international law. In the Article 172 Paragraph 1 of BiH Criminal Code, it is prescribed:” The person who, as the part of wide or systematic attack aimed against civil population, commits the offence of torture or some other similar inhuman offences in order to cause great sufferings and serious physical and mental injuries or violation of health, will be sentenced to at least ten years of prison or to many years of prison.” According to the paragraph 1 of this Article the term torture means deliberate demonstration of strong physical or mental pain or sufferings of a person kept by the charged person or in his charge, excluding the pain or suffering that are consequences of the implementation of legal sanctions.

216. The Criminal Code of BiH standardized the term of official person in terms of an official person being chosen or appointed executive in the bodies of legal, executive and judicial authority in BiH and in other governmental and administrative institutions or services which perform certain administrative, professional and other works within the rights and duties of the authority that established them, where their responsibility is specified according to the respect of UN Standards of minimal rules of prisoners’ treatment, Codex of behaviour of the officials who implement the law, and the Principles of medical ethic relevant to the prison doctors. On the base of UN Convention against torture criminal legislation of both entities and the Brcko District of BiH are harmonized with minimal differences and there are activities on coordination of the norms on the whole territory of BiH. So, for example, The Criminal Code of the FBiH does not provide penal proceeding for certain criminal offences on account of official duty, so it is necessary to work on amendment and supplement of the criminal legislation that will oblige the public prosecutor to prosecute the perpetrator of the criminal offence on the ground of official duty. The Criminal Code of the Brcko District of BiH also does not contain special definition of the criminal offence of

torture, as it is provided by the Article 1 of the Convention against torture and other cruel, inhuman or humiliating treatment and punishment.<sup>26</sup>

217. Convicted persons have to obey provisions of the law, the regulation of order in institutions where they serve sentence. Order and discipline in the penal institutions are maintained in order to achieve punishment purpose and re-education of the convicted persons, and safety of the institutions and common life of the convicted who serve prison sentence. Such purpose cannot be achieved only under conditions and measures of maintaining order and discipline. That is why the rights, duties and privileges of the convicted persons are established, in the cases when they cannot keep discipline, as it is provided by the mentioned documents.

218. The Laws on Implementation of criminal sanctions provide that convicted persons can stand disciplinary procedure for the infringement of discipline, which can be lighter and heavier. For the lighter infringement of discipline the convicted person can be pronounced a disciplinary measure: reprimand and public reprimand, and for the heavier infringement of discipline the fine is pronounced and solitary confinement cell for the period to 20 days.

The most common infringements of discipline committed by the convicted persons are: abuse of privilege, consumption of alcohol, mutual fight, racketing, aggressive behaviour and use of inadmissible things.

Disciplinary commission, appointed by the institution manager, conducts disciplinary procedure and pronounces the sentence. It brings first instance decision, and the convicted person has the right to appeal to the institution manager who brings second instance decision which is final and administrative procedure can not be instituted against it. The most common disciplinary measure is solitary confinement cell, and it makes more than 50% of the total pronounced sentences.<sup>27</sup>

Positive legal regulations in this field do not have discriminative attitudes either to the migrant workers or members of their families.

### **Recognition as a person before the law**

219. According to the constitutions and laws in BiH, its entities and the Brcko District of BiH, each migrant worker and member of his or her family has the right to recognition as a person before the law without any kind of discrimination. The natural person becomes the legal subject by his or her birth. Therefore, children of the migrant workers and members of their families achieve by their birth all the rights as the children in BiH (name, surname, citizenship etc).

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<sup>26</sup> See ICCPR, pages 35-38

<sup>27</sup> See Report CPT, pages 106-113

### **Right to procedural guarantees**

220. In BiH the rules of criminal procedures are provided by BiH Law on Criminal Procedure of BiH (“Official Gazette of BiH”, No. 36/03, 26/04 and 13/05) (hereafter: ZKP BiH), Law on Criminal Procedure of FBiH (“Official Gazette of FBiH”, No. 35/03), Law on Criminal Procedure of the RS (“Official Gazette of the RS”, No.:50/03), and Law on Criminal Procedure of the Brcko District of BiH (“Official Gazette the Brcko District of BiH”, No. 10/03).

221. These laws are fully harmonized with each other, and also with modern and internationally accepted standards from the field of Criminal Code including guarantees granted by the International Convention on Human Rights, which is the integral part of BiH Constitution and has priority over all other laws. Criminal offence and criminal-legal sanctions are provided only by the law.

The Criminal Legislation of BiH applies to everyone who committed criminal offence on the territory of BIH.

222. All procedural rights of migrant workers and members of their families guaranteed by the Convention are contained in provisions of ZKP BiH with which, as above mentioned, the laws on the criminal procedure of entities and the Brcko District of BiH were harmonized.

223. The right of migrant workers and members of their families to be informed at the time of arrest about the reasons of their arrest under any charges against them is guaranteed by the Article 5 of ZKP BiH, according to which the person deprived of liberty must be informed in his mother tongue or in the language they understand of the reasons of their arrest.

224. The right of the arrested or detained migrant workers and members of their families under criminal charges to be brought promptly before a judge or other official authorized by law to exercise judicial power and to be entitled to trial within a reasonable time or to realize is provided for in the Article 13 of ZKP BiH.

225. The right that the consular or diplomatic authorities of the State of Origin or of the State representing the interest of that State are notified on the arrest or detention of migrant workers and members of their families, upon the request of the latter ones, related to the judicial proceedings, is provided by the Article 5 of ZKP.

226. The right to communicate with the said authorities is provided in the Article 144 paragraph 2 of ZKP BiH, with the exception when the judge for the previous procedure brings the decision on prohibition of certain visits because of the damaging impacts on the proceedings.

227. The right that the person deprived of liberty is informed without delay of the mentioned rights is provided in the Article 139, paragraph 2 of ZKP BiH.

228. The right of migrant workers and members of their families to legal judicial proceedings is provided by the Article 13. and 139. of ZKP BiH. The Article 139 provides the duty of the police authority to bring without delay before the prosecutors the person deprived of liberty, and the prosecutor is obliged to hear without delay that person and to decide within 24 hours whether the person deprived of liberty will be released or the judge for the previous procedure will lodge the claim for detention.

The right to have free assistance of an interpreter if they can not understand one of the official languages in BiH is provided by the Article 8 of ZKP BiH and the costs of translation will be paid from the funds of competent court or competent prosecutor's office.

229. The right to compensation in the case of the unlawful arrest or detention is provided by the Article 436 ZKP BiH.

230. The right to a fair hearing by competent, independent and impartial tribunals is guaranteed by the fact that the courts in BiH are established by the law, and in the few recent years the intensive reform of BiH jurisdiction has been done with aim to establish independent and impartial jurisdiction.

231. The assumption of innocence, as long as the guilt has not been proven according to the law, is provided by the Article 3 of ZKP BiH. In the Article 3 Paragraph 2 of BiH Criminal Code, adopted in 2003, which says: "No one can be passed a sentence or some other penal sanction for the offence which, before it was done, was not established as a criminal offence by the law or international law and for which the sentence is not provided by the law."

232. The right to minimum guarantees during consideration of the charges against migrant workers and members of their families is established in the Articles 6,7,8,12,13,247,262 of ZKP BiH, and in the large numbers of other articles that set forth the rules of procedure. For example, the right to personal presence to the trial is established by the Article 247 which says:" The accused cannot be



tried in absence”, or the right to examination of witnesses is given by the Article 262, and can be done directly, crosswise and additionally.

233. The ZKP BiH, in its special chapters, contains provisions of procedure against juvenile persons. Among other things in the Article 342 it is provided that the authorities participating in the procedure against juvenile persons are obliged to treat them carefully, taking care of their mental development, sensitivity and personal characteristics of juvenile persons so that the procedure does not harmfully influence their development.

234. The right to re-examination of the decision, by which the migrant worker or the member of his or her family is convicted for the criminal offence, is provided in the provisions of the chapter XXIII-ZKP BiH (regular legal remedies, right to appeal etc.)

235. The right to reimbursement in the case of unjustified condemnation against criminal offence is provided in Articles 11 and 432 f ZKP BiH.

236. The right that migrant workers and members of their families can not be liable to be tried or punished again for the offence for which he or she had already been finally convicted in accordance with the law and penal procedure of the State concerned is provided in the Article 4 of ZKP BiH.

237. Articles 3 and 4 of BiH Criminal Code provide that the migrant worker or the member of his or her family cannot be passed a sentence or other penal sanction against the offence which did not constitute a criminal offence under national or international law at the time of commitment of the criminal offence, nor the heavier penalty will be imposed than the one that was applicable at the time of commitment and that a lighter penalty will be imposed in the case that the law changes after the offence had been committed.

And besides the fact that the extensive reform of the penal legislation has been done in the few recent years, we have to conclude that we still have to perform activities for the establishment of legislation which will ensure that all provided human rights become the model according to which the individual as well as courts and other authorities which take care of their protection will behave and act.

For that aim, significant efforts are made for the reform of police in the entire judicial system, because without professional police and independent and impartial judicial system there is no appropriate protection of human rights and freedoms.

**Prohibition of imprisonment, deprivation of residence and/or work permit and expel merely on the ground of failure to fulfill an obligation arising out of a work contract**

238. The Law on Employment of Foreigners in FBiH («Official Gazette FBiH», No.8/99...) establishes the way, conditions of employment of the foreign citizens and stateless persons, the competence of the Federal employment bureau and public services for employment of cantons in the procedure of employment of foreigner and other questions relating to the employment of foreigners. The Law on employment of foreign citizens and stateless persons («Official Gazette RS» No. 97/04, 96/05 and 126/06) establishes conditions of the procedure and the way of employment of foreign citizens and stateless persons in the RS. In November 2002 in the Brcko District of BiH the Law on employment of foreigners was adopted, establishing conditions of employment of foreigners and stateless persons in the Brcko District of BiH. The Law on Movement and Stay of Foreigners and Asylum provides conditions for permit of temporary residence of foreigners according to the work on issued work permit and to the residence for business purposes. Fulfilment of established conditions is the base of permit of temporary stay of foreigners. In accordance to the Article 47 paragraph g) the foreigner will be deprived of the right to residence if he or she performs the activity for which he or she needs work permit and he or she does not possess it.

**Protection against confiscation and/or destruction of identity documents or other documents and protection against collective expulsion - Confiscation of identity documents**

239. The Law on Movement and Stay of Foreigners and Asylum establishes in which situations the passport of foreigners can be kept away.

The Article 43 of the Law – appeal against decision of the organisational unit of BiH Ministry of Security defines:

1. It is permitted to appeal against decision on application for permit of residence, to the Ministry within 15 days from the day of receipt of the decision.
2. Applicant for permit of residence cannot be expelled from the territory of BiH until the appeal time has expired, in other words, until settlement of the appeal procedure.
3. Until the enforceability of the appeal decision, the foreigner must be at the address at which he or she is registered and he or she must report every day to the authority on whose territory he or she resides.
4. Until the procedure is finished the foreigner is temporarily deprived of passport, with the certificate, except if he or she accepts willingly to leave the territory of BiH before completion of the procedure according to the paragraph 2 of this Article.

240. Expulsion of migrant worker and members of their families is done only in the cases when conditions established by the Law on Movement and Stay of Foreigners and Asylum and Instruction on the procedure of remove, supervision and covering the costs of supervision and return of Foreigners from BiH (“Official Gazette of BiH”, No.30/05) are fulfilled. Migrant workers receive help if they want to get in touch with DKP mission of their State of Origin.

The right of migrant workers to be absent occasionally from their residence is provided by Articles 38 and 39 of the Convention. Implementation through provisions of the Law on Movement and Stay of Foreigners and Asylum - Article 5 of the Law (freedom of movement).

1. Entry, stay, movement and exit of the foreigner can be limited under conditions provided by this Law.
2. Foreigners, who reside in BiH, under conditions provided by this law, are entitled with the right to movement within the State with free choice of their residence, if it is not provided otherwise by this or other special laws.

#### 241. Release of the duty of obtaining visa

Foreigners do not have the duty of obtaining visa for their entry in BiH if they have in their passport the label of permit for temporary or permanent residence, while that permit is valid.

#### Guarantee of exit out of State

The existence of guarantee for exit of foreigners out of state can be proved by possession of valid travelling ticket for continuation of travelling, or for return, as well as by the fact that the foreigner legally possesses the vehicle.

#### Conditions for permit of permanent residence

The stay out of BiH which lasted 90 days within one year is not considered as interruption of residence according to the Paragraph 1 point a) of this Article.

The Article 48 of the Law-special reason for cancellation of permanent residence

To the foreigner who was approved permanent residence in BiH the further residence is cancelled:

- a) If it is established that the foreigner does not live in BiH for more than a year and he does not notify the reasons of his absence to the competent organisational unit of BiH Ministry of Security or the Ministry of Internal Affairs on whose territory he or she lives.
- b) If the foreigner stays out of BiH less than a year and if on the base of circumstances it can be undoubtedly proved that he or she has no intention to return and permanently reside in BiH.

**Equal treatment in respect of remuneration and other conditions of work and terms of employment, social security; Right to receive urgent medical care**

242. Current situation in this field of work, employment and social welfare in BiH is characterised by the divided competence for migration in the field of work between the State and its entities and the Brcko District of BiH and the existence of more institutions of different levels and powers concerning employment and work, i.e. the rights arising from the migrant's work. The issues of movement, stay of foreigners and asylum are regulated by the Law on Movement and Stay of Foreigners and Asylum of BiH, laws on employment of foreigners in both entities and the Brcko District of BiH and under bylaws. After the issuance of work permit, the foreigner signs a contract on work or temporary or occasional work for employers, which should regulate rights and duties arising from the work involvement. According to rights, duties and responsibilities arising from the work and employment regulations, from the collective contracts and general acts of employers, the foreigner is equal with the employee of BiH citizenship, on the same base. According to all reimbursement for his or her work as are: overtime, hours of work, weekly rest, holidays with pay and other absences, migrant workers and members of their families are equalled with right to BiH citizens.

243. Furthermore, such a situation is also characterized by non-existence of the migration plan, both for exit from the state and entry in the state, or in other words the employment of migrants in BiH. Such plans should be brought in cooperation with competent state and entities bodies taking into account their different competences and responsibilities. We have to conclude that there is no cooperation within the region and wider because BiH still has not signed any international contract although there is the competent authority for the preparation and making of such contracts, which investigated insufficiently the possibilities of cooperation in the region.

**244. Work permits issued to foreign citizens in BiH**

1. In BiH in 2005, 2.347 work permits were issued to foreign citizens, of which:

- 1.551 work permits in FBiH
- 365 work permits in the RS
- 431 work permits in the Brcko District of BiH

2. Till December 2006, 1.884 work permits were issued to foreign citizens in BiH, of which:

- 1.009 work permits in FBiH (01.01.-30.09.2006.)

(The most of work permits were issued to persons from the following countries: Serbia and Montenegro -276, China -221, Croatia -157, Turkey-105, Slovenia -50, Macedonia -33 etc.)

- 447 work permits in the RS (01.01.-30.11.2006.)

(The most of work permits were issued to persons from the following countries: Republic of Serbia, Republic of Montenegro, Republic of Croatia, Lithuania, Ukraine, Slovakia, Macedonia, China, Russian Federation etc.)

-428 work permits were issued in the Brcko District of BiH (01.01.-30.11.2006.)

(The most of work permits were issued to persons from the following countries: PR of China -302, Serbia and Montenegro -70, Turkey -20, Croatia -11, Macedonia -6, others -19)

In 2005, 2347 work permits were issued to foreign citizens, and the majority were issued in FBiH-1551. From January to November 2006, 1884 work permits were issued to foreign citizens in BiH. According to the data of the Agencies for work and employment of BiH, in FBiH there were 1009 work permits issued, in the RS 447, and in the Brcko District of BiH 418 work permits. The most of work permits were issued to citizens of Serbia and Montenegro, Croatia and China.

245. In accordance to BiH Constitution, the field of work and employment, and the employment of foreigners, is confined to the competence of entities, which legally regulate this field with special laws. The foreigner is the natural person who does not have BiH citizenship or who is without citizenship. The foreigner can get a job on the territory of BiH if he or she signs a contract on work or contract on execution of temporary and occasional works with the employer, on grounds of previously obtained work permit, under condition that he or she fulfills all conditions for establishing of labour relationship pursuant to the law and general act of the employer.

246. In **the Federation of BiH**, the ways and conditions of employment of foreign citizens and the stateless persons are established by the Law on Employment of Foreigners, for the Federation of BiH ("Official Gazette of Federation BiH", No. 8/99). The work permit is issued to the foreigner on condition that he or she has permit for permanent accommodation or temporary residence in FBiH and that in the register of employment bureau among unemployed persons there is no other person who fulfills requirements by the employer in order to sign a contract on work or contract on temporary and occasional works. The request for issuing work permit for making a contract on work or contract on temporary and occasional works for the foreigner, who has permit for permanent accommodation or temporary residence in the Federation, is submitted by the manager of employment bureau according to his seat, with the explanation of the necessity for foreigner to work, conditions for making a contract on

work or contract on temporary and occasional works, number of required employees, kind of works and their duration.

247. The employment of foreign citizens in **the Republika Srpska** is regulated by the Law on Employment of Foreign Citizens and Stateless Persons (“Official Gazette Republika Srpska”, No.: 97/04, 96/05 and 123/06).

According to the said regulations, in order to employ the foreigner or the person without citizenship, the employer is obliged to submit the request to the competent branch office of the employment bureau of the Republika Srpska according to his seat. When the branch office manager receives the request with complete documentation, he solves the request within 30 days. The work permit can be issued at the least to the period, for which the residence is permitted, most often to the 6 or 12 months. The branch office can not issue the work permit if according to the registers in the employment bureau there are unemployed persons who fulfill all conditions required by the employer.

Former experiences show that work permits are issued in most cases to foreign citizens with university-level qualifications mainly for scarce occupations (pharmacist, veterinary surgeon, electrical engineer with a special knowledge of computer applications, metallurgy and mining engineer, professors of foreign languages etc.)

Work permits are being issued also for persons with higher professional qualifications, for highly skilled and skilled workers if they possess special knowledge and skills mentioned as conditions for execution of works and tasks of work place.

248. In **the Brcko District of BiH**, before submission of requests for issuing of work permits, the employer is obliged to obtain the certificate, from the Employment Bureau of the Brcko District of BiH, that among registered unemployed citizens of the Brcko District of BiH there is no suitable number of qualified persons who fulfill conditions for works for which the employer wants to employ the foreigner. The work permit is issued by the Department for the professional-administrative affairs of the Brcko District of BiH. The department for the professional-administrative affairs of the Brcko District of BiH is obliged to issue work permits to certain number of foreigners in management works in any foreign company established in the Brcko District of BiH, and depending on the foreign investments.

### **1. Foreigners employed in 2004**

249. Federal employment bureau, in 2004 and in the first half of 2005, issued 792 work permits for foreign citizens. The most of work permits were issued for the citizens of Serbia

and Montenegro-215, China-185, Croatia-101, Turkey-92, Slovenia-30, Macedonia-20, USA-19, Germany-17, Austria-16 etc.

Federal employment bureau also did not issue 23 work permits for foreign citizens: For citizens of Serbia and Montenegro-18, Croatia-2, China-1 Macedonia-1. The foreign citizens who are not issued work permits did not fulfil certain legal regulations for issuing of permit.

## **2. Foreigners registered in unemployment offices on 30 June 2005**

In the registers of cantonal employment bureaus, 61 foreign citizens are registered. The most foreign citizens are registered from Serbia and Montenegro-37, Macedonia-4, Croatia-3, Russia-2, Albania-2, Turkey-2, China-2 etc.

250. Former experiences and knowledge which regulate rights of migrant workers and members of their families show that there were no problems in the implementation of this and other conventions which regulate the field of work and employment.

According to the reports in FBiH, 792 work permits were issued in total to foreigners in the period from 1/1/-30/06/2005. The table of the issued work permits is given as attachment to the report.

According to the mentioned principles of rights of migrant workers and member of their families, and who have regulated status, are equal with the rights of native persons-workers, as I the sense of fundamental human rights so in the rights resulted from employment established by the Law o work, collective contract and general acts of employer, and in the sense of mere employment the protection of their rights is ensured by the implementation of Law on Employment of Foreigners and Stateless Persons in RS, Law on Employment of Foreigners in FBiH and the Brcko District of BiH, as by the laws on employments of both entities and the Brcko District of BiH.

Tabular presentation of registered foreign citizens in the period from 01/01/-30/06/2005 in FBiH is 61 and it is showed in cantons and countries as attachment to the report.

## **Report on realization of the Law on Employment of Foreign Citizens and Stateless Persons**

251. It is established by the same Article that foreign citizens and stateless persons can get asylum in the Republika Srpska if they are persecuted because of involvement in the movements for social and ethnic liberation, because of combat for democracy, human rights and fundamental freedoms or freedom of scientific and artistic creation. In accordance with the Article 2 of BiH Constitution, rights and freedoms provided by European Conventions for Protection of Human Rights and Fundamental Freedoms are applied and those acts have priority over others, and in that sense the cooperation is provided and access enabled to all international mechanisms for supervision of human rights. The same Article establishes principle of non-discrimination so that the enjoyment

of human rights and freedoms is provided to all persons in BiH with no discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national and social origin or affiliation to ethnic minorities, property, birth or other status including: the right not to be subjected to torture or inhuman and humiliating procedure or penalty; right not to be held in slavery or servitude or on forced or obligatory labour; right to personal freedom and security, right to private and family life, home and correspondence; freedom of thought and religion; right to marriage and family; right to property, education, freedom of movement and residence; right to just legal procedure in civil and criminal proceedings.

### **Law on Movement and Stay of Foreigners and Asylum (Refusal of Entries)**

252. The foreigner will be refused entry in BiH if he or she does not fulfill conditions from the Article 11 of the Law. The Foreigner can be refused entry in BiH even if he or she fulfills conditions for entry provided by the Article 11 of this law if:

- a) during the entry he or she avoids to show to the competent authority documents or fill in certain questionnaires or deliberately gives wrong information on his right to entry in BiH, or deliberately avoids such situation, or
- b) there is justified suspicion that he or she will exercise activities for which he or she needs work permit, and he or she does not possess such a permit, and especially to the foreigner who had already been refused entry in BiH due to said reasons.

The foreigner who is refused entry in accordance to the said paragraphs of this article cannot enter BiH at least 24 hours from the moment of refusal although he or she had fulfilled conditions for entry after the decision on refusal of entry was made.

253. Prospects and approaches concerning work migrations in BiH are established in the first place by the constitutional authorities and legal regulations. The role of Agency of work and employment in this field is limited to the certain number of activities and the role of the State is that its representatives sign contracts which are implemented and realized by the entities employment services and the service in the Brcko District of BiH.

254. One of restrictions in employment of foreigners (migrants) has its justification in the fact that unemployment in BiH has alarming scale, so from that point of view this measure will also have certain protecting character in realization of constitutional right of citizens to work, which also happens in other neighbouring countries. The second aspect in restriction of employment of foreigners would be that the competent authority would be obliged to withdraw the work permit from the foreigner who committed criminal offence or crime, for which he can be passed a



sentence to prison according to the law. The law provides the foreigner with the right to appeal against decision on withdrawal of the work permit.

Reasons for such restrictions are obvious from the table which refers to the state of employment and unemployment in BiH and number of population.<sup>28</sup>

**NOTE:** *The only regulations which regulate the field of work and employment at the state level are: Law on Public Services in BiH institutions )”Official Gazette of BiH”, No. 12/02., 35/03, 4/04, 17/04, 26/04 and 37/04) and Law on Work in BiH Institutions ( “Official Gazette of BiH “ No. 26/04 and 7/05), but these laws do not refer to foreigners and foreign migrants, they refer only to BiH citizens.*

### **Legislative framework for work migration viewed from aspect of rights arising from work**

255. Starting with the fact that work migration is established by the laws, by bylaws and other regulations, the normative framework as the condition for implementation of work migration policy is given below. The normative framework for the work migrations in BiH is based on international and state regulations.

#### **International regulations:**

256. Convention on Migration for Employment No. 97 (revised) 1949.

-The Convention on Migration under Conditions of Abuse and Improvement of Equal Possibilities and Treatment of Migrant Workers, No. 143 from 1975.

-The Recommendation on Protection of Migrant Workers in Under-developed Countries and Territories, No. 199 from 1955.

#### **BiH regulations**

257. The BiH Constitution establishes that BiH, both entities and the Brcko District of BiH have to provide the highest level of internationally recognized human rights and fundamental freedoms. International standards, which refer to rights and freedoms, are directly applied in BiH and have priority over all other laws and stronger legal power in comparison to the national regulations.

The Law Agency for Work and Employment in BiH (“Official Gazette of BiH”, No. 21/03), provides that the agency, among other things, is competent to collect information about supply and demand of labour power at the international market and deliver information to entities offices and

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<sup>28</sup> Attachment, table no.3

initiate entering and signing of international contracts in the field of work and follow-up their implementation.

### **Entities regulations**

258. According to BiH Constitution, entities are competent to establish the field of work and employment autonomously, as well as issues on work migration, and that is why we have in each entity special laws which are in accordance with the international standards contained in international documents ratified by BiH. In each entity the field of work and employment is completely encircled and laws from that field are applied and they are in effect as follows:

In the Republika Srpska the following laws are in effect and they are applied:

- Law on Work (“Official Gazette RS” No. 38/00, 40/00, 47/02, 38/03 and 66/03);
- Law on Employment-revised text (“Official Gazette RS” No. 54/05);
- Law on Employment of Foreign Citizens and Stateless Persons (“Official Gazette RS” No.97/04 and 96/05).

In FBiH the following laws are in effect and they are applied:

- Law on Work (“Official Gazette FBiH”, No. 43/99 and 32/00);
- Law on Intervention in Employment and Social Security of Unemployed Persons (“Official Gazette FBiH”, No. 81/01);
- Law on Employment of Foreign Citizens and Stateless Persons (“Official Gazette FBiH”, No. 8/99);

In the Brcko District of BiH the following laws are in effect and they are applied:

- Law on Work of the Brcko District of BiH (“Official Gazette of the Brcko District of BiH, No. 7/00 and 8/04);
- Law on Employment and Rights during Unemployment in the Brcko District of BiH (“Official Gazette of the Brcko District of BiH, No. 8/04);

In the Brcko District of BiH there is no special regulation providing for employment of foreign citizens and stateless persons.

259. Starting with the fact that employment of foreigners in each country is the subject of special legislative system, RS, FBiH and the Brcko District of BiH regulated this field by special laws, but only to the extent in which conditions and procedure of employment are specific, taking into account laws which at the state level regulate asylum and stay of foreign citizens and stateless persons and all in accordance with international standards.

Along with these regulations there are national regulations which establish the stay, movement and asylum of foreign citizens, what is very important for pursuing migration policy in BiH.

260. BiH institutions which are competent for implementation of regulations and policy of migration of labour power only from the aspect of work and the right to work and according to the competences and authorizations are:

- Agency for work and employment of BiH,
- Employment bureau of the RS,
- Employment bureau of the FBiH,
- Employment bureau of the Brcko District of BiH.

The competent ministries of labour and social policy of entities and the Brcko District of BiH are dealing with these issues.

Agencies for work and employment of BiH, whose competence is established by the Law on Agency for Work and Employment of BiH, are competent to: do international presentation and correlation with international organisations and execute international duties in the field of work and employment, coordinate activities with entities authorities and entities employment bureaus relating to the employment in projects of interest for BiH, collect information about supply and demand of labour power at the international market and provided information to entities bureaus, initiate entering and signing contracts from the field of work, employment and national insurance and follow-up their implementation, follow the implementation of conventions of International Organisation of Work and International Standards in the field of work and employment.

Employment bureaus of entities and the Brcko District of BiH are competent for employment of foreign citizens in BiH because such employment is a part of the entire policy of employment which they implement on those fields.

261. Entities in BiH have their laws regulating in general work and employment and social welfare.

As for foreign workers in BiH and BiH citizens in other countries, with mutual consent of BiH and those countries, bilateral treaties on social insurance are concluded and, among other things, they also regulate issues of pensions, health care, right in the case of unemployment, child's allowances and other aspects of social insurance. These rights are regulated by contracts on social insurance

which are concluded with different countries and they regulate different framework and kind of rights.

262. Migrations in field of employment and inter-religious cooperation in that field are very important issues for each of the states, because they affect significantly the economic situation and social relations in those states. The regular migrations in the field of employment, managed by the plans, can have very important effect on the social and economic development of each state. The basis of such migration are the bilateral contracts on employment concluded between the states and other measures founded on the international standards in this field, which protect the irregular employment or prohibited ways of migrations inside and outside the region, which can have negative influence on the economic development and social relations of all the states in the region. The migration within the employment in BiH has its specific characteristics in comparison with other states of the region, because of the transition and changes in all the spheres of the social and economic life, because of the change of the property structures and ways of making business and different attitudes of the states of the region towards these phenomena in BiH. This feature is reflected in uncontrolled and unplanned departure of the young experts from BiH and pressure for uncontrolled admission of the foreigners, very often with different motives. The planned employment of BiH citizens through the bilateral treaties with the states of the region and out of the region, will decrease unemployment and support the economic recovery of the state, under the assumption that families of these citizens are living in BiH, where they will spend what they earn here, and in this way the financial potential of the state is increasing.

The cooperation in the field of migration of the work force between BiH and the states of the region and out the region is founded on the principles contained within the frames of the concluded international contracts and clear needs for the labour in those states, which will be the base for strengthening of the sustainable scheme of migrations. Nowadays there are ways out of these contracts, which operate through the economic chamber and associations of employers, because BiH has not concluded the contracts with the states of the region, although there is the Agency whose main task it should be. There are not yet established sufficient controls and procedures regarding our citizens' employment abroad, and it is done on the bases of bilateral treaties with those states and on the bases of guarantees for employment which are issued by the foreign employers from the states of region and wider.

This issue is solved through the cooperation founded on international standards and through the contracts already concluded between the states of the region and out of it and by other measures and activities, which are of the common interests and which are agreed between the competent

state bodies, in order to make this field function as well as possible. For the aim of better cooperation, there are opinions on establishment of the common body in the region, which will promote cooperation within the states in the field of migrations and employment, follow realization and respect of international contracts conclusions and coordinate the work with such bodies in other regions in order to strengthen the cooperation in the field of work migration out the region.

BiH has to date concluded a number of the bilateral treaties on social insurance with other states or the procedure is in process. The concluded and ratified agreements are with the Republic of Croatia, Austria, Turkey and Macedonia. Beside these agreements, there are bilateral treaties which BiH has overtaken during the process of succession and which had been concluded by the former SFR Yugoslavia with other states. The ratification of the agreements with the Kingdom of Belgium and with the Republic of Slovenia is under way.

**Attachment: List of the bilateral treaties**

263. The mobility of the labour force in the region will be possible by establishment of the relations between the states, founded on the conclusion of the bilateral treaties on employment and the shown market needs of each state signatory of the contract. As for BiH there is current information on the needs in civil workers, medical technicians and qualified workers of the metal hand crafts, and for the seasonal workers from the states of the region (Serbia, Montenegro, Croatia and Slovenia). Need for the seasonal workers is regular from Montenegro and Croatia, namely for the restaurant and hotel workers. Mobility of the workers should be provided first of all through the employment services in BiH, based on the bilateral treaties concluded by the competent government bodies and which should be prepared by BiH Agency for the work and employment. The restriction factors for mobility of workers in the region are small salaries and high living costs in the states of employment.

264. In BiH there is neither unique economic market nor unique market of the labour force, but the entity regulations which define the employment issues, that is the general employment, do not put the condition that only BiH citizens can be employed. From this it is possible to conclude that the foreigners and migrant workers can also work and enjoy all the rights in BiH. Pursuant to that regulation they have all the rights as the domestic employees, on the bases of employment, i.e. their working and legal status is equalled.

265. During the year 2005 in BiH there have been employed in total 1996 of the foreign citizens from 53 states. From the total number, there are 1551 foreigners employed in the F BiH, 445 in the RS, while there is no data about the Brcko District of BiH. The employment permits for these persons have been issued by the entity services of employments in accordance with the prescribed entity procedures. The most of employment permits are issued for the citizens of Serbia and Montenegro, Croatia, China, Ukraine, Turkey, Macedonia and Austria. Regarding the qualification structure, it is obvious that most of them are university professors, deficit experts with university degree, graduated pharmaceutics, graduated veterinarians, doctors of all specialities, graduated electrical engineers with special knowledge of computer applications, graduated mining engineers, metallurgy engineers, teachers of English, French and Latin language, professors – teachers of all kind of music profiles, graduated economists with knowledge of foreign languages, managers, programme leaders, controllers, ballistic technicians and other professions.

266. The employment permit for the conclusion of the employment contract with the migrant workers is issued by the competent services for employments in the entities and the Brcko District of BiH upon the recommendation by the employers. They cannot issue the employment permit if by the evidence of unemployed persons in the employer's seat bureau there are unemployed persons who fulfill all the requested conditions from the request of the employer. In the F BiH and the RS the request for issuance of the employment permit is submitted by the employer to the service for employment, according to the seat of his office, with explanation of necessity of the work of the foreigner, the terms for conclusion of the contract, number of workers, kinds of the works and period of their engagement. Before the submission of the request for issuance of the employment permit in the Brcko District of BiH, the employer is obliged to provide the certificate from the employment bureau that among the registered unemployed citizens of the District there is no adequate number of qualified persons who fulfill the conditions for the works for which the employer requests to employ the foreigner. In the F BiH the employment permit to the foreigner is issued under the conditions that he has temporary or permanent residence permit in the F BiH and that in the evidence of the service for employment there are no persons who fulfill the conditions which the employer requests for the conclusion of the contract. In the RS the employment service cannot issue the employment permit to the foreigner if by the evidence of unemployed persons there is a person who fulfills the conditions of the working place and who accept that job. The employment permit to the foreigner is issued by the competent branch office for the employment in the F BiH and in the RS, or by the department for administrative affairs in the BD BiH. In the area of the F BiH, the employment permit is issued on the bases of the approval by the Federal institute for employment. The employment permit to the foreigner is issued for the defined time, maximum to one year in the F BiH, or for the period of approved residence, as it is defined in the

RS, and according to the regulations in the BD BiH for the limited period, not longer than one year, which can be extended. By the amendment of the Article 4 of the Law on Employment of the Foreigners and Stateless Persons the special conditions are modified, because the residence is not the condition for approval of the employment permit. The new Article 4 of the mentioned Law defines: "Besides the general conditions prescribed by the Law, the conditions prescribed by the collective agreements and by the general acts of the employer, the foreigner must also fulfill the special conditions: to have employment permit for conclusion of the employment contract issued by the Institute for employment in the RS".

267. BiH state is member of the OUN and of the International Labour Organizations (ILO) as its specialized organization. On that ground, BiH has ratified 68 ILO conventions (the list is attached). When the entity governments prepare and adopt the regulations from the fields covered by these conventions, these regulations must comply with the conventions and must be submitted to the ILO for comments and harmonization. The special care is paid to the ratified conventions of the ILO No.19 (Convention on Equality of Treatment (Accident Compensation)), No.97 (Convention on Migration for Employment), and No.143 (Convention on Migration in Conditions of Misuse and Improvement of Equal Conditions and Treatment of the Migrant Workers).

According to the Article II.7 in the chapter International Agreements of BiH Constitution it is defined that BiH is a contract party to the international agreements listed in the Annex I of the Constitutions, and the Annex I of the Constitution (Additional agreements on the human rights which apply to BiH) lists the mentioned agreements including under the number 13, Convention on Protection of the Rights of All the Migrant Workers and Members of their Families (1990).

#### ATTACHMENTS:

2. Information on the bilateral treaties BiH has made with other states or treaties in process
3. Conventions BiH has ratified.

#### **Exercise of rights to health care**

268. The migrant workers and members of their families will enjoy in the state of employment the same treatment as the citizens of the state of employment regarding the rights to the social insurance (paragraph 1) as long as they fulfill the conditions prescribed by the current laws of the that state and by the bilateral and multilateral agreements which are in force. The competent bodies of the State of employment and the State of origin may at any time make agreement in order to define modalities of application of this norm. As confirmation of the mentioned

statements, we quote several articles of the Law on Health Insurance of the FBiH (Official Gazette of the FBiH, No. 30/97).

Article 30 of the Law: "The health care is provided to the foreigners and stateless persons under the same conditions as to the citizens of the FBiH, if it is not defined otherwise by the international agreements".

That means that all the migrant workers for which the employer is paying contributions enjoy the right to the health care and protection in the same way as the insured people of BiH.

Article 11 of the Law: "All the insured persons have the equal treatment regarding the achievement of the rights from the obligatory health protection".

By this Article it is ensured that if the health insurance contributions are paid (and in this way equalize the rights of the insured persons, regardless of being the citizen of the state or not), there cannot exist any possibility of discrimination regarding achievement of the rights to health care and protection.

Article 19 of the Law defines which persons can be treated as insured persons in view of this Law, and in the paragraph 5 it is written: persons who are employed in the companies, institutions, cooperative societies and other forms of organizing, employed by the workers who are doing business on their own work, by citizens' resources, workers who are self-employed working in their own profession (from now on: legal and natural persons), on the territory of FBiH.

According to this Article, in all kinds of employment in which the person performs any work there is right and obligation to the obligatory health insurance.

According to the Article 2 of the Convention, the term "migrant worker" refers to the person who is to be engaged, is engaged or has been engaged in a remunerated activity in the state which he or she is not a national of.

Consistently to the application of the Article 19 of the Law on health insurance, and per definition of "migrant worker", all these migrant workers have equal rights to the health care on grounds of employment as the employed citizens of our state.



The international Convention on Protection of the Rights of All the Migrant Workers and Members of their Families also protects the rights of all migrant workers and members of their families. Here are some explanations how this is provided for in our current legal regulations:

269 The Law on the Health Insurance, Article 5: By the obligatory health insurance persons and members of their families are ensured (from now on: the insured persons) the right to use the health care and protection and right to the financial assistance and support according to this Law.

The scope of the rights from the obligatory health insurance is defined by the provisions of this Law and the regulations adopted on the base of this Law, and the Article 20 prescribes who can be treated as the member of the family in accordance with this Law: spouse (married or unmarried according to the regulations on the marriage and family), children (born in the marriage or out-marriage, adopted or stepchildren), and other children without parents if they are supported by the insurer, parents (father, mother, stepfather, stepmother, adopters of the insured) if the insured supports them, grand-children, brothers, sisters, grandfather, grandmother if they are not capable for the independent living and work and if they have no means for living, but the insured supports them.

Members of the insured family from the paragraph 1 of this Article obtain the rights to obligatory health insurance per this Law, according to the condition that they do not enjoy the same right from their employment or by performing of the economic or non-economic activities by individual work or by performing of the agricultural activities.

The government of the FBiH defines by the executive regulations the terms and conditions under which it is considered that a person is not capable for independent living and employment and has no personal means for living.

By the Article 53 of the Law it is defined, also, that only the person who was approved of the status of insured person can obtain the rights arising from the obligatory insurance. The status of insured person is approved by the cantonal institute for insurance, and is certified by the special document. The executive regulations on the contents and form of this document and the procedures for their issuing are adopted by the minister of health.

That means that the status of insured person for all the migrant workers or the members of their families is approved by the cantonal health institute. For the migrant workers who have approved status of the insured persons by the cantonal institute, the same institute issues the special

document certifying the status of insured person. The health ID, as a special document is now in use. The same procedure refers to the members of migrant workers families.

The only difference that can occur is in the field of certification of the health insurance base between some cantons. By the Article 84 of the Law on Health Insurance it is defined that cantons or legislative bodies of the cantons, upon recommendation of the cantonal insurance institutes, adopt, by their regulations, the basis, procedures for calculations and payment of the contributions, which are not defined by the regulations on taxation of the citizens.

The Article 84 of the Law defines that the basis, procedures for calculation and payment of the contributions from the Article 80, paragraph 1, items 3, 4, 5, 6, 7, 8, 9 10, 11, 12 , 13 and 14 of this Law are regulated by the legislative body of the canton on the recommendation by the cantonal insurance institute.

270. The Law on Health Insurance in the RS (Official Gazette of RS, No. 18/99, 51/01, 70/01 and 57/03), Article 10, defines that the insured are also the foreign citizens who are attending schools in the RS, if it is not defined otherwise by the international agreements.

The Article 11 defines that the insured person – worker is also the foreigner and stateless person who is employed by the foreign legal and natural persons in the territory of the RS, and by the international and consular representatives, if such insurance is provided by the international agreement.

271. The Law on health Insurance in the Brcko District of BiH (Official Gazette BD BiH, No.1/02, Article 18, defines that insured persons are also the persons who have temporary residence and work in the Brcko District of BiH and are employed by the foreign employer and have no insurance by the foreign foundation of health insurance or by other institution, which is competent for realization of health insurance.

The citizens of the states with which there are concluded international agreements on social insurance (health insurance) achieve their health care and protection within the scope defined by these agreements.

### **Rights of children of migrant workers**

272. The international instruments, which are obligatory for BiH, on the right to a name of the child of migrant worker, as well as obligation of the state to enable achievement of that right, is

clearly contained in the Convention on the Rights of a Child and in the International Treaty on Civil and Political Rights. BiH is bound to respect both these acts on protection of the human rights, because they are incorporated in BiH Constitution, and as such have the constitutional power.

The provision of the Article 7 of the Convention on the Rights of a Child defines:

1. "The child is registered immediately after birth, and has the right to a name, right to care, citizenship and if possible to know who are his or her parents and right to care by them.
2. The state parties ensure achievement of these rights in accordance with the national legislation and their obligations in accordance with the appropriate international instruments from this field, particularly in the cases in which the child will remain without citizenship".

The provision of the Article 27 of the International Treaty on Civil Rights defines:

1. "Each child without discrimination on the basis of race, colour, sex, language, religion, national and social origin, property and birth has the right that his or her family, society and state enable protection which is necessary concerning his or her status of under-age.
2. Immediately after birth each child must be registered in the register of born children, and get a name"

273. The laws on the register of births in the F BiH (Official Gazette RBiH, No. 20/92, 13/94) and in the RS (Official Gazette RS, No.18/99) define the announcement and registration in the register of birth, prescribe the unique text in the Articles 6 of both laws: "The birth of a child is announced to the birth register officer in the area where the child is born, verbally or in written in order to be registered in the register of birth".

The Article 8 of both laws prescribes obligation of the health institution to announce birth of a child, while the child born outside the institution is to be announced by his or her father, or other member of the household, persons in whose flat the child is born and the persons who came to know that the child was born.

The announcement of the birth of the child is done within 15 days; register of the child's name is done within 2 months after the birth of the child. Registering of the child's name, 30 days after the birth, is done by the officer on the basis of the decision issued by the Police office in the area where the register of births is kept, and this as for any other late registration.

274. The Law on Personal Name, which applied in both entities, (Official Gazette SRBiH, No. 35/71, 38/86, 37/88 and 33/90) is succeeded from the former state, and the Article 3 prescribes: "Personal name of the child is designated by agreement of the parents".

The Article 1 of the Amendments and Modifications of the Law on Personal Name (Official Gazette of SRBiH, No. 38/86) prescribes: "If the parents have not reached agreement about the personal name of their child, the personal name of the child is to be defined by the competent body of care").

275. The Law on BiH citizenship was adopted on BiH territory. The provisions of this Law are in compliance with the provisions of the European Convention on Citizenship. BiH state is in the phase of joining to this Convention.

By the provisions of the Article 7 of the Law on Citizenship it is defined:

"1. BiH citizenship will be assigned to the child who is born or found on BiH territory after the Constitution became valid and whose both parents are unknown or of unknown citizenships or without citizenship, or if the child is without citizenship.

2. Under the conditions from the paragraph 1 of this Article, a child will lose BiH citizenship if until the age of 14 years that child receives the citizenship of another state, on grounds of his origin".

In connection with this item, the Article 11 of this Law gives possibility to the foreigner "who has registered company in BiH for at least two years and is doing his business successfully on BiH territory, to get citizenship of BiH at birth of his child, although he does not comply with the conditions from the Article 8, paragraph 1, item 3 of this Law". In these cases, after providing of the positive opinions of the Ministry of Foreign Trade and Economic Relations, the foreigner is approved of the citizenship.

276. The entity laws on citizenship (and other regulations) are harmonized with the Law on BiH Citizenship, and register of all the born or found children in the register of birth is done by the entity bodies. (We have information that a number of Roman children have not been registered in the register of birth, which should be addressed in future along with what is recorded in BiH Strategy for solving problems of Romans).

277. In the area of education the following laws are adopted at the state level: the Frame Law on Primary and Secondary Education (in 2003), the Frame Law on Pre-school Education (in 2006)

and the Law on High Education, which is under the Parliamentary procedure. The text of the Law was adopted at the session of the House of Representatives of the Parliamentary Assembly and its adoption is expected at the session of the House of Peoples of the Parliamentary Assembly of BiH. In the said laws there is no mention of the rights of the child of migrant workers, because these rights are provided at the lower level of the administrative structure in BiH, that is in the area of education at the cantonal level in the FBiH, at level of RS entity and at the level of the Brcko District of BiH. None of these governmental levels is obliged to submit to BiH level ministry any information, and there is true possibility that these rights – rights of the child of migrant workers are not defined identically in all the administrative units, which are totally autonomous in the area of education. The Sarajevo Canton has equalized the rights of the children – the migrants with the domicile ones.

278. In the area of culture at the level of BiH, now there is not any law, or regulations which define this area. The culture in the F BiH is the responsibility of cantons, and in the RS and the Brcko District of BiH it is the same as in the area of education. There are no general laws on culture in cantons, but only on particular cultural sectors (museums, archives, scenic activities, etc.). There is no regulation which defines respect of the cultural identity of the migrant workers. Since BiH state is one of the signatories of a number of the conventions which deal and affirm the culture, and as by the Dayton Constitution it is said that the essential international conventions are part of BiH Constitution, it is the obligation of the state to ensure and to respect the rights of migrant workers and members of their families.

### **Right to transfer earnings and personal belongings to the state of origin and right to information**

279. Upon termination of the stay of the migrant workers and members of their families in BiH as the state of employment, according to the current legislations, they have the right to transfer all of their earnings and savings, their belongings and personal things.

Before the departure, in the so called preparation phase for departure from the State of employment, the migrant workers have the right to be timely informed by the competent bodies of the state of employment on their rights and obligations. That refers, first of all, to their rights and obligations under the laws and regulations of the State of employment, but also of the State of origin and State of transfer about the issues which will enable them to fulfill their basic administrative and other formalities, very important for their families. Very important issues for the workers are the questions regarding the transfer of their belongings without customs duties and other barriers. The issues connected with the assistance in cases of death of the migrant workers

and members of their families are also very important. Because of all the mentioned, the State of employment, BiH in this case, is obliged to inform migrant workers and members of their families, and BiH does it. That is provided by the employers, trade unions and other appropriate bodies and institutions. There is intention to provide appropriate information to the migrant workers in the language they are able to understand, of course according to the current possibilities.

**c) *FOURTH PART OF THE CONVENTION: Other rights of migrant workers and members of their families who are documented or in a regular situation***

280. The rights to information of the migrant workers and members of their families, at departure from Bosnia and Herzegovina, are defined by the positive laws and regulations. Information is accessible during the entering and departure from the state, all in order that the migrant workers can without discrimination enjoy their rights in full respect by the host state. Their rights are prescribed by the laws and regulations and other documents adopted at the state and entity levels, as well as by the documents of the companies and working organizations for which the foreign workers work. The key law which regulates this field is the Law on Movement and Stay of the Foreigners and Asylum, which was adopted at the level of BiH State.

The Law on Movement and Stay of the Foreigners and Asylum in the Article 1 states that this law defines the conditions and procedures on admission and stay of foreigners in BiH, reasons for refusal of admission and residence, reasons for the refusal of residence and for expulsion of the foreigners, the procedures for application for the asylum, competent government bodies for the law application, as well as other issues relating to asylum, residence and movement of the foreigners.

The Article 47 of the Law on Movement and Stay of the Foreigners and Asylum prescribed the main reasons for the refusal of residence. Among others, it will happen if the foreigner does not respect constitutional system of BiH and the Brcko District of BiH; if the foreigner by his acting jeopardizes BiH national interest, if he is engaged in the smuggling of the weapons and war equipment, radioactive and other hazardous materials and other means for the massive destructions, narcotics etc.; if he has violated the regulation prescribed for crossing of BiH State border; if the foreigner is giving false and incorrect data for approval of residence, and similar. The Article 48 of this Law defines the special reasons for refusal of residence. The residence can be refused to the foreigner if it is approved that for more than one year he has not resided in BiH, and has not informed the competent bodies about the reasons. The residence can be refused also in the case if he is residing outside BiH state less than one year, and if it is obvious from the circumstances that he has no intention to return to the permanent residence in BiH.

281. The foreigners can enter in BiH if they fulfill the conditions prescribed in the Article 11 of the Law on Movement and Stay of the Foreigners and Asylum, such as the following: possession of the valid PI and valid visa, possession of the means for the entry, residence and departure from the state, visas for the countries through which he is travelling, means for the health care and protection, if he has no registered measure for the expulsion and prohibition of entry, if he is not in the category of the international offenders, if his presence does not mean the threat for the state security.

After entering BiH, the foreigner can apply for the temporary residence, if he wishes to stay in BiH longer than visa and non-visa residence, for one of the following reasons: marriage with BiH citizens, family reunion, education, scientific research and cultural activities, work upon issued work permit, for business purposes, for the purpose of medical treatment and for humanitarian reasons. The temporary residence permit can be issued for the period of one year or for the period of the passport validity, if it is shorter than one year. Temporary residence for the humanitarian reasons can be approved for the period of three months, while the foreigner who entered BiH as tourist can not be approved temporary residence based on the employment.

For the permanent residence of the foreigner, the main condition is that he has had continuous residence in BiH at least for five years.

The approval of asylum to the foreigner is given according to the conditions stipulated in the Law on Movement and Stay of the Foreigners and Asylum, with application of the standards applied in the EU countries.

### **Right of foreigners to employment in BiH**

282. Rights to employment of the foreign citizens and stateless persons are defined by the special laws on the employment of foreigners in both entities, while at BiH level these issues are defined by the Law on Movement and Stay of the Foreigners and Asylum. Work permit, issued to the foreigner, is one of the conditions for approval of the temporary residence based on the employment, under condition that the foreigner has entered into BiH with obtained employment permit. Regarding this, the employment laws in the entities do not comply with the Law on Movement and Stay of Foreigners and Asylum in BiH, because they define that possession of the temporary residence permit is a precondition for obtaining of the employment permit. There are opinions that existing regulations on employment of the foreigners in the entities are in function of the battle against possible misuse, because issuance of the employment permit as precondition for entering of a foreigner can be misused by the employer in function of illegal entry of the foreigners

into BiH. Another problem is non-compliance of the regulation for issuance of visas (prescribed by the regulations of the MVP) with the Law on Movement and Stay of Foreigners and Asylum, and necessity of the foreigners who are entering with intention of employment in BiH, because it is not separately prescribed to have the visa for employment (so called employment visa). Third problem is non-compliance of the MVP (DKP) with the provisions of the Article 42 of the Law on Movement and Stay of Foreigners and Asylum, by which it is prescribed that a foreigner can apply for the temporary residence through the competent DKP of BiH.

283. According to the Law, the temporary residence permits are approved based on the profitable business (establishment of small and medium enterprises); in that case the employment visa is replaced by the permit for establishment of the enterprise. Residence permit based on the employment and employment permit are issued for the defined period, but not longer than one year. By the regulation of the FBiH it is possible to issue the employment permit for unlimited period in special cases. The foreigner possessing the tourist visa cannot obtain the employment permit. The foreigner employment permit expires according to the conditions defined by the law.<sup>29</sup> Among others, the employment permit can be withdrawn from the foreigner if he commits criminal offence or serious offence against public peace and order, for which it is possible to be passed jail sentence as in other occasions prescribed by the law, which is decided upon by the same body who had pronounced the sentence.

**Right to temporary absence without effect upon authorization to stay or work, right to liberty of movement and freedom to choose the residence in the territory of the state of employment**

284. The migrant workers obtain necessary support if they wish to apply to the DKP of the State of their citizenship. The migrant workers have the right to occasional leave from the place of their residence.

285. BiH is making efforts through the employment regulations at the state level, at the level of entities and the Brcko District of BiH, as the State of employment, not to make obstacles to the migrant workers and members of their families concerning occasional leave, without effects on their residence and employment permits. The employers are obliged to inform the migrant workers about conditions under which the occasional leaves are permitted, which is done upon the worker's request, according to the positive law and regulations.

<sup>29</sup> After expiry of the period for which it is issued, after expiry of the period of the temporary residence, by refusing of residence in line with special regulations, by losing of the status of resident foreigner, by expiry of the time for which employment agreement is concluded or the agreement on temporary and occasional jobs, by refusing the employment permit.



286. Right to freedom of movement and choice of the residence place in BiH as the State of employment, is regulated by the Law on Movement and Stay of Foreigners and Asylum. In the Article 5 of this Law, it is prescribed that admission, residence and departure of the foreigners can be restricted by the provisions of this Law.

The foreigners residing in BiH enjoy the right to free movement within the state and free choice of the residence place, in accordance to the conditions prescribed by this Law, if it is not defined in another way by this law or by the special law. According to the information received from the competent bodies in BiH, the entities and the Brcko District of BiH, there are no records of any cases of unlawful treatment of these rights of migrant workers and members of their families.

According to the Article 31 of the mentioned Law, the following cases are considered: residence with visa, without visa, temporary and permanent residence. In all these cases, the law has prescribed the general frame and special conditions, which must be respected in order for the foreigner to obtain appropriate employment and residence permit in BiH.

### **Right to form associations and trade unions, right to vote in the State of origin and enjoyment of political rights in the State of employment**

287. By the Constitution of BiH, Article II, paragraph 2.,(i), the rights to peaceful assembly are guaranteed, which means that in accordance to this Article of the Treaty, every person has guaranteed rights to free association with other persons on political and other grounds. This Article somehow supplements the right to peaceful assembly recognized by the Article 21 of the Treaty.

#### **a) Associations and foundations`**

288. The right to association of the citizens in BiH, its entities and the Brcko District of BiH, is defined by the Law on Associations and Foundations. According to this Law, the associations represent every kind of free connection of more natural or legal persons in order to improve or achieve some of the common or general interests or targets, in accordance with the Constitution and law, and whose main goal is not profit making. An association can be established by at least three natural or legal persons, by adoption of the constitutional act. After founding, it can become legal entity upon registration. The constitutional assembly of the association adopts the constitutional act, statute of the association and nominates the management structure.

289. The associations and foundations in BiH define their goals and activities freely, in accordance with the Constitution and law. Activities of these associations and foundations cannot

go against the constitutional order, either against the violent undermining, spreading of national, racial and religious animosity and intolerance, or discrimination forbidden by the Constitution and laws. The goals and activities of the associations and foundations cannot involve the engagement in the pre-election campaign of the political parties and candidates and financing of the candidates or political parties.

300. The associations and foundations manage freely their assets, in accordance with their statutes and laws. Auditing and checking of the legality and ear-marked spending of the resources owned by the associations and foundations are conducted by the bodies of the associations and foundations, defined by the statutes and law, as well as the responsible government body.

301. The associations or foundations exercising some public powers are obliged to submit the report on their activities to the governmental body supervising their activities, at least once a year. If they not exercise their duties in accordance to their obligations, the governmental body supervising their activities is obliged to warn in written the responsible body of the associations and foundations and to recommend the measures for elimination of the mentioned defects, and to recommend other measures within his rights and authorities. The penalties and fines are foreseen for the unlawful activities.

#### **b) Political organizing**

302. The right to establishment of political parties in BiH is defined in the FBiH, the RS and the Brcko District of BiH by laws on political organizing. These laws define the ways of freedom of political organizing and activities, conditions and procedures for their foundation, registration and stopping of activities of the political organizations. A political organization has its statute, as the main document of the organization, which among other things contains the provisions regarding the goals of the political organization and ways of their achievement. The political organization has features of the legal person, which is achieved by the registration in the court. The maintenance of register of political organization is arranged by the special regulation, which defines the contents and procedure of the political organizations registering. The political organization, according to these laws, is an independent and voluntary organization of citizens, which can be founded by at least 50 full age citizens in the FBiH, 500 full age citizens in the RS and 300 in the Brcko District of BiH. Every full age citizen of BiH can under equal conditions and in accordance to the statute become the member of the political organization (party, association, movement, union or other organization), established with aim of achieving political goals.

Any political organization will be banned to work if it operates as to provoke the violent change of the constitutional order, jeopardizes the territorial entity and independence, violates the rights and human rights, spreads national, racial and religious animosity and intolerance guaranteed by the constitution, aimed to jeopardizing the generally accepted principles of democratic government and the rights and freedom guaranteed by the Constitution of BiH.

303. The Central Election Commission of BiH has formed a working group, with aim to pass the law on political organizing at the BiH level, and tasked it to draft an initiative for starting activities around passing this law. The inter-sectorial group will be established for construction of this law consisted of representatives of competent ministries and organizations in BiH.

By BiH Law on Associations and Foundations (Official Gazette of BiH, No.32/01) it is defined that each natural person who is the citizen of BiH or has residence in BiH, and legal persons who are registered in BiH, freely and voluntarily organize their associations with any goals whatsoever, in accordance with BiH Constitution and laws. An association can be organized by at least three natural persons, who are citizens of BiH or are residing in BiH, or legal persons from BiH, who are registered in BiH. The same law prescribes the ways of organization of the foundations, whose founders need not be the citizens or legal persons from BiH, and this means that the foreigners, migrant workers and their members of their families have the rights to associations and establishment of foundations in BiH, and there is no discrimination against migrant workers in BiH.

304. It should be emphasized that the political scene is still dispersed in BiH nowadays. There is still a great number of political parties and coalitions included in the election activities, what was reported about more in the Inception Report on Application of the International Convention on Civil and Political Rights. The migrant workers and members of their families achieve their election rights through their embassies and consular offices in BiH. There are no restrictions and obstacles regarding this matter in BiH.

### **c) Trade unions organizing**

305. The right to the trade unions organizing in BiH is provided by the labour laws in the entities and the Brcko District of BiH. This kind of organizing is guaranteed by the Constitution of the entities, and it is more precisely defined by the labour laws adopted at the level of entities and the Brcko District of BiH, as well as by the collective agreements. The employees have the right to freely associate into trade unions and to become their members. The provisions on the right to trade union organizing are much more concrete and described in more details in the trade and collective agreements.

306. According to the data in our possession, the total number of the trade union members in BiH is 478.640, from which there are 277.450 in the FBiH and 180.310 in the RS. The trade unions are organized in unions and branch trade unions. There are 22 branch trade unions in the FBiH and 14 branch trade unions in the RS. The trade union were founded in 2001 in the Brcko District of BiH, as voluntary interest organization of the employees. This trade union has 3.600 members, what is about 20% of the total number of employees in the Brcko District of BiH.

307. The employees have guaranteed right to strike by the constitutions and laws and collective agreements in BiH, in the entities and in the Brcko District of BiH. This right is defined by the laws on strike adopted at all the levels of the state organization.

308. The above mentioned laws defines the rights of employees on the strike, the right to the trade union to invite on strike, the right of the employer to exclude the worker from the company's employment contract and other issues in relation with the strike. The trade union has the right to invite on the strike and to organize a strike, with aim of protection and achieving economical and social rights and interests of its member. A strike can be organized only in accordance with the current laws and regulations, the trade union's regulations on strike and collective agreements. The workers freely make decisions about their involvement in the strike.

309. The strike should be announced to the employer in written, at least eight days before beginning of the strike. The reasons for the strike, place, date and time of its beginning should be noticed therein. At the same time, the organizer of the strike is obliged to inform responsible bodies and to submit to it the decision on entering into the strike, about the time and place of the strike.

310. In some trades, according to the laws on strike in the entities, upon the recommendation of the employer - the trade unions and the employer agree on the works and services that cannot be stopped during the strike. This agreement contains provisions about the works and services and number of employees who are obliged to work during the strike or elimination from the works in order to ensure the minimum working process (production maintaining works), provision of the necessary conditions for living and working of the citizens, or for works of other legal persons, and to protect security of the properties, and prevention of endangering of lives and individual security or health of the citizens (health care, power supply, water supply, PTT services, international traffic etc.). It means that these services are necessary to ensure the minimum process of works during the strike. It should be emphasized that the law prescribes the place of the strike to

be within the compound of the company or enterprise while gatherings at public places are defined by the laws on public gatherings.

311. The worker who took part in the strike can have decreased salary, in proportion to the time he spent in the strike, in accordance to the collective agreement and labour regulation.

312. The Employer may submit a claim to the court in order to prevent organization and execution of the strike, if it is contrary to the provisions of the mentioned law, collective agreement and the trade union regulation about strikes. The Employer may request compensation for the damage due to the strike, if it is not organized in accordance with the provisions of the law. In the same way, the trade union may apply to the court in order to prevent expelling of the employees from the working process, if it is done contrary to the law. The trade union may, also, request the employer to compensate the trade union and the workers for the damages that the trade union and workers suffered due to the expel from the working process, if it is not done in accordance with the provision of the mentioned law.

In the case that the trade union organizes a strike contrary to the provision of the law, there are prescribed fines from KM 500,00 to 2500,00. For the committed violation by the employer there are prescribed fines in the range from KM 1000,00 to 5000,00.

313. BiH state has been characterized by numerous strikes and social unrests. All the area of the state during the last years has been characterized by unrests directed towards (or against) the employers, local governments, entity and state governments. Due to very bad economic situation and lack of the signs of improvement of the conditions, the following people took part in the strikes and unrests: retired persons, employees in education, doctors, miners, industrial workers, farmers, war invalids, members of the killed and missing persons, state officials (from the taxation departments, inspections, etc.) and others. The most frequent reasons for the strike have been low or, even more often, unpaid salaries. The mentioned unrests have been regularly associated with the requests for change of the managers or for the resignation of the political function holders. There are many cases in which the employers have been in debt to the employees, because of non-payment of many tens of monthly salaries. Very often the reason for the unrests were malformations in the privatization process, which caused total destruction of many companies, and the workers in such companies have become very often jobless and without any prospects to get the jobs. In most of the cases, the new owners of the companies had no intention to start (restore) the previous production activity of the company, so the workers have got "waiting worker" status from the early beginning, after which they stayed without jobs. When you add discrimination of

BiH citizens upon employment because of interests of the parties or nations, or belonging to them, and the phenomenon of nepotism or corruption, you can that the right to employment is one of the most violated human rights in BiH.

314. Regarding the migrant workers and members of their families there are not any restriction in the current laws and regulations in BiH, not any kind of discrimination regarding their involvement in the public works of the States of their origin, election or taking part in the election of that State. The migrant workers and their family members can enjoy political rights without discrimination, and organize themselves – depending of their needs and activities. This refers to organization of unrests and strikes and other manifestations, respecting the current laws and regulations of the State of employment.

### **Principles of equal treatment with citizens of the State of employment regarding dismissal and assistance in case of unemployment**

315. Regarding the equal treatment and protection of the workers from the dismissal, according to the provisions of the Labour Law and the Law on Employment, the foreigners and stateless persons have equal rights as BiH citizens regarding the dismissal from the job and support during unemployment.

The wide catalogue of the rights and freedoms, promoted and enshrined by BiH Constitution and international documents making parts of the Constitution, contains **the right to education**, (Article II.3 "1" of BiH Constitution). Pursuant to this, in the Article 88 of the Law on Movement and Stay of Foreigners and Asylum it is emphasized that "No provision of this law will prevent achievement and protection of rights of any person to which this law refers, under any responsible bodies, according to the Constitution and laws of BiH, entities and the Brcko District of BiH".

The BiH Constitution defines responsibility of the state and both entities for achievement of the highest level of the internationally recognized human rights and fundamental freedoms (Article II.1 of BiH Constitution). It means that protection of the human rights and responsibility for non-discrimination in enjoyment of such rights is joint obligation and responsibility of the state and entities, and that the government bodies at each level of decision making, are obliged to secure achievement and protection of human rights and freedoms defined by the constitutions including right to education as well.

316. The BiH Constitution also defines concrete distribution of obligation and responsibility between the state and entities, and mutual relations between the state and entity institutions. **All the government functions, which are not precisely appointed to BiH Institutions, belong to**

**the entities** (Article III.3."a" of BiH Constitution). It means that special and concrete responsibilities for the organization and management of the education system belong to the entities, i.e. the federal units.

317. The Frame Law on Primary and Secondary Education in BiH was adopted in June 2003. This law defines the general principles of pre-school, primary and secondary school education, education for adults and establishment and functioning of the educational institutions in BiH (Article 1).

The government bodies responsible for organization of the education system in the Brcko District of BiH, in the entities and cantons (from now on: responsible educational authorities), institutions that according to the current laws in BiH should be registered for providing education services in the field of pre-school, primary and secondary education and education of adults (from now on: schools), and other expert institutions in the field of education, are obliged to use and respect the principals and norms defined by this law in order to ensure the education under equal conditions for all the pupils (Article 1 of the Law).

In the Article 4 of this Law it is defined that all children have equal right to attend and equal possibilities of involvement in the appropriate education, without discrimination on any grounds.<sup>30</sup> The children of migrant workers have the possibility of integration and access to the school system on the whole area of BiH.

According to the RS data, pursuant to the laws and regulation, on the base of enabling access to the educational institutions to the members of foreign employers, in 2005 there were (4) four residences approved and 17 residences extended on grounds of education (21 in total) and for the nine (9) months in 2006 there were 25 approved and three (3) temporary residences extended.

318. Execution of the program of professional orientation, training and re-qualification of unemployed persons and their re-employment at appropriate jobs in BiH, as well as access to the services and institutions for professional education and re-qualification is defined by the current regulations, and there is no discrimination in any form in comparison with BiH citizens.

The laws on the employment of foreigners are adopted in both entities and in the Brcko District of BiH, and they define kinds and conditions for employment of foreigners and stateless persons. The foreigner, according to these laws is the natural person, who has no BiH citizenship. The

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<sup>30</sup> See the ICESCR, pages 110 – 127

responsible department for employment in the entities and the Brcko District of BiH keep the prescribed evidence on the unemployed foreigners, who perform temporary and occasional works, in accordance to the labour regulations.

319. The migrant workers and members of their families in BiH, in accordance with the valid regulations, have the right to the flat, to gain it in possession by purchase, or use it on leasing. The leasing of a flat is defined by contract concluded with the lease-holder including the defining of the rent, which is individually agreed between them.

320. The right to social and health services is defined by the laws of entities and the Brcko District of BiH and by the cantonal laws. The migrant workers and members of their families can without any discrimination use the mentioned services in the same way as BiH citizens.

BiH authorities do not prevent the employers to solve issues of housing and social politics for the migrant workers, within their capacities, or their involvement in cultural events and other conveniences in connection with the cultural events in BiH.

321. In the case of unemployment of the workers, their rights in BiH are defined by the Articles 3, 29 and 30 of the Law on Mediation in Employment and Social Security of Unemployed Persons.

The financial aid during the unemployment (Article 29 of the Law) is defined by the Article 3, under the conditions prescribed in the law, and amount of the financial aid is defined by the Article 30 of this law. During the unemployment, the right to health and pension-invalid insurance is prescribed by the laws on the health or pension-invalid insurance in the entities and in the Brcko District of BiH.

The special programmes aimed against unemployment are implemented by the responsible department for employment.

322. Protection of the rights of workers in BiH is defined by the labour laws, in which it is defined that the worker has the right from the employment status. The worker has the right to request achievement of his rights from the employer. If the friendly settlement of the dispute has not been reached (it means if the employer does not approve the request within 15 days from the date of its submission) the worker has the right to claim to the court and request protection of his rights.



323. The migrant workers who have received the permit for paid activities, in accordance with the provisions for issuance of such permit, have the same right while performing such activities as BiH citizens.

**Protection of complete family of migrant workers and reunion of migrant employee with his Family**

324. The provision 38 of the Law on Movement and Stay of Foreigners and Asylum provides that members of the close family of BiH citizens with residence in BiH, or the foreigner with temporary or permanent residence permit in BiH, may be approved temporary residence, in order to reunite with their families, under conditions that:

- a) he is the BiH citizen, or the foreigner, who has residence permit in BiH, the permanent source of funding and financial means for living of the applicant in BiH.
- b) there are no reasons prescribed by the law for elimination of approval of residence.

The close family members, in accordance to this law, are considered:

- a) spouse (husband or wife),
- b) children under 18 years, or the supported children who live in the common household,
- c) supported parents.

Based on the connection of the employees with their close family members, in RS there were 20 residences approved and 29 extended (49 in total) in 2005. During 9 months of 2006 there were 27 applications approved and 47 temporary residences extended on the same grounds (74 in total).

325. The residence related to the divorce, and if the marriage ceased due to death of the husband or wife (Article 44 and 50 of the Convention), is defined by the provisions of Article 39 of the Law on Movement and Stay of Foreigners and Asylum in BiH. The foreigner, who has got the residence as the spouse of a BiH citizen or the foreigner with temporary or permanent residence, in the case of death of the spouse gets right to extended temporary residence if he /she has status of the tutorship over the minor children who have BiH citizenship, and if based on the family reunion he stays three years and fulfills conditions for residence on another bases and if there are strong humanitarian reasons for approval of the temporary residence.

326. The expulsion of foreigners may be done only in accordance with the active legislation and regulations. According to the Article 56 of the Law, the expulsion is the measure by which it is ordered to the foreigner to leave BiH state and forbid entry into BiH within the defined period, which cannot be shorter than one and longer than 10 years. The reasons for passing the sentence of expulsion are prescribed by the provisions of the Article 57 of the Law on Movement and Stay of

Foreigners and Asylum in BiH. The decision issued by the responsible department for foreigners defines the term in which the willing execution of the decision should be within 15 days. It is allowed to submit the claim against the decision on expulsion to the Ministry of Security of BiH within 15 days from the date of receipt of such decision. According to the current legislation, the Council of Ministers of BiH may, in special individual cases and based upon the reasonable recommendation by the responsible Ministry, make decision of expulsion of the foreigner from BiH, if it concludes that the expulsion is necessary for ensuring of public order and national security. Article 60 of the Law defines the reasons for which the foreigner will not be expelled in any case to the country where his life and freedom will be jeopardized because of religion, race, and nation, belonging to particular social group or because of political ideas.

The forced expulsion is carried out in the case that the foreigner does not leave the state willingly, and the procedures about that are defined by the Special Instruction, in accordance with the law.

327. The residence on grounds of the divorce and if the marriage ceased due to the death of spouse who is a BiH citizen is settled according to the Articles 35, 39 and 61 of the Law on Movement and Stay of Foreigners and Asylum. In such and similar cases, when the foreigner emphasized the reasons connected with the Article 60 of this Law, the body in processing submits the case to the Ministry of Security of BiH in order to proceed with assessment of the reasons of approval of the residence for humanitarian reasons. The foreigner who has approved residence permit for humanitarian reasons has the right to work and possibility for education, health and social protection under the same terms as BiH citizens.

As for the residence related to the divorce, the Article 39 of the mentioned Law prescribes the following rules: "if the divorce happened during the temporary residence on grounds of the family reunion, the former spouse who received the temporary residence permit as the close family member, according to the Article 38 of this Law, does not gain the right for extension of the temporary residence..." He keeps that right, according to the Article 39 of this Law, if he has right of tutorship over minor child who has BiH citizenship, and was born in the marriage with a BiH citizen. That right is also gained on grounds of temporary residence approved for family reunion, and if he/she is residing in BiH continuously during three years and fulfills the special conditions. Besides the mentioned, to exercise the mentioned right, it is necessary to provide the temporary residence permit for humanitarian reasons, as it is defined in Article 35 of the Law.

The provision of paragraph 1 of Article 39 of the Law applies if the marriage ceased due to the spouse death who is a BiH citizen, or the foreigner who has temporary or permanent residence permit in BiH.

### **Enjoyment of equal treatment for members of migrant workers families**

328. According to the existing legislative in BiH, members of the family of the migrant workers enjoy equal treatment as BiH citizens related to exercise of the right to access to the educational institutions, health and social institutions, involvement in the cultural life and cultural manifestations, if they show their interest in it. It is true, that it is currently defined by the appropriate legal acts that the foreigner and his family members may be employed by the national legal and natural persons, and enjoy the same rights, obligations and responsibilities arising from the employment as the home citizens, in accordance with the employment regulations, collective agreements and general acts of the employers. Of course, the migrant worker families, without discrimination, have the rights to involvement in the local educational system, with respect to their mother languages and cultures. In that sense, BiH has obligation to provide special programmes for education of the migrant children in their mother language, and if necessary to establish, to that end, cooperation with the State of their origin. Regarding the health and social protection those rights are achieved according to the established regulations. Taking into account the conditions of the total economic relations in the society, characterized by the grave social situation, due to great unemployment, according to our information, there is small number of foreigners applying for use of the above mentioned services, but if they show their interest, no obstacles are made for them in respect of using such services, in accordance with the law.

329. No obstacles are made to the migrant family members upon choice of their paid activities, if these are undertaken accordance with the legal regulations. This surely refers to the migrant workers and their family members whose employment residence and employment permit are not time-limited. These issues are in close connection and depend on the signed bilateral and multilateral agreements between the State of employment and the State of origin.

### **Exemption from import and export duties and taxes in respect of specified belongings**

330. In accordance with the Law on Customs Policy in BiH, at the beginning of 2005 and upon the recommendation of the Management Board and the Directorate for Indirect Taxation, the BiH Council of Ministers, adopted the Decision on the procedure of realization of the right to exempt from import customs and duties for the free trade equipment that represents the deposit of the foreigner. This decision defines more precisely the procedures of achievement of the right to exempt from import customs and duties for the free trade equipment in accordance with the Article

176, paragraph 1, of the Law on the Customs Policy in BiH, and which represents deposit of the foreigner, except for passenger cars, automatic machine for entertainment and gamble games. The term "equipment which represents deposit of the foreigner" covers the equipment that:

- a) is imported, and which the foreign investor invests as his deposit into the legal person, on the bases of the investment agreement, or
- b) is imported for the name and for the account of the legal person, if it is paid by the funds collected from the foreign investor's deposit in that legal person.

331. In order to benefit the custom privileges from the Article 176, paragraph 1, of the Law on Customs Policy in BiH, the beneficiary of this privilege submits the written request for the exempt of import customs to the customs office responsible, according to the place of the beneficiary's seat, accompanied by the necessary documents defined by the mentioned Decision. The responsible custom office will make decision on the matter within 15 days from the date of receipt of such request.

The customs bodies have authorization to undertake all necessary activities and measures in order to ensure that the free trade equipment exempt from import custom duties on grounds of the foreign deposit is not used for any purposes other than those for which it was exempt, without payment of appropriate customs duties.

332. The migrant workers and their family members have the right to transfer the salaries and savings they have in BiH to the State of their origin or any other state where the migrant worker and his family members wish to transfer, without obstacles. In the same way they are protected of the double taxation, because at the entry of the migrant worker and his family members are subjected to control and listing of assets (property) entering in BiH, according to the current legal regulations.

**Right to seek alternative employment in case of termination of remunerated activities for migrant workers who have no right freely to choose their remunerated activities**

333. The employment permit is issued to the migrant worker under the conditions that he has permit for permanent residence or temporary residence in BiH and that in BiH employment services evidence there are no persons who fulfill the conditions requested by the employer for conclusion of the employment agreement or the contract on temporary and occasional jobs.

By the modification of the Law on Employment of the Foreigners and Stateless Persons, which took place in 2006 in the RS, and the modification of the mentioned regulation is ongoing in the FBiH, the special condition that the person has residence in BiH is not requested any more. The new Article 4 of this Law defines that: "Besides the general conditions prescribed by the Law, the

conditions prescribed by the collective agreement and by the general acts of the employer, the foreigner must also comply to the special condition: to have the work permit, issued by the Employment bureau, for conclusion of the work contract issued".

The work permit, according to the Law on Employment of the Foreigners, ceases to be valid: by expiry of the period for which it was issued, by expiry of the period of temporary residence permit, by dismissal of the residence in accordance with the special regulations and by losing the status of the permanent residence as a foreigner, by expiry of the period for which the work agreement or the contract for performance of temporary and occasional jobs have been concluded and by withdrawal of the permit.

334. By the labour laws in both entities and the Brcko District of BiH it is defined that the foreigners, i.e. migrants, can make the work agreements only according to the conditions defined by the laws on employment of the foreigners.

The temporary residence permit will not influence the status of migrant workers and their family members after termination of the jobs they have done in a specified period. By termination of the jobs of the migrant workers, their family members continue residence in BiH until the period permitted in BiH.

335. The implementation of the programme of professional orientation, training and re-training of unemployed persons and their re-employment on the appropriate jobs in BiH, as well as access to the services and institutions for professional education and re-training, is defined by the current regulations and there is no discrimination of any kind, in comparison with BiH citizens.

336. The migrant workers, under the condition mentioned in the previous article, achieve their right to employment in the period mentioned in the employment agreement and in accordance with the legal regulations. That period is regularly one year, with possibility of extension for each successive year, depending on the period of permitted residence and plans of both the employees and the employer.

337. The specified categories of jobs in BiH are defined by the legal regulations. They can be performed only by BiH citizens. These are jobs of the civil servants, public servants employed with the government, in education, health services, defence, police etc. For instance, in the Article 22 of the Law on the Civil Service in BiH Institutions, one of the first general conditions for employment as a civil servant is to be BiH citizen.

338. The validation of diplomas and titles in BiH is carried out in accordance with the bilateral treaties that BiH has concluded with other countries. These jobs are temporarily under responsibility of the entity ministries of education. The University diplomas, the Master studies and Doctor's dissertations are validated by the relevant faculties, in coordination with the entity ministries of education. After adoption of the Law on Higher Education at BiH level, and by integration of the Bologna process, these issues will be solved successfully and the mentioned diplomas will be recognized in the countries of the European Union and even wider.

339. By the Article 17 of the Law on Movement and Stay of Foreigners and Asylum in BiH (work permit) it is defined that the foreigner who wants to enter into BiH in order to work and perform other profitable business subject to taxation, can be approved entering if he has work permit or other equivalent, issued by the authorized governmental body, in accordance with the regulations that define the field of employment, banking, investment or of direct foreign investment policies, as well as the business-technical cooperation, production and cooperation. It is understood that the foreigner, who has work permit, fulfills the regulations provided by the law that refer to possession of the means for living.

The Article 31 defines kinds of residence. It is defined that the temporary residence in BiH territory is residence during the period of one year, if it is not defined otherwise by the residence permit, and the permanent residence is residence in BiH territory for unlimited period.

340. The laws on employment of the foreigners in BiH define the conditions under which the migrant workers, who are received on grounds of their employment, can obtain permit to perform their jobs for their personal account, taking into consideration the period in which the worker had already had documented stay in BiH.

341. According to the current regulations in BiH, the special permits for residence and employment of the foreign workers are related to the provisions of the labour legislation exclusively dealt with by the associations of employers, in cooperation with the employment bureaus operating in the state. In BiH there is no special law on the rights of migrant workers, and it is defined by the laws on employment of the foreigners and labour laws. These laws precisely define all the issues relating to the issuance of the work permits, status of the employers, their rights and obligations, salaries and other conditions in connection with the employment, unemployment etc.

342. In special cases, when works are performed on the investment buildings, according to the Law on Foreign Trade, conduct of works can be awarded to the foreign contractor on the base of previously completed public tendering or collection of the offers from a number of tenderers. If the investor is the governmental body, public society with majority of the state capital or the public subject for satisfying needs of general interest, the provisions of the Public Procurement Law should be applied during the selection procedure. This work contract is registered in the special register, which is kept by the responsible entity ministry. For execution of the contracted works, the foreign partner can engage persons from abroad, as well as the labour force (workers) from the state where the works are to be executed. If the investor – the works contractor engages the workers from abroad, it is necessary, in accordance with the Law on Employment of Foreigners, to provide the residence and employment permits. The period limitation and possibility for extension of the employment permits and period of residences are defined by the laws on rules of procedure, as it was explained earlier. The issues relating to losing the residence permits, employment status, and support during the unemployment not caused by the worker's fault, is also defined there.

343. In the special situations, BiH economic chambers are authorized for certification of the invitations for the business visits of foreign partners. The invitation is in the form of a letter of guarantee by which the domestic or foreign legal person, registered in BiH, invites the foreign partner for a business visit in the defined period. This invitation must be certified by the responsible department of the Ministry and responsible economic chamber according to the business seat of the guarantee (invitation) issuer. In those cases, the inviter (legal person) is obliged to enclose statement that he undertakes on himself obligation to ensure accommodation, support for living and other costs that may incur during the foreign partner stay in BiH, and costs of departure of the foreign partner from BiH. The invitation letter is submitted to the BiH embassy, which approves the foreigner the entrance visa.

Since there is not a special ministry of labour on BiH level, which would treat employment-related issues, this fact causes difficulties regarding the harmonization of each issue at the state level. By solving that question, it will be possible to give answers in more effective and transparent way to the responsible UN committees on all of the treated questions, according to the standards defined by the said convention.

344. The special chapter of the Law on Movement and Stay of Foreigners and Asylum, defined by the Article 56 to 62, refers to the expulsion of the foreigner from the state. It is normal that the migrant workers and their family members could be expelled merely on grounds specified by the national legislation of the State of employment. Wider explanations relating to this issue are given in the previous text of this Report, but we emphasize that all the cases of the foreign expulsion

from the country are founded on the legal facts, i.e. not contrary to the current legal legislation. The decision making on expulsion of a foreigner from BiH state is responsibility of the organization unit of the BiH Ministry of Security, who brings first instance decision, by taking of measures for the forced expulsion of the foreigner from BiH, if necessary in cooperation with other organization units of the Ministry or of the MUP, all in accordance with the mentioned law. That is done in cases when the expulsion of the foreigner is necessary and when it is connected with the reasons of national security, according to the provision 1 paragraph 2 of the Protocol No.7 of the European Convention on Protection of Human Rights and Fundamental Freedom. When the humanitarian reasons are in question, according to BiH legislation the foreigner shall not be expelled to the territory where his life and freedom are jeopardized, or if there is knowledge that they could be target of torture or other inhuman or degrading treatment. The humanitarian reasons can also refer to other reasons, about what the decision is made by the responsible body. The claim to the responsible Ministry can be lodged against the decision on expulsion, Article 58 of the Law on Movement and Stay of Foreigners and Asylum is allowed.

**d) FIFTH PART OF THE CONVENTION: Provisions applicable to particular categories of migrant workers and members of their families**

345. The particular categories of the migrant workers, such as frontier workers, seasonal workers, itinerant workers, project tied workers, specified-employment workers, self-employed workers etc., if they have regulated residence and employment status, enjoy all the rights defined by the law, without discrimination on any grounds.

Although this category of workers stays seasonally in BiH, shorter period of time, they are informed on their rights according to BiH legislations and obligations they have towards BiH. Of course, they will gain their rights better if they are more active and show their interest in exercise of their rights, because at this level of development of BiH, although it is its obligation to inform the workers on their rights in more effective and complete way, it happens that it does not do it in transparent way, which will be the prime task of BiH in the future period to do steps on that plan.

**e) SIXTH PART OF THE CONVENTION**

**Maintenance of appropriate services that deal with questions concerning international migration of workers and members of their families**

346. According to the Article 65 of the Convention on Protection of Rights of Migrant Workers and Members of Their Families, the Law on Service for Foreigners was adopted. This Service is the governmental organization within BiH Ministry of Security, with the operational independency for dealing with affairs and solving issues concerning the movement and stay of foreigners and asylum. It was established in order to supply administrative-governmental and inspection services



prescribed by the Law on Movement and Stay of Foreigners and Asylum. The management of the Service for Foreigners was appointed in August 2006, while take-over of the officers employed on the affairs with foreigners from the entity ministries and the Brcko District of BiH has successfully completed, and operation works of this Service has began on 01/10/2006.

Beside others in the competences of this Service are the following tasks: issuing and withdrawal of the identity documents to the foreigners, registration of the residence and change of residence of the foreigners, approval of the temporary or permanent stay of foreigners and withdrawal of the same, putting the foreigner under the supervision, dismissal of foreigners, inspection affairs, assessment and reporting about the conditions in this field and other services by which are defined the rights and obligations concerning the movement, staying and stay of foreigners in BiH. If necessary, the migrant workers are allowed appropriate consular and other services necessary in order to satisfy the social, cultural and other needs of migrant workers and members of their families.

#### **Approval of activities and bodies for recruitment of workers for employment in another State**

347. Approval for engagement of the workers for employment in another state is possible only in accordance with the defined bilateral and multinational agreements between the states concerned. The states concerned may issue the approval to the employers, agencies or persons who work in their name, and the latter ones may also obtain authorizations in accordance with the legislation and practice of the states concerned for undertaking the mentioned activities.

Having in mind that in BiH there have not been a significant number of such cases registered, this time we re not in position to present our experiences regarding this issue.

#### **Measures regarding the orderly return of migrant workers and member of their families to the State of their origin, their resettlement and cultural reintegration**

348. Different from undertaking special procedures and measures done in the cases where the State of employment must expel the migrant workers from the state, willingly or by force, about what we have reported in the previous part, and what is defined by the Special Instructions on the procedure of expulsion, supervision and obligations of cover of the costs of supervision and return of the foreigner from BiH, the States of employment and States of origin of the worker have defined agreements and contracts for this kind of return mentioned in the title. This refers to the migrant workers who had or have the documented status. Of course, there are obligations of the states parties to cooperate on these issues and to fulfill defined contracts and agreements regarding the encouragement of adequate economic conditions for their resettlement and reintegration in all

aspects in the State of origin. Unfortunately, these practices are not yet applied in the states with much stronger economy, where all contact with the migrant workers is lost. BiH, as developing country, still makes efforts to protect the rights of migrant workers and members of their families, in order to make them feel safe and protected without any discrimination, in the same way as BiH citizens.

### **Measures with a view to preventing and eliminating illegal or clandestine movement and employment of migrant workers in an irregular situation**

349. The state of BiH, within scope of all the activities that it undertakes on prevention and elimination of unlawful or secrete movement and employment of the migrant workers who have not regulated employment and other status, is doing regular control of enterprises by the competent bodies. In both entities and the Brcko District of BiH the inspectors conduct inspection and checking of the companies where the migrant workers are employed.<sup>31</sup> In that view, by application of the Law on Movement and Stay of Foreigners and Asylum, the measures are undertaken and decisions made on refusal of the requests for issuing of the permits for temporary residence of the foreigner on the basis of employment and performance of profitable business, decisions on expulsion of those who stay in BiH in an irregular situation, decisions on refusal of admission to BiH, make final decisions and valid decision on cancellation of the temporary residence permit of the foreigners in BiH.

In 2005, in the RS, there have been 98 inspections made of the foreigners in the companies in which the foreigners are employed, and 84 inspections during the first nine months of 2006 and during those inspections the irregularities have not been founded.

### **Measures undertaken to prevent discrimination of migrant workers in an irregular situation**

350. In cases when on BiH territory there are migrant workers and members of their families without documented status, according to the Law on Movement and Stay of Foreigners and Asylum, the Law on the Service for Foreigners, the Instructions on Procedures for expulsion of the foreigners, inspections and obligation for cover of the costs of inspections and return of the foreigner from BiH and other regulations, the competent state bodies undertake adequate legal measures. Anyway, on the basis of concluded multilateral and agreements between the State of employment and the States of origin of the workers, the appropriate conditions taken into

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<sup>31</sup> According to the data from the Republika Srpska, the inspectors for the foreigners have executed 197 of inspections during the period 2001 – 2004, and in accordance to the law, have undertaken 378 of adequate measures. In the Brcko District of BiH there were 31 criminal procedures and 126 violations during the period 30.06.2003 – 31.12.2005. Attachment, Table No. ...

consideration upon their admission into the state are length of the period of residence in the State of employment and other relevant reasons, especially those referring to the status of their families. These issues were discussed in this Report in more details earlier in the text on manners of undertaking measures of legal measures and in most cases with the maximum uses and respect of the humanitarian reasons, with aim to more consistent protection of the migrant workers and members of their families.

### **Measures to ensure living conditions for migrant workers and members of their families**

351. BiH respects its law founded on the internationally recognized legal standards, especially international conventions founded on respect of the human dignity, freedom, equality, justice, tolerance, etc. and are incorporated into BiH Constitution, the constitutions of entities and the Brcko District of BiH, and intends to apply these norms on the said Convention. According to the legislation and in conformity with economic capacity, BiH is making efforts in order to comply the status of migrant workers and members of their families with the standards of exemplary, security, health and principle of the human dignity.

### **Repatriation of the bodies of deceased migrant workers and members of their families and compensation matters relating to the death**

352. In each case without exception, in respecting this Convention, BiH is obliged and has duty, in the cases of death of the migrant worker or member of his family, to give support during the return of the deceased and injured migrant workers and members of their families to the State of origin. These questions refer, first of all, to the migrant workers and members of their families, in accordance with the Convention on social insurance, what is defined in more details by the bilateral treaties and contracts between the State of employment of the migrant workers and State of origin. BiH has concluded such agreements with more than twenty states until now. According to the information we have there have been no problems in defining the issues regarding the death of the workers and their family members - when the subject was the return of the deceased bodies or giving the compensation related to the death. That means that all such issues are solved in relation between the States of employment – the State of origin - the employer. If such and similar issues are out of the legal frame, these have another treatment and way of solving.

## **LIST OF REGULATIONS**

- Constitution of Bosnia and Herzegovina,
- Constitution of the Federation of Bosnia and Herzegovina,
- Constitution of the Brcko District of BiH,
- Statute of the Brcko District of BiH,
- Law on Movement and Stay of Foreigners and Asylum (BiH),
- Law on Supervision and Control of State Border Crossings (BiH),
- Law on Control of Crossing and Security of the State Border (RS),
- Law on Service on Foreigners (BiH),
- Law on Foreign Investments (RS),
- Law on Employment of Foreigners (FBiH),
- Law on Employment of Foreign Citizens or Stateless Persons (RS),
- Law on Employment (Brcko D. BiH)
- Law on Mediation in Employment and Social Security of Unemployed Persons (FBiH),
- Labor Law (FBiH),
- Labor Law (RS),
- Labor Law (Brcko District BiH),
- Law on Gathering of Citizens (Brcko District BiH),
- Law on Employment (RS),
- Law on Employment and Rights during Unemployment (Brcko District of BiH),
- Law on Health Insurance of FBiH (FBiH)
- Law on Health Insurance (RS),
- Law on Health Insurance (Brcko District of BiH),
- Law on Social Care (Brcko District of BiH),
- Law on Children's Care (Brcko District of BiH),
- Law on Health Care (Brcko District of BiH),
- Law on Pension and Invalid Insurance. Revised. (RS),
- Law on Pension and Invalid Insurance (FBiH),
- Law on Pension and Invalid Insurance of RS (RS),
- Law on Administrative Procedure of Bosnia and Herzegovina,
- Law on Administrative Procedure of Republika Srpska,
- Law on Administrative Procedure of FBiH,
- Rulebook on travel document for foreigners (BiH),
- Rulebook on asylum in BiH (BiH),
- Rulebook on conditions and procedure of issuance of visas to foreigners, extension, cancellation of visas, types of visas and records of issued visas (BiH),
- Rulebook on protection of foreigners victims of trafficking in persons (BiH),
- Instruction on procedure of expulsion, supervision and supervision costs payees and return of foreigners from BiH (BiH),
- Rulebook on the manner of border control conduct (BiH),
- Instruction on procedure of expulsion, supervision and supervision costs obligations and return of foreigners from BiH,
- Decision on constitution and work of foreign missions in BiH,
- Contract on approval of transit for Yugoslav citizens subject to leave the country of residence;
- Instruction on the extension of the temporary admission status in BiH of persons from Serbia and Montenegro whose last place of residence was Kosovo;
- Rulebook on terms and procedures of entry and residence of foreigners (BiH),

- Rulebook on protection of foreigners victims of trafficking in persons (BiH),
- Instruction on implementation of the Law on movement and stay of foreigners (RS),
- Rulebook on protection of foreigners victims of trafficking in persons (BiH),
- Other instructions, protocols and agreements related to concrete areas of movement and stay of foreigners in BiH.
- Agreement between BiH and SRYugoslavia on social insurance, so called Readmission Agreement (which BiH made with some other countries);
- Agreement between the BiH Council of Ministers and the Government of the Republic of Croatia on cooperation in extradition and admission of persons with illegal stay,
- Agreement between the BiH Council of Ministers and the Government of Kingdom of Denmark on cooperation in extradition and admission of persons with illegal stay (Agreement on Readmission),
- Agreement between the BiH Council of Ministers and the Government of Kingdom of Sweden on cooperation in extradition and admission of persons with illegal stay (Agreement on Readmission),
- Agreement between the BiH Council of Ministers and the Government of Kingdom of Norway on cooperation in extradition and admission of persons with illegal stay (Agreement on Readmission),
- Agreement between the BiH Council of Ministers and the Government of Confederation of Switzerland on cooperation in extradition and admission of persons with illegal stay (Agreement on Readmission),
- Agreement between the BiH Council of Ministers and the Government of Republic of Italy on cooperation in extradition and admission of persons with illegal stay (Agreement on Readmission),
- Protocol against smuggling of migrants by land, air and sea, as annex to UN Convention against Transnational Organized Crime,
- Contract on Approval of Transit for Yugoslav Citizens Subject to Leave the Country of Residence;
- Instruction on extension of temporary admission status in BiH of persons from Serbia and Montenegro whose last place of residence was Kosovo;
- Protocol against smuggling of migrants by land, air and sea, as annex to UN Convention against Transnational Organized Crime and other regulations.

***ATTACHMENT TO THE REPORT: Activities related to conclusion of agreements  
on police cooperation and admission agreements***

By the end of 2006 BiH started negotiations on conclusion of the Agreement between the European Union and BiH on readmission of the persons staying in an irregular situation in those countries. The conclusion of this agreement would create the legal framework for readmission of the persons in an irregular situation, with all countries of the European Union, except Denmark, Great Britain and Ireland. The said Agreement was initialled on 13 April 2007, in Zagreb, at the conference of ministers.

The Ministry of Security has initiated, in 2006, wider activities with other countries in the region related to conclusion of agreements on police cooperation and agreements on readmission. A great number of countries accepted the BiH initiative and have started themselves activities to make such agreements. Having in mind their direct relationship to the phenomenon of trafficking in persons and illegal migrations, they are included in the Chapter II of the Report - Legal and regulatory framework. In 2006 the following agreements were made:

1. Agreement between BiH and the Republic of Greece on cooperation in fight against crime, especially terrorism, illegal drug trade and organized crime;
2. Agreement between BiH and the Federal Republic of Austria on police cooperation;
3. Agreement between BiH and the Republic of Slovakia on cooperation in fight against crime, especially terrorism, illegal narcotics trade and organized crime;
4. Agreement between BiH and the Republic of Greece on readmission of persons illegally staying on the territory of their countries;
5. Agreement between BiH and the Federal Republic of Austria on readmission of persons with illegal stay;
6. Agreement between BiH and the Republic of Slovakia on readmission of persons with illegal stay;
7. Agreement between BiH and the Republic of Bulgaria on return of own citizens and foreigners with illegal stay;
8. Agreement between BiH and the Republic of Romania on readmission of own citizens and foreigners;
9. Agreement between BiH and Benelux countries on admission of persons with illegal stay;
10. Agreement between BiH and Arab Republic of Egypt on police cooperation;
11. Agreement between BiH and the Republic of Slovenia on admission of persons with illegal stay;
12. Agreement between BiH and the Republic of Slovenia on police cooperation;
13. Agreement between BiH and the Republic of France on readmission of persons with illegal stay;

In 2006 the activities have been initiated and carried out in connection with conclusion of the following agreements:

1. Agreement between BiH and Switzerland Confederation on police cooperation in fight against crime;
2. Agreement between BiH and the Republic of Romania on cooperation in fight against terrorism, organized crime, illegal drug trade, psychotropic substances and precursors and against other criminal activities;

3. Agreement between BiH and the Republic of Macedonia on cooperation in fight against terrorism, organized crime, illegal drug trade, psychotropic substances and precursors, illegal migration and other criminal acts;
4. Agreement between BiH and the Kingdom of Spain on cooperation in fight against crime, especially terrorism and illegal trade;
5. Agreement between BiH and the Republic of Moldavia on cooperation in fight against organized crime, illegal opiates trade and psychotropic substances, terrorism and other kinds of serious crime;
6. Agreement between BiH and the Islamic Republic of Pakistan on cooperation in fight against crime, especially terrorism, illegal drug trade and organized crime;
7. Agreement between BiH and the Kingdom of Saudi Arabia on police cooperation;
8. Agreement between BiH and the Republic of France on police cooperation;
9. Agreement between BiH and the Republic of Bulgaria on police cooperation;
10. Agreement between BiH and the Republic of Serbia on police cooperation;
11. Agreement between BiH and the Republic of Croatia on police cooperation (modifications and amendments of existing Agreement);
12. Agreement between Bosnia and Herzegovina and the Republic of Montenegro on police cooperation;
13. Agreement between BiH and the Republic of Albania on police cooperation;
14. Agreement between BiH and the Republic of Ukraine on police cooperation;
15. Agreement between BiH and the Kingdom of Belgium on police cooperation;
16. Agreement between BiH and the Kingdom of Netherlands on police cooperation;
17. Agreement between BiH and the Kingdom of Denmark on police cooperation;
18. Agreement between the Council of Ministers of BiH and the Kingdom of Norway on police cooperation;
19. Agreement between the Council of Ministers of BiH and the Kingdom of Sweden on police cooperation;
20. Agreement between BiH and the Republic of Tunisia on police cooperation;
21. Agreement between BiH and the Kingdom of Morocco on police cooperation;
22. Agreement between BiH and the People's Democratic Republic of Algeria on police cooperation;
23. Agreement between BiH and the Republic of Macedonia on readmission of persons with illegal stay on their territory;
24. Agreement between BiH and the Kingdom of Spain on readmission of persons with illegal stay;
25. Agreement between BiH and the Republic of Finland on readmission of persons with illegal stay;
26. Agreement between BiH and the Republic of Turkey on readmission of own citizens and third countries citizens with illegal stay;
27. Agreement between BiH and the Republic of Latvia on readmission of persons with illegal stay on the territory of one of the Agreement parties;
28. Agreement between BiH and the Republic of Poland on readmission of persons with illegal stay;
29. Agreement between BiH and the Republic of Moldavia on readmission of persons with illegal stay;
30. Agreement between BiH and the Russian Federation on readmission;
31. Agreement between BiH and the Arab Republic of Egypt on readmission;
32. Agreement between BiH and the Republic of Montenegro on readmission;



***ATTACHMENT TO THE REPORT: List of ILO Conventions***

## **List of ratified International Labour Conventions**

### **Bosnia and Herzegovina**

**Member since 1993**

**68 Conventions ratified (67 in force)**

<b>No.</b>	<b>Convention</b>	<b>Ratification date</b>
<b>C2</b>	<b>Unemployment Convention, 1919</b>	02/06/1993
<b>C3</b>	<b>Maternity Protection Convention, 1919</b>	02/06/1993
<b>C8</b>	<b>Unemployment Indemnity (Shipwreck) Convention, 1920</b>	02/06/1993
<b>C9</b>	<b>Placing of Seamen Convention, 1920</b>	02/06/1993
<b>C11</b>	<b>Right of Association (Agriculture) Convention, 1921</b>	02/06/1993
<b>C12</b>	<b>Workmen's Compensation (Agriculture) Convention, 1921</b>	02/06/1993
<b>C13</b>	<b>White Lead (Painting) Convention, 1921</b>	02/06/1993
<b>C14</b>	<b>Weekly Rest (Industry) Convention, 1921</b>	02/06/1993
<b>C16</b>	<b>Medical Examination of Young Persons (Sea) Convention, 1921</b>	02/06/1993
<b>C17</b>	<b>Workmen's Compensation (Accidents) Convention, 1925</b>	02/06/1993
<b>C18</b>	<b>Workmen's Compensation (Occupational Diseases) Convention, 1925</b>	02/06/1993
<b>C19</b>	<b>Equality of Treatment (Accident Compensation) Convention, 1925</b>	02/06/1993
<b>C22</b>	<b>Seamen's Articles of Agreement Convention, 1926</b>	02/06/1993
<b>C23</b>	<b>Repatriation of Seamen Convention, 1926</b>	02/06/1993
<b>C24</b>	<b>Sickness Insurance (Industry) Convention, 1927</b>	02/06/1993
<b>C25</b>	<b>Sickness Insurance (Agriculture) Convention, 1927</b>	02/06/1993
<b>C27</b>	<b>Marking of Weight (Packages Transported by Vessels) Convention, 1929</b>	02/06/1993
<b>C29</b>	<b>Forced Labour Convention, 1930</b>	02/06/1993
<b>C32</b>	<b>Protection against Accidents (Dockers) Convention (Revised), 1932</b>	02/06/1993
<b>C45</b>	<b>Underground Work (Women) Convention, 1935</b>	02/06/1993
<b>C48</b>	<b>Maintenance of Migrants' Pension Rights Convention, 1935</b>	02/06/1993
<b>C53</b>	<b>Officers' Competency Certificates Convention, 1936</b>	02/06/1993
<b>C56</b>	<b>Sickness Insurance (Sea) Convention, 1936</b>	02/06/1993
<b>C69</b>	<b>Certification of Ships' Cooks Convention 1946</b>	02/06/1993
<b>C73</b>	<b>Medical Examination (Seafarers) Convention, 1946</b>	02/06/1993
<b>C74</b>	<b>Certification of Able Seamen Convention, 1946</b>	02/06/1993

<b>C80</b>	<b>Final Articles Revision Convention, 1946</b>	02/06/1993
<b>C81</b>	<b>Labour Inspection Convention, 1947</b>	02/06/1993
<b>C87</b>	<b>Freedom of Association and Protection of the Right to Organise Convention, 1948</b>	02/06/1993
<b>C88</b>	<b>Employment Service Convention, 1948</b>	02/06/1993
<b>C89</b>	<b>Night Work (Women) Convention (Revised), 1948</b>	02/06/1993
<b>C90</b>	<b>Night Work of Young Persons (Industry) Convention (Revised), 1948</b>	02/06/1993
<b>C91</b>	<b>Paid Vacations (Seafarers) Convention (Revised), 1949</b>	02/06/1993
<b>C92</b>	<b>Accommodation of Crews Convention (Revised), 1949</b>	02/06/1993
<b>C97</b>	<b>Migration for Employment Convention (Revised), 1949</b>	02/06/1993
<b>C98</b>	<b>Right to Organise and Collective Bargaining Convention, 1949</b>	02/06/1993
<b>C100</b>	<b>Equal Remuneration Convention, 1951</b>	02/06/1993
<b>C102</b>	<b>Social Security (Minimum Standards) Convention, 1952</b>	02/06/1993
<b>C103</b>	<b>Maternity Protection Convention (Revised), 1952</b>	02/06/1993
<b>C105</b>	<b>Abolition of Forced Labour Convention, 1957</b>	15/11/2000
<b>C106</b>	<b>Weekly Rest (Commerce and Offices) Convention, 1957</b>	02/06/1993
<b>C109</b>	<b>Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958</b>	02/06/1993
<b>C111</b>	<b>Discrimination (Employment and Occupation) Convention, 1958</b>	02/06/1993
<b>C113</b>	<b>Medical Examination (Fishermen) Convention, 1959</b>	02/06/1993
<b>C114</b>	<b>Fishermen's Articles of Agreement Convention, 1959</b>	02/06/1993
<b>C116</b>	<b>Final Articles Revision Convention, 1961</b>	02/06/1993
<b>C119</b>	<b>Guarding of Machinery Convention, 1963</b>	02/06/1993
<b>C121</b>	<b>Employment Injury Benefits Convention, 1964</b>	02/06/1993
<b>C122</b>	<b>Employment Policy Convention, 1964</b>	02/06/1993
<b>C126</b>	<b>Accommodation of Crews (Fishermen) Convention, 1966</b>	02/06/1993
<b>C129</b>	<b>Labour Inspection (Agriculture) Convention, 1969</b>	02/06/1993
<b>C131</b>	<b>Minimum Wage Fixing Convention, 1970</b>	02/06/1993
<b>C132</b>	<b>Holidays with Pay Convention (Revised), 1970</b>	02/06/1993
<b>C135</b>	<b>Workers' Representatives Convention, 1971</b>	02/06/1993
<b>C136</b>	<b>Benzene Convention, 1971</b>	02/06/1993
<b>C138</b>	<b>Minimum Age Convention, 1973</b>	02/06/1993
<b>C139</b>	<b>Occupational Cancer Convention, 1974</b>	02/06/1993
<b>C140</b>	<b>Paid Educational Leave Convention, 1974</b>	02/06/1993

<b>C142</b>	<b>Human Resources Development Convention, 1975</b>	02/06/1993
<b>C143</b>	<b>Migrant Workers (Supplementary Provisions) Convention, 1975</b>	02/06/1993
<b>C144</b>	<b>Tripartite Consultation (International Labour Standards) Convention, 1976</b>	11/07/2006
<b>C148</b>	<b>Working Environment (Air Pollution, Noise and Vibration) Convention, 1977</b>	02/06/1993
<b>C155</b>	<b>Occupational Safety and Health Convention, 1981</b>	02/06/1993
<b>C156</b>	<b>Workers with Family Responsibilities Convention, 1981</b>	02/06/1993
<b>C158</b>	<b>Termination of Employment Convention, 1982</b>	02/06/1993
<b>C159</b>	<b>Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983</b>	02/06/1993
<b>C161</b>	<b>Occupational Health Services Convention, 1985</b>	02/06/1993
<b>C162</b>	<b>Asbestos Convention, 1986</b>	02/06/1993
<b>C182</b>	<b>Worst Forms of Child Labour Convention, 1999</b>	05/10/2001

## **ABBREVIATIONS IN THE REPORT**

- ❖ EU - European Union,
- ❖ BiH - Bosnia and Herzegovina,
- ❖ FBiH - Federation of Bosnia and Herzegovina,
- ❖ RS – Republika Srpska,
- ❖ BD BiH - Brčko District of BiH,
- ❖ SFR Jugoslavija - Socialist Federative Republic of Yugoslavia,
- ❖ MVP - Ministry of Foreign Affairs,
- ❖ MUP - Ministry of Interior,
- ❖ DKP - Diplomatic consular mission,
- ❖ KMUP- Cantonal Ministry of Interior,
- ❖ CJB - Center of Public Security,
- ❖ SiCG - Serbia and Montenegro,
- ❖ IOM – International Organization for Migration,
- ❖ CIPS- Directorate for Implementation of CIPS project (Citizen Information Protection System),
- ❖ CARDS – Community Assistance for Reconstruction, Development and Stabilization,
- ❖ DZiSCG-State Union of Serbia and Montenegro,
- ❖ PI – travel document,
- ❖ PS - police station,
- ❖ IPTF – International Police Task Forces,
- ❖ MUP HNK-Mostar - MUP of Herzegovina-Neretva Canton,
- ❖ ZE-DO- Zenica-Doboj Canton,
- ❖ CPT- European Committee for Prevention of Torture and Other Inhuman Treatment,
- ❖ ZKP BiH - Bosnia and Herzegovina Criminal Procedure Code,
- ❖ ZKP - Criminal Procedure Code,
- ❖ OHR – Office of the High Representative,
- ❖ OHCHR – Office of the High Commissioner for Human Rights,
- ❖ UNHCR –UN High Commissionaire for Refugees,
- ❖ MARRI – Migration, Asylum, Refugees Regional Initiative,
- ❖ SAP – Stabilization and Association Process,
- ❖ R. Hrvatska – Republic of Croatia,
- ❖ TK – field office
- ❖ UNMIKA – UN Mission in Kosovo
- ❖ ICAO standardi – International Civil Aviation Organization standards
- ❖ (Zemlje) ZE – West Europe (countries),
- ❖ CJB – Center of Public Security,
- ❖ DKP – Diplomatic consular mission,
- ❖ KZ – Criminal Code

**ATTACHMENT TO THE REPORT - TABLES**

Annex: Table no. 1

**REVIEW OF CRIMINAL AND OFFENCE PROCEEDINGS INSTITUTED  
AGAINST FOREIGN CITIZENS BY THE POLICE OF BRCKO DISTRICT  
OF BiH**

PERIOD	CRIMINAL PROCEEDING	OFFENCE PROCEDURE	TOTAL
30/06/2003 31/12/2003	6	35	41
01/01/2004 31/12/2004	6	51	57
01/01/2005 31/12/2005	19	40	59
01/01/2006 31/12/2006	13	53	66
<b>TOTAL</b>	44	179	223

**REVIEW OF ISSUED WORKING PERMITS FOR FOREIGNERS  
ON THE TERRITORY OF BRCKO DISTRICT OF BOSNIA AND  
HERZEGOVINA**

<b>PERIOD</b>	<b>NUMBER OF ISSUED WORKING PERMITS</b>
<b>30/06/2003 31/12/2003</b>	<b>117</b>
<b>01/01/2004 31/12/2004</b>	<b>398</b>
<b>01/01/2005 31/12/2005</b>	<b>431</b>
<b>01/01/2006 31/12/2006</b>	<b>368</b>
<b>TOTAL</b>	<b>1332</b>



Annex: Table no. 3

**REVIEW OF STAY REGISTER OF FOREIGN CITIZENS ON THE  
TERRITORY OF BRCKO DISTRICT OF BiH**

<b>PERIOD</b>	<b>TOTAL REGISTERED</b>	<b>APPROVED TEMPORARY RESIDENCE UP TO ONE YEAR</b>	<b>APPROVED PERMANENT RESIDENCE</b>
<b>30/06/2003 31/12/2003</b>	<b>2448</b>	<b>213</b>	<b>16</b>
<b>01/01/2004 31/12/2004</b>	<b>4660</b>	<b>528</b>	<b>7</b>
<b>01/01/2005 31/12/2005</b>	<b>4622</b>	<b>612</b>	<b>16</b>
<b>TOTAL</b>	<b>11730</b>	<b>1363</b>	<b>39</b>

**Annex: Table no. 4.**

**FOREIGN CITIZENS ATTENDING SCHOOLS IN BRCKO DISTRICT OF  
BOSNIA AND HERZEGOVINA**

<b>SCHOOL NAME</b>	<b>NUMBER OF PUPILS</b>
<b>SECONDARY ECONOMICS SCHOOL</b>	<b>34</b>
<b>SECONDARY TECHNICAL SCHOOL</b>	<b>10</b>
<b>SECONDARY AGRICULTURE AND MEDICAL SCHOOL</b>	<b>10</b>
<b>HIGH SCHOOL</b>	<b>8</b>
<b>TOTAL</b>	<b>62</b>

**Annex: Table no. 5.**

Table 5. Review of issued working permits to foreign citizens in the Republika Srpska in 2006 at branch-offices										
Branch-office	NK	PK	KV	SSS	VKV	VŠS	VSS	MR	DR	TOTAL
Banja Luka	5	-	8	34	1	7	71	12	10	148
Bijeljina	2	2	10	16	-	3	61	8	65	167
Doboj	2	-	3	6	-	5	43	-	3	62
E.Sarajevo	-	-	2	5	-	-	5	1	50	63
Prijedor	4	1	-	4	-	1	18	-	-	28
Trebinje	-	-	-	-	-	-	2	-	28	30
TOTAL	13	3	23	65	1	16	200	21	156	498

**Legend:** NK-unqualified, PK-semi-qualified, KV-qualified, SSS-secondary education, VKV-advanced qualified, VŠS-advanced education, VSS-high education graduate, MR-master, DR-PhD

Table no. 5a

REVIEW OF COUNTRIES OF ORIGIN OF CITIZENS APPROVED OF TEMPORARY RESIDENCE IN BiH IN 2006,  
UNDER DIFFERENT WORK REFERENCES

S E R · N O ·	COUNTRY	temporary residence “WORK PERMIT”	temporary residence “TEMPO RARY WORK ON BIH TERRITO RY”	temporary residence “HUMANI TARIAN WORK”	temporary residence “VOLUNTEER WORK IN RELIGIOUS ORGANIZATI ONS”	temporary residence “VOLUNTEER WORK”	temporary residence “SCIENTIFIC- RESEARCH AND ART WORK”	TOTAL NUMBER
1.	Austria	34	-	-	1	1	-	36
2.	China	269	3	-	-	-	-	272
3.	Croatia	152	-	2	7	5	1	167
4.	Macedonia	38	-	-	1	-	-	39
5.	Slovenia	64	-	-	-	-	-	64
6.	SiCG	568	1	-	-	-	-	569
7.	Turkey	160	1	-	-	3	-	164
<b>8.</b>	<b>OTHER COUNTRI ES TOTAL</b>	<b>209</b>	<b>1</b>	<b>17</b>	<b>104</b>	<b>56</b>	<b>6</b>	<b>393</b>
<b>9.</b>	<b>TOTAL NUMBER</b>	<b>1494</b>	<b>6</b>	<b>19</b>	<b>113</b>	<b>65</b>	<b>7</b>	<b>1704</b>

<b>10.</b>	<b>TOTAL NUMBER OF APPROVED TEMPORARY RESIDENCES OF FOREIGNERS IN BIH IN 2006 (FROM 01/01 TO 31/12/2006) UNDER ALL REFERENCES AND RESIDENCE RIGHTS:</b>	<b>5274</b>
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Table no. 5b

REVIEW OF COUNTRIES OF ORIGIN OF CITIZENS APPROVED OF PERMANENT RESIDENCE IN BiH IN 2006,  
UNDER DIFFERENT WORK REFERENCES

S E R. N O.	COUNTRY	permanent residence “WORK PERMIT”	permanent residence “TEMPO RARY WORK ON BIH TERRITO RY”	permanent residence “HUMANI TARIAN WORK”	permanent residence “VOLUNTEER WORK IN RELIGIOUS ORGANIZATI ONS”	permanent residence “VOLUNTEER WORK”	permanent residence “SCIENTIFIC- RESEARCH AND ART WORK”	TOTAL NUMBER
11.	Austria	-	-	-	-	-	-	-
12.	China	-	39	-	-	-	-	39
13.	Croatia	-	18	-	-	-	-	18
14.	Macedonia	-	10	-	-	-	-	10
15.	Slovenia	-	1	-	-	-	-	1
16.	SiCG	-	-	-	-	-	-	-
17.	Turkey	-	16	-	-	-	-	16
<b>18.</b>	<b>OTHER COUNTRI ES TOTAL</b>	<b>0</b>	<b>59</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>59</b>
<b>19.</b>	<b>TOTAL NUMBER</b>	<b>0</b>	<b>143</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>143</b>

<b>20</b>	<b>TOTAL NUMBER OF APPROVED AND ACTIVE PERMANENT \RESIDENCES OF FOREIGNERS IN BIH IN 2006 UNDER ALL REFERENCES AND RIGHTS TO PERMANENT RESIDENCE:</b>	<b>153</b>
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**Annex: Table no. 6.**

**Review of issued work permits, per branch-offices, for the period 17/11/2004 to 30/11/2006 in RS**

Branch-Office	NK	PK	KV	SSS	VKV	VŠS	VSS	MR	Prof. dr	TOTAL
Banja Luka	8	2	18	63	4	12	137	13	14	271
Bijeljina	3	4	14	33	-	16	105	8	79	262
Doboj	3	1	4	11	-	10	64	-	2	95
East Sarajevo	-	-	3	9	1	1	20	1	80	115
Prijedor	6	1	-	8	3	4	37	-	1	60
Trebinje	-	-	1	3	1	4	3	-	28	40
<b>TOTAL</b>	<b>20</b>	<b>8</b>	<b>40</b>	<b>127</b>	<b>9</b>	<b>47</b>	<b>366</b>	<b>22</b>	<b>204</b>	<b>843</b>

**Annex: Table no. 7.**

Table 7. Review of issued work permits to foreigners in the Brcko District of BiH until December 2006	
People's Republic of China	302
Serbia and Montenegro	70
Turkey	20
Croatia	11
Macedonia	6
Other countries	19
<b>TOTAL:</b>	<b>428</b>

**Annex: Table no. 8.**

**REVIEW OF ISSUED CERTIFICATES FOR ISSUANCE OF WORK PERMITS TO FOREIGNERS FROM 01/01 TO 31/03/2003, PER CANTONS AND COUNTRIES**

Ser. no.	Country	1. US	2. PK	3. TK	4. ZDK	5. BPKK	6. SBK	7. HNK	8. ZHK	9. KS	10. LK	TOTAL
		K										
	<b>TOTAL</b>	<b>120</b>	<b>31</b>	<b>211</b>	<b>128</b>	<b>38</b>	<b>86</b>	<b>129</b>	<b>76</b>	<b>1211</b>	<b>20</b>	<b>2050</b>
1	SERBIA AND MONTENEGRO	76	6	66	60	25	32	24	4	489	4	786
2	CHINA	9	0	52	24	4	10	23	1	197	2	322
3	TURKEY	14	0	29	7	0	5	0	0	123	0	178
4	CROATIA	9	17	12	0	21	22	59	60	117	10	327
5	SLOVENIA	3	0	1	0	0	1	1	0	40	2	48
6	GERMANY	2	0	2	3	0	1	1	1	22	0	32
7	MACEDONIA	2	7	18	8	1	1	0	0	50	0	87
8	AUSTRIA	0	0	3	0	0	2	1	0	29	0	35

9	USA	0	0	1	1	2	0	1	0	21	0	26
10	G.BRITAIN	0	0	4	0	0	0	2	0	8	0	14
11	ITALY	3	0	5	1	3	3	6	0	0	1	22
12	SYRIA	0	0	3	2	1	1	0	0	7	0	14
13	MOLDAVIA	0	0	0	0	0	0	0	0	4	0	4
14	IRAN	0	0	0	0	0	0	1	0	16	0	17
15	SWEDEN	0	0	0	0	0	0	0	0	2	0	2
16	EGYPT	0	0	3	0	0	0	0	0	5	0	8
17	NETHERLANDS	0	0	1	1	0	0	0	0	3	0	5
18	INDIA	0	0	1	0	0	0	0	0	1	0	2
19	RUSSIA	0	0	0	0	0	0	2	0	3	0	5
20	CZECH REP.	0	0	1	0	0	0	0	1	2	0	4
21	SPAIN	0	0	0	0	0	4	0	0	2	0	6
22	SUDAN	0	0	0	0	0	1	0	0	8	0	9
23	FRANCE	0	0	0	0	0	0	1	0	0	0	1
24	S.ARABIA	0	0	0	0	0	0	0	0	2	0	2
25	NEPAL	0	0	0	0	1	0	0	0	1	0	2
26	LIBAN	1	0	0	0	0	0	0	0	2	0	3
27	S.AFR.REP.	0	0	0	0	0	0	1	0	1	0	2
28	UKRAINE	0	0	0	0	0	0	1	1	0	0	2
29	ALBANIA	0	0	0	0	0	0	0	0	2	0	2
30	IRAQ	0	0	0	0	0	2	0	0	3	0	5
31	JORDAN	0	0	0	0	0	0	0	0	2	0	2
32	CAMERON	0	0	0	0	0	0	0	1	0	0	1
33	BRAZIL	0	0	0	0	0	0	0	4	0	0	4
34	GREECE	0	0	0	0	0	0	0	0	3	0	3
35	BULGARIA	0	0	4	0	0	0	0	0	2	0	6
36	PAKISTAN	0	0	0	1	0	0	0	0	1	0	2
37	MALESIA	0	0	0	0	0	0	0	0	5	0	5
38	POLAND	0	0	0	0	0	0	1	0	1	0	2
39	IRELAND	0	0	0	0	0	0	0	0	1	0	1
40	ARMENIA	0	0	0	0	0	0	0	0	1	0	1
41	SWITZERLAND	0	0	0	0	0	0	0	0	1	0	1
42	SAN SALVADOR	0	0	0	0	0	0	0	0	1	0	1
43	INDONESIA	0	0	0	0	0	0	0	0	1	0	1
44	DOMINICAN.R	0	0	0	0	0	1	0	0	0	0	1
45	AUSTRALIA	0	0	1	0	1	0	0	0	3	0	5
46	BELGUM	0	0	0	0	0	0	0	2	2	0	4
47	SLOVAKIA	0	0	2	0	0	0	0	0	0	0	2
48	TUNISIA	0	0	0	0	0	0	0	0	2	0	2
49	DENMARK	0	0	0	0	0	0	1	0	0	0	1
50	BELORUSSIA	0	0	0	0	0	0	0	0	2	0	2
51	PHILIPPINES	0	0	0	0	0	0	0	0	1	0	1
52	CANADA	1	0	0	0	0	0	0	0	5	0	6
53	KIRGISTAN	0	0	0	0	0	0	0	0	1	0	1
54	LATVIA	0	0	0	0	0	0	0	0	1	0	1
55	LIBIA	0	0	0	0	0	0	0	0	3	0	3
56	HYNGARY	0	0	0	0	0	0	0	0	3	0	3
57	MEXICO	0	0	0	0	0	0	0	0	1	0	1
58	NEW ZEELAND	0	0	0	0	0	0	1	0	0	0	1
59	ROMANIA	0	1	2	0	0	0	2	1	7	1	14

**Annex: Table no. 9.**

**REVIEW OF ISSUED WORK PERMITS TO FOREIGNERS DURING 2004 PER CANTONS AND COUNTRIES**

Ser. no.	Country	1. USK	2. PK	3. TK	4. ZDK	5. BPK	6. SBK	7. HNK	8. ZHK	9. KS	10. LK	TOTAL
	<b>TOTAL</b>	<b>122</b>	<b>30</b>	<b>165</b>	<b>122</b>	<b>17</b>	<b>63</b>	<b>139</b>	<b>83</b>	<b>892</b>	<b>22</b>	<b>1656</b>
1	SERBIA AND MONTENEGRO	12	0	4	13	1	1	7	0	78	2	118
2	CHINA	0	0	9	5	0	5	2	0	77	7	105
3	CROATIA	1	1	3	0	0	1	15	8	17	5	51
4	TURKEY	16		20	18		3	1		58		116
5	MACEDONIA	2	8	18	10		1	1		30		70
6	SLOVENIA	3		1			1	1		51	6	63
7	USA	3		1	15	1	2	4		23		49
8	GERMANY	5	1	1	2		2	1		17	1	30
9	AUSTRIA						1	1		25		27
10	ITALY	5		3	1	1	2	6		3	1	22
11	G.BRITAIN	1		1						17		20
12	SYRIA	1		6	3	1	1			2		14
13	ROMANIA		1					1	4	5	1	12
14	RUSSIA	1						2	2	7		12
15	IRAN						1			10		11
16	BRAZIL	1			1				4	3		9
17	NETHERLANDS	2		1	1		1			4		9
18	UKRAINE		1	1			1		6			9
19	JORDAN	2								5		7
20	BULGARIA			3				2		1		6
21	EGYPT			2			1			3		6
22	CZECH REP.			2					1	2		5
23	PAKISTAN				3					2		5
24	SPAIN	1					2			2		5
25	SWITZERLAND					1				4		5
26	FRANCE							3		1		4
27	INDIA			3						1		4
28	CAMERON		1						2	1		4
29	HUNGARY									4		4
30	NORWAY									4		4
31	SUDAN				1		1			2		4
32	SWEDEN									4		4
33	AUSTRALIA								1	2		3
34	BELGUM								2	1		3
35	MALESIA									3		3
36	NEW ZEELAND			1				1		1		3
37	POLAND						1	1		1		3
38	SLOVAKIA			2				1				3
39	TUNISIA									3		3
40	ALGERY				1					1		2
41	ARGENTINA	1								1		2
42	ESTONIA	1								1		2
43	FINLAND			2								2
44	GREECE									2		2
45	S.AFR. REP.		1							1		2



46	LIBAN									2		2
47	MOLDAVIA									2		2
48	SAUD. ARABIA									2		2
49	ALBANIA									1		1
50	BANGLADESh									1		1
51	BELORUSSIA									1		1
52	CHILE									1		1
53	IRAQ						1					1
54	IRELAND							1				1
55	CANADA									1		1
56	KENYA									1		1
57	COREA									1		1
58	CUBA									1		1
59	MOROCCO									1		1
60	NEPAL									1		1
61	ZAMBIA									1		1

**Annex: Table no. 10.**

**REVIEW OF ISSUED CERTIFICATES FOR ISSUANCE OF WORK PERMITS TO FOREIGNERS FROM 01/01 TO 31/12/2005 PER CANTONS AND COUNTRIES**

Ser. No.	Country	1. USK	2. PK	3. TK	4. ZDK	5. BP K	6. SBK	7. HNK	8. ZHK	9. KS	10. LK	TOTAL
	<b>TOTAL</b>	<b>102</b>	<b>21</b>	<b>140</b>	<b>108</b>	<b>10</b>	<b>44</b>	<b>121</b>	<b>61</b>	<b>909</b>	<b>35</b>	<b>1551</b>
1	SERBIA AND MONTENEGRO	44	1	30	30	6	13	20		255	3	402
2	CHINA	15		40	25	3	13	25		219	16	356
3	CROATIA	8	14	8	3		4	58	50	73	10	228
4	TURKEY	20		18	17		3			129		187
5	SLOVENIA	6		3	1		2	1	1	53	4	71
6	MACEDONIA		5	10	3			1		26		45
7	ITALY	3		3	2		1	2		5		16
8	GERMANY	2	1	4	2		1	3		15	1	29
9	IRAN									19		19
10	BRAZIL				5			1	6			12
11	G.BRITAIN			2				1		9		12
12	USA	1		3	10			1		12		27
13	INDIA			1	4							5
14	RUSSIA			1				2		7		10
15	HUNGARY									4		4
16	GREECE							1		3		4
17	IRELAND									1		1
18	SYRIA			4	1	1	2			6		14
19	JORDAN	1								1		2
20	BULGARIA			3			1	3		2		8
21	EGYPT						1			4		5
22	AUSTRIA			4				1		18		24
23	CZECH REP.			2					1	1		4
24	SPAIN						1			2		3
25	SWITZERLAND									1		1
26	SWEDEN				1					4		5
27	MALESIA									2		2
28	POLAND						1			1		2

29	INDONESIA								1		1
30	NORWAY								3		3
31	ISRAEL			1							1
32	CAMERON			1				1			2
33	AUSTRALIA				1				2		3
34	BELGUM							1			1
35	SUDAN					1			2		3
36	NEW ZEELAND										0
37	FRANCE								2		2
38	SLOVAKIA			1							1
39	TUNISIA								1		1
40	ALGERIE										0
41	ARMENIA								1		1
42	NETHERLANDS	1			1				2		4
43	FINLAND			1							1
44	UKRAINE						1	1	1		3
45	S. AFR. REP.										0
46	LIBAN								1		1
47	MOLDAVIA								7		7
48	SAUD. ARABIA				1				1		2
49	ALBANIA										0
50	BANGLADESH										0
51	BELORUSSIA								1		1
52	CHILE										0
53	IRAQ								3		3
54	ROMANIA								4	1	5
55	CANADA										0
56	KENYA										0
57	ESTONIA	1									1
58	DENMARK								1		1
59	MOROCCO								1		1
60	NEPAL								2		2
61	PAKISTAN				1				1		2

Table 11. Review of issued work permits to foreign citizens in the Federation of BiH in 2006 per cantons

	Country	1. USK	2. PK	3. TK	4. ZDK	5. BPK	6. SBK	7. HNK	8. ZHK	9. KS	10. LK	TOTAL
	<b>TOTAL</b>	<b>97</b>	<b>25</b>	<b>127</b>	<b>137</b>	<b>17</b>	<b>51</b>	<b>101</b>	<b>53</b>	<b>720</b>	<b>30</b>	<b>1.358</b>
1	SERBIA AND MONTENEGRO	42	1	36	45	8	13	15	2	185	3	350
2	CHINA	15	2	24	20	5	8	18	2	147	16	257
3	CROATIA	8	16	3	7	0	8	49	40	81	3	215
4	TURKEY	16	0	22	30	1	3	0	0	106	0	178
5	SLOVENIA	6	0	5	3	0	4	1	0	37	5	61
6	MACEDONIA	1	4	13	5	0	1	2	0	23	0	49
7	GERMANY	2	2	4	3	0	2	2	1	17	0	33
8	AUSTRIA	1	0	2	1	0	4	3	0	24	0	35
9	ITALY	4	0	1	3	0	2	1	1	5	0	17
10	G.BRITAIN	0	0	4	0	0	2	0	1	9	0	16
11	USA	0	0	0	2	0	0	0	0	15	0	17
12	INDIA	0	0	0	11	0	0	0	0	1	0	12
13	IRAN	0	0	0	0	0	0	0	0	9	0	9
14	SIRYA	0	0	4	2	2	0	0	0	4	0	12
15	NETHERLANDS	0	0	3	2	0	0	0	0	4	0	9
16	RUSSIA	0	0	0	0	0	0	2	0	6	0	8
17	GREECE	0	0	0	0	0	0	0	0	4	0	4
18	SPAIN	0	0	0	0	1	0	0	0	3	0	4
19	SWEDEN	0	0	0	1	0	0	0	0	3	0	4
20	EGYPT	0	0	1	0	0	2	0	0	2	0	5
21	POLAND	0	0	1	0	0	1	0	0	2	0	4
22	MOLDAVIA	0	0	0	0	0	0	0	0	5	0	5
23	CZECH REP.	0	0	2	0	0	0	0	1	4	0	7
24	PAKISTAN	0	0	0	1	0	0	0	0	1	0	2
25	FRANCE	0	0	0	0	0	0	1	0	3	0	4
26	UKRAINE	0	0	0	0	0	0	0	0	2	0	2
27	JORDAN	1	0	0	0	0	0	0	0	1	0	2
28	BULGARIA	0	0	2	0	0	0	2	0	0	0	4
29	BELORUSSIA	0	0	0	0	0	0	1	0	1	0	2
30	DENMARK	0	0	0	0	0	0	0	0	1	0	1
31	ROMANIA	0	0	0	0	0	0	1	0	3	1	5
32	PORTUGAL	0	0	0	0	0	0	0	0	1	0	1
33	PALESTINA	0	0	0	0	0	0	0	0	1	0	1
34	CAMERON	0	0	0	0	0	0	0	1	0	0	1
35	IRELAND	0	0	0	0	0	0	1	0	1	0	2
36	SWITZERLAND	0	0	0	0	0	0	0	0	1	0	1
37	TUNISIA	0	0	0	0	0	0	0	0	1	0	1
38	SUDAN	0	0	0	0	0	1	0	0	0	0	1
39	S.ARABIA	0	0	0	0	0	0	0	0	1	0	1
40	NEPAL	0	0	0	0	0	0	0	0	1	0	1
41	LIBAN	0	0	0	0	0	0	0	0	1	0	1
42	S.AFR.REPUB.	0	0	0	0	0	0	0	0	1	0	1
43	NORWAY	0	0	0	1	0	0	0	0	0	0	1
44	SOUTH KOREA	1	0	0	0	0	0	0	0	0	0	1
45	MALESIA	0	0	0	0	0	0	0	0	1	0	1
46	KUWAIT	0	0	0	0	0	0	0	0	1	0	1
47	HUNGARY	0	0	0	0	0	0	0	0	1	0	1
48	CANADA	0	0	0	0	0	0	0	0	0	2	2
49	KENYA	0	0	0	0	0	0	2	0	0	0	2
50	BRAZIL	0	0	0	0	0	0	0	4	0	0	4

Annex: Table no. 12

**REVIEW OF COUNTRIES OF ORIGIN OF CITIZENS ISSUED TEMPORARY OR  
PERMANENT RESIDENCE ON THE TERRITORY OF BRCKO DISTRICT OF BIH**

	COUNTRY	2003 from 6th month		2004		2005		Total no. of foreigners per countries
		temporary residence	permanent residence	temporary residence	permanent residence	temporary residence	permanent residence	
21.	Australia	-	-	2	-	2	-	4
22.	Austria	2	-	8	-	8	-	18
23.	Barbados	1	-	-	-	-	-	1
24.	Bulgaria	-	-	2	-	3	-	5
25.	Egypt	2	-	2	-	1	-	5
26.	France	-	-	-	-	2	-	2
27.	Croatia	12	2	27	-	32	-	73
28.	Hong Kong	-	-	1	-	-	-	1
29.	Italy	3	1	2	-	2	-	8
30.	Japan	5	-	-	-	-	-	5
31.	Jordan	-	-	1	-	-	-	1
32.	China	99	-	293	4	339	16	751
33.	Macedonia	4	-	20	-	13	-	37
34.	Moldavia	1	-	2	-	3	-	6
35.	Germany	3	-	3	-	5	-	11
36.	Poland	1	1	-	-	-	-	2
37.	Romania	3	5	9	1	8	-	26
38.	Russia	2	1	5	2	3	-	13
39.	USA	4	-	1	-	3	-	8
40.	SiCG	55	5	120	-	154	-	334
41.	Syria	2	-	4	-	2	-	8
42.	Slovakia	2	-	3	-	2	-	7
43.	Slovenia	1	-	3	-	2	-	6
44.	Sweden	-	-	-	-	1	-	1
45.	Switzerland	2	1	-	-	2	-	5
46.	Turkey	8	-	18	-	25	-	51
47.	Ukraine	1	-	-	-	-	-	1
48.	Great Britain	-	-	2	-	-	-	2
49.	<b>Total no. of foreigners per years</b>	<b>213</b>	<b>16</b>	<b>528</b>	<b>7</b>	<b>612</b>	<b>16</b>	<b>1392</b>
50.	<b>TOTAL NUMBER:</b>	<b>229</b>		<b>535</b>		<b>628</b>		<b>1392</b>

**Annex: Table no. 13.**

**POPULATION AND LABOUR MARKET  
SITUATION IN BIH AS OF 31/12/2005**

<b>Table -- Population number and labour market situation in BIH as of 31/12/2005</b>				
	<b>Bosnia and Herzegovina</b>	<b>Federation BiH</b>	<b>Republika Srpska</b>	<b>Brcko District of BiH</b>
<b>Population number (estimate)</b>	<b>3.832.301</b>	2.327.690	1.401.986	102.625
<b>TOTAL registered employment</b>	<b>641.437</b>	387.083*	241.047	13.307
<b>TOTAL registered unemployment</b>	<b>508.039</b>	347.478	142.331	18.230
<b>Unemployment rate</b>	<b>44,20%</b>	47,30%	37,13%	37,80%

**Annex: Tables no. 14**  
**Year 2003**

Ser. No.	COUNTRY	TOTAL	Kind of measures undertaken			Reason for undertaking measures	
			Expel from the BiH territory	Refusal of entry into BiH	Discharge of stay in BiH	Illegal passage of State Border	Illegal stay in BiH
1.	DZ SiCG	75	33	39	3	32	43
2.	CHINA	1	-	1	-	-	1
3.	MACEDONIA	2	-	2	-	-	2
4.	CROATIA	3	-	3	-	-	3
5.	EGYPT	1	-	1	-	-	1
6.	UKRAINE	1	-	1	-	-	1
7.	BULGARIA	1	1	-	-	1	-
8.	PHILIPPINES	5	5	-	-	5	-
9.	ALBANIA	3	3	-	-	3	-
<b>TOTAL</b>		<b>92</b>	<b>42</b>	<b>47</b>	<b>3</b>	<b>41</b>	<b>51</b>

**Year 2004**

Ser. No.	COUNTRY	TOTAL	Kind of measures undertaken		Reason for undertaking measures	
			Expel from the BiH territory	Discharge of stay in BiH	Illegal passage of State Border	Illegal stay in BiH
1.	DZ SiCG	134	81	53	75	59
2.	CZECH REP.	7	1	6	1	6
3.	MACEDONIA	11	11	-	11	-
4.	UKRAINE	1	1	-	-	1
5.	ALBANIA	48	48	-	48	-
6.	POLAND	1	1	-	1	-
7.	MOLDAVIA	2	2	-	2	-
8.	TURKEY	8	8	-	8	-
9.	CROATIA	2	1	1	1	1
10.	ROMANIA	2	1	1	-	2
11.	BULGARIA	1	1	-	1	-
12.	SYRIA	1	1	-	-	1
13.	ITALY	1	-	1	-	1
<b>TOTAL</b>		<b>219</b>	<b>157</b>	<b>62</b>	<b>148</b>	<b>71</b>

**Year 2005**

Ser. No.	COUNTRY	TOTAL	Kind of measures undertaken		Reason for undertaking measures	
			Expel from the BiH territory	Discharge of stay in BiH	Illegal passage of State Border	Illegal stay in BiH
1.	DZ SiCG	56	36	20	30	26
2.	SLOVAKIA	1	1	-	1	-
3.	MACEDONIA	15	14	1	14	1
4.	CROATIA	4	1	3	-	4
5.	LITVANIA	1	1	-	1	-
6.	ALBANIA	25	25	-	25	-
7.	SWITZERLAND	1	1	-	1	-
8.	ITALY	3	-	3	-	3
<b>TOTAL</b>		<b>106</b>	<b>79</b>	<b>27</b>	<b>72</b>	<b>34</b>

***ATTACHEMENT TO THE REPORT: Bilateral agreements BiH signed with other states or the procedure of making is in progress***

## ***BILATERAL AGREEMENTS BOSNIA AND HERZEGOVINA SIGNED WITH OTHER STATES OR THE PROCEDURE IS IN PROGRESS***

### **I Made and ratified agreements**

1. Agreement between BiH and **the Republic of Austria** on social insurance («Official Journal of BiH» - International agreements, no. 35/01 - enforced in 2001)
  - Protocol on implementation of the Agreement on Social Insurance between BiH and **the Republic of Austria** («Official Journal of BiH» - International agreements, no. 35/01 - enforced in 2001)
2. Agreement on social insurance between BiH and **the Republic of Croatia** («Official Journal of BiH» - International agreements, no. 39/01 - enforced in 2001)
  - Administrative agreement on implementation of the Agreement on social insurance between BiH and **the republic of Croatia** («Official Journal of BiH» - International agreements, no. 35/01 - enforced in 2001)
3. Agreement between BiH and **SR Yugoslavia** on social insurance («Official Journal of BiH» - International agreements, no. 16/03 - enforced in 2004)
  - Administrative agreement on implementation on the Agreement between BiH and **SR Yugoslavia** on social insurance (has not been published)
  - agreement on lump compensation for health care costs signed on 11 Feb 2005 in Sarajevo
4. Agreement between BiH and **the Republic of Turkey** on social insurance («Official Journal of BiH» - International agreements, no. 16/03 - enforced in 2004)
  - Administrative agreement on Implementation of the Agreement between BiH and **the Republic of Turkey** on social insurance («Official Journal of BiH» - International agreements, no. 16/03 - enforced in 2004)
5. Agreement between BiH and **the Republic of Macedonia** on social insurance («Official Journal of BiH» - International agreements, no. 1/06 - enforced in 2006)
  - Administrative agreement on Implementation of the Agreement between BiH and **the Republic of Macedonia** on social insurance («Official Journal of BiH» - International agreements, no. 1/06 - enforced in 2006)

### **II Agreements in process of ratification**

1. Agreement on social insurance between BiH and **the Kingdom of Belgium** (signed, ratification procedure in process, the text of signed Agreement sent to MIP for further procedure)
  - *Administrative agreement in regard of implementation of the Agreement on social insurance between BiH and **the Kingdom of Belgium** (initialled, signatory and ratification procedure in process)*



2. Agreement on social insurance between BiH and **the Republic of Slovenia** (after 6th term of preparatory negotiations at expert level, the agreement was harmonized and signed on 19 Feb 2007. The agreement sent to MIP BiH for further procedure, so that this Ministry sends the draft Decision on ratification of the said agreement with original text of the signed agreement to the Council of Ministers of BiH for further action)

### **III Initialled agreements**

1. Agreement on social insurance between BiH and **the Kingdom of Netherlands** ( initialled, passed the procedure with the Council of Ministers of BiH, the proposal of the agreement and the report on negotiations of the BiH delegation is submitted to the Presidency for further procedure, together with the proposal to authorize the Minister for Civil Affairs as the signatory of the Agreement on behalf of Bosnia and Hercegovina.
  - Administrative agreement on implementation of the Agreement on social insurance between BiH and **the Kingdom of Netherlands** ( initialled, passed the procedure with the Council of Ministers of BiH, the proposal of the agreement and the report on negotiations of the BiH delegation are submitted to the Presidency for further procedure, together with the proposal to authorize the Minister for Civil Affairs as the signatory of the Agreement on behalf of Bosnia and Hercegovina.

### **IV Agreements in process of negotiations and ratification**

1. Agreement on social insurance between BiH and **the Switzerland Confederation** (was initialled in 2001, upon request of Switzerland party returned to the initialling stage, lexically harmonized in 2006. MIP BIH sent a letter to MCP BIH for consideration of possibility of an invitation to the Minister of Interior of Switzerland for signature of the agreement)
  - Administrative agreement on implementation of the Agreement on social insurance between BiH and **the Switzerland Confederation**
2. Agreement between BiH and the **Grand Duchy of Luxembourg** on social insurance (the first term of negotiations was held in December 2006. Both parties agreed to have the next term of discussions in Sarajevo from 7 11 May 2007. The Luxembourg party bound itself to prepare and forward to BiH party the Draft of the Administrative Agreement for implementation of the Agreement on social insurance between BiH and Luxembourg.
3. Agreement between BiH and **the Republic of Hungary** on social insurance (the Decision of the Presidency on starting the negotiation procedure in order to make Agreement on social insurance submitted and the list of members of BiH delegation for negotiations made. The Hungarian side suggested another term for negotiations for 03 Sep 2007 in Sarajevo, although the BiH side expressed readiness for continuation of negotiations before September, i.e. in the period from 06 to 08 June 2007 if it suits to the Hungarian side).

## **V Initiated conclusion of agreements on social insurance**

1. Agreement on social insurance with **Australia and New Zealand** (Negotiation delegation established for making of Agreement between BiH and Australia and New Zealand on 21 March 2007. The delegation members met on 21 March 2007 in order to make the text of the draft agreement. The text should be translated into English language)
2. Agreement on social insurance with **Sweden** (the proposed date for start of negotiations was not accepted by the Ministry of Health and Social Care of the Kingdom of Sweden. They ask to have information on the system of social care in BiH in order to prepare negotiations).
3. Agreement on social insurance with **Canada** (Activities started in 2001 and in 2002 the Council of Ministers made base for negotiations and conclusion of the Agreement between BiH and Canada on social insurance. The first negotiation term for conclusion of this Agreement has not been held yet).
4. Agreement on social insurance with **Denmark** (MIP BiH sent to MCP BiH initiative of the Embassy of BiH in Copenhagen to set to initiating a new agreement on social insurance, together with the Draft agreement.).
5. Agreement on social insurance with **Italy** (Proposal for launch of initiative for making of the Agreement on social insurance sent by the Embassy in Rome to MIP BiH, and MIP BiH forwarded it to the Council of Ministers and MCP BiH. Entity Ministries for labour sent a list of persons to participate in the preparation of the working version of the Agreement).
6. Agreement on social insurance with **the Czech Republic** (Relevant entity Ministries sent the list of persons for the delegation of BiH. The Embassy of Czech Republic in Sarajevo launched initiative for revision of bilateral agreements between BiH and the Czech Republic in January 2007. MIP BIH forwarded the list of 43 bilateral agreements between BiH and the Czech Republic to know and further procede.).
7. Agreement on social insurance with **Greece** (The Embassy of BiH in Athens initiated making of the agreement by the end of 2006; some members of the delegation proposed to participate in preparation of the working version of the agreement on social insurance)
8. Agreement on social insurance with **Germany** (in July 2001 initiative made to start the procedure for making of the agreement, a draft agreement and negotiation base for conclusion of the agreement are attached; however, this act has not been signed; in the meantime negotiations were carried out between BiH and Germany on issues from health insurance and lump sums for 1997, 1998 and 1999)