



January 2018

## **European Social Charter**

European Committee of Social Rights

Conclusions 2017

**BOSNIA AND HERZEGOVINA**

*This text may be subject to editorial revision.*



The following chapter concerns Bosnia and Herzegovina, which ratified the Charter on 7 October 2008. The deadline for submitting the 7th report was 31 October 2016 and Bosnia and Herzegovina submitted it on 20 February 2017. On 6 September 2017, a request for additional information regarding Articles 7§3, 7§8, 8§2, 8§4 and 16 was sent to the Government which did not submit a reply.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Health, social security and social protection":

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

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Article 3, Article 12§§3 and 4, Article 13§4 and Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Bosnia and Herzegovina concern 11 situations and are as follows:

– 6 conclusions of non-conformity: Articles 11§2, 11§3, 12§1, 12§2, 13§1 and 13§3.

In respect of the 5 other situations related to Articles 11§1, 13§2, 14§1, 14§2 and 23 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

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In addition, the report contains also information requested by the Committee in Conclusions 2015 in respect of its conclusions of non-conformity due to a repeated lack of information:

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

The Committee examined this information and adopted 5 conclusions of non-conformity relating to these Articles.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),

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

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),

The deadline for submitting that report was 31 October 2017. The report was registered on 11 December 2017. Conclusions on the Articles concerned will be published in January 2019.

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Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) as well as in the HUDOC database.

**CONCLUSIONS RELATING TO ARTICLES  
FROM THE THEMATIC GROUP**

**‘Health, social security and social protection’**

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

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

### **Measures to ensure the highest possible standard of health**

The Committee notes from WHO that life expectancy at birth in 2015 was 76.64 years. The average life-expectancy rate in BiH is still below that in other European countries, for example the EU-28 average that same year was 80,6.

The death rate (deaths/1,000 population) was 11 in 2015.

The Committee notes that infant mortality rate in BiH decreased from 6.4 per 1,000 live births (2011) to 6 in 2015, which remains above to that in other European countries.

During the reference period, the rate of maternal mortality fluctuated from 12 (in 2012) to 11 (in 2015) per 100,000 live births, a rate above to that in other European countries.

In the previous conclusion (2013), the Committee noted that there had been a growth of mortality rate caused by an increase of malignant neoplasms and diseases of the circulatory systems which were the most common causes of mortality. The Committee asked that the next report indicates what measures are being taken to combat these causes of mortality. The current report states that cardiovascular diseases make 57% of all causes of death for women and 50% for men. The second leading cause of death was neoplasms, with a share of 17% for women and 22% for men. Both causes of death accounted for almost 3/4 of all causes of death. The Committee notes that in several areas, public health legislation and action plans have been adopted but they still need to be implemented. The Committee asks the next report to provide updated information on the measures taken to combat the causes of mortality.

The Committee takes note of the specific measures to reduce infant and maternal mortality described by the report. It asks for information in the next report on their implementation and their impact in practice.

The Committee asks the next report to provide updated information on the above-mentioned rates and measures taken to reduce them.

### **Access to health care**

The Committee noted in the 2013 Conclusions that the health system in BiH is decentralized and that the Entities [Federation of Bosnia and Herzegovina](#) (FBiH), and the [Republika Srpska](#) (RS) and Brcko District (BD) are responsible for the financing, organization and delivery of health care services. The health system in the FBiH is arranged on the principle of decentralization, with a high degree of autonomy of cantons, while in the Republika Srpska (RS) the health care system is centralized. BD has its own health care system.

According to the report, coverage of health insurance in BiH in 2012 was 84.55%, in FBiH 84.55%, in RS and in BD 70.0%. In both entities (FBiH and RS) and in BD there is noticeable reduction of population covered by health insurance.

The report indicates that the share of total health expenditure in GDP in BiH was almost constant from 2009 to 2013, around 9.2% of GDP, which is below the EU average. The share of public health expenditures in GDP amounted to 6.6% in 2012 and 6.7% in 2013 and the share of private expenditure is 2.8% of GDP in 2012 and 2013. In its precedent conclusion, the Committee noted that 38.7% was private spending on health, which entirely related to out-of-pocket payments. The Committee asked the Government to explain this high percentage of out-of pocket payments, namely whether this means that certain health services are not publicly financed and fall outside the public healthcare system. The report

indicates that the out-of-pocket medical costs are necessary because funds from health insurance contributions are not sufficient to cover all costs for all services. In 2014, the Committee notes that out of pocket health expenditure rate was 27.9% and that it remains high.

The report provides details on the health care system in the entities. In F BiH, health care is provided and performed by health care facilities, private practices, health insurance funds, the Agency for Quality and Accreditation in Health, chambers of health, employers, educational and other institutions, humanitarian, religious, sport and other organizations. Local governments, in accordance with established rights and obligations, also ensure favourable conditions for the provision of health care in their territory. The Committee takes note of the main laws in the health field, as well as the number of health facilities. It also notes that in F BiH waiting lists for health care services funded by the Federation Health Insurance Institute have been set up for: multiple sclerosis, some cytostatics with special regime of prescribing, invasive and interventional cardiology and cardiovascular surgery. The reasons for setting up these waiting lists are a lack of funds in the Institute and an increased number of patients suffering from these diseases.

As regards the RS, the Law on Health Insurance provides that all citizens are covered by the RS mandatory health insurance. The mandatory principle means that all citizens are compulsory registered in the health insurance scheme on any of the grounds set out by law.

In BD, access to health services is provided to all District residents through the family medicine system, where the territory is covered by three health care centres and 32 clinics (ambulanta). A plan envisages that 40 clinics (ambulanta) of family medicine will completely cover the entire territory of the District.

The Committee recalls that arrangements for access to care must not lead to unnecessary delays in its provision. It underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life (Conclusions XV-2 (2001), United Kingdom).

In the previous Conclusion (Conclusions 2013), the Committee asked if the high degree of decentralisation had created problems from a health system point of view, and namely to clarify if and how the entities and cantons collaborate with each other in health matters. It also asked if the geographical distribution of health facilities in the Entities and cantons ensures an equitable access to health services throughout the country. The Committee also asked to receive specific information on the average waiting time for care in hospitals, as well as for a first consultation in primary care, with a view to showing that access to health care is provided without undue delays in all entities. There is no information provided in the report on these issues, except some information with regard to F BiH. However, in the 2013 European Commission country report, the Committee notes that there were no steps to reduce fragmentation of the entire health system and to harmonise reforms and that the implementation of Entity health strategies is slow.

The Committee notes in the 2015 European Commission country report that with regard to health, progress has been very limited. In particular the socio-economic integration of the Roma minority continues to be undermined by limited action on health. Roma remain the country's most vulnerable and disadvantaged minority. The lack of reliable data hampers effective policy-making. A more comprehensive and integrated approach needs to be adopted for the social inclusion of Roma. The action plans on health and employment have not yet been fully implemented. Health insurance coverage for Roma needs to improve significantly. The Committee asks that the next report provide comments to this report.

The Committee also notes from the same source that internally displaced persons that return in the country continue to face obstacles in access to healthcare. Therefore it asks that the next report provide information on this issue.

In reply to the Committee's request for information on the availability of rehabilitation facilities for drug addicts (Conclusions 2009 and Conclusions 2013), the report provides detailed information on the facilities and treatments available for drug addicts.

The Committee asks that the next report on Article 11§1 contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report on Article 11§1 contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received submissions from the International Lesbian and Gay Association (European Region) (ILGA) stating that "in BiH there is a requirement that transgender people undergo medical treatment, including sterilisation, as a condition of legal gender recognition". It also claims that "the authorities fail to provide medical facilities for gender reassignment treatment (or the alternative of such treatment abroad), and to ensure that medical insurance covers, or contributes to the coverage of such medically necessary treatment, on a non-discriminatory basis". The report indicates that there is no knowledge about conducting surgeries on adjustments of sex in BiH, and that these surgeries are conducted in Serbia and Slovenia.

#### *Conclusion*

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

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

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

### ***Education and awareness raising***

The report indicates that strengthening promotion and prevention programs and interventions aimed at raising awareness about the importance of health is an on-going activity that is carried out by the Federation Institute of Public Health and Cantonal Institutes of Public Health, which are, according to the law, responsible for achieving the goals of the public health in the Federation of BiH. Based on the cantonal budgets and priorities in public health, cross-sector prevention and promotion programs are implemented at the cantonal and municipal levels. Municipalities (local communities) also develop local development programs with appropriate operational plans. Quality of life, health and equality in health and welfare, which are provided for in the operational projects and plans, are not formulated as separate goals. They are integrated into series of programs and projects, including transportation, environmental protection, remediation of waste water, air pollution control, and prevention of youth violence.

In its previous conclusion (Conclusions 2013), the Committee asked for updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases. The Committee also asked the authorities to indicate whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43). The report does not contain the needed information, therefore the Committee reiterates its request.

### ***Counselling and screening***

The Committee recalls that under Article 11§2 States should provide free and regular consultation and screening for pregnant women and children throughout the country. Moreover, free medical checks for children must be carried out throughout the period of schooling. The Committee notes in the European Commission Country report 2015 that primary free-of-charge healthcare for children is available only if the cantonal health institutes contracted this service with local primary health institutions — a measure which is not equally implemented in practice. The Committee asks that information on these matters be included in the next report, including on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing.

In its previous conclusion, the Committee recalled that pursuant to this provision there should be screening, preferably systematic, for diseases such as cancer, cardiovascular diseases or other major causes of mortality. Preventive screening must play an effective role in improving the population's state of health. The report indicates that the Strategy for the prevention, treatment and control of malignant neoplasms for 2012-2020 is the main document aiming at ensuring early detection and screening of malignant neoplasms.

The Committee notes from the European Commission country report 2015 that cancer screening policies are not systematically in place in the country.

In addition, it further points out that one of the priorities of the Program for Rare Diseases in RS for 2014-2020 is to improve the prevention of rare diseases of genomic origin by organizing extensive "screening" program and raise awareness among professionals and general public about the importance of rare diseases and their impact on the health of population.

The Committee asks the next report to specify the conditions of accessibility to such screening, proportion of persons concerned and the frequency of such examinations.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 11§2 of the Charter on the ground that screening policies are not systematically in place in the country.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

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

### **Healthy environment**

In its previous conclusion (Conclusions 2013), the Committee asked information on the institutional structures for the proper implementation of the legislation in force. It also wished to receive updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased. The report does not provide this information. Therefore, the Committee reiterates its request. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In the absence of relevant information provided in the report, the Committee refers to the 2015 European Commission Country report for BiH.

The Committee notes that with regard to air quality, planning and monitoring systems need upgrading. Moreover, from the European Commission Country report it notes that a country-wide waste management strategy and strategic planning of related investments have yet to be prepared. The municipal waste management plans have been drawn up but have yet to be implemented. Regarding water quality, the country still lacks a consistent and harmonised State-level policy on water management that would include implementing legislation, monitoring and river-basin management plans. The country's capacity to implement the water *acquis* remains insufficient. Investment in infrastructure has brought some improvements in access to drinking water and also in wastewater discharges. Regarding industrial pollution control and risk management, Bosnia and Herzegovina is working on developing a national emissions reduction plan. According to the European Commission Country report, significant further efforts are needed on noise prevention.

The Committee concludes that the situation is not in conformity with Article 11 of the Charter on the ground that it has not been established that adequate measures have been taken to guarantee a healthy environment.

### **Tobacco, alcohol and drugs**

In its previous conclusion (Conclusions 2013), the Committee noted that WHO Framework Convention on Tobacco Control was ratified by BiH in July 2009. Legislation in line with the Convention was subsequently passed in BiH, on restricted use of tobacco products and on the prohibition of sale of tobacco products to persons under 18 years of age. In the previous conclusion, the Committee asked if there is a similar legal framework in the other Entities and cantons. More generally, it wished to receive information on the state of legislation on smoke-free environments, health warnings on tobacco packages, and if there is a ban on tobacco advertising, promotion and sponsorship, throughout the whole country.

The report refers to the Law Prohibiting Smoking of Tobacco Products in Public Places ("Official Gazette of RS" 46/04, 74/04, 92/09) prohibiting smoking of tobacco and tobacco products in public places in order to protect non-smokers and risk groups, such as minors, pregnant women and older people from passive smoking. In order to implement preventive measures and improve the health of persons younger than 18 years from the harmful effects of tobacco products, the Law on Prohibiting Sale and Use of Tobacco Products to Persons under 18 provides for a ban on the use and sale of tobacco and tobacco products. The report indicates that, according to the information provided in the RS 2011 Survey, which was carried out by the RS Public Health Institute, 53.6% of adults are exposed to tobacco smoke in the workplace, while the percentage of public places exposed to tobacco smoke is

80.7%. 52.2% of the population have never used tobacco. 28.7% of the adult population smokes tobacco on a daily basis. The average number of years of smoking is 20.2 years. The Committee asks for clarifications on the above figures indicating that workplaces in RS are not smoke-free. Accordingly, the Committee reserves its position on that point.

With respect to smoking, the Committee recalls that anti-smoking measures are particularly relevant for compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2012, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption. The Committee reiterates its request that the next report includes smoking prevalence rates in the other Entities and cantons. It also asks that the next report include information on legal framework in the entities.

In its previous conclusion, the Committee asked what legislation and policies are in force concerning alcohol consumption and, in particular, what the minimum legal age for the purchase of alcoholic drinks is and whether there are legally binding rules on alcohol advertising. It likewise asked for information on consumption trends. The report does not reply to these questions. It only indicates that, among the population group that consumes alcohol, 16.8% of the group consume it on a daily basis. The population group consuming alcohol on average drinks 17 weekly doses of alcoholic beverages (beer, wine, spirits, liquors and cocktails). Therefore the Committee reiterates its question and asks in particular what is the minimum legal age for the purchase of alcoholic drinks in the country.

The report provides detailed information in respect of drugs. The Law on the Prevention and Suppression of Drug Abuse, adopted with a view to implementing UN Conventions in this field, was followed by a National Strategy for Combatting and Preventing Drug Abuse in BiH for the period 2009-2013. According to a survey, 4.8% of the adult population is on a psychoactive substance (bensedin, Trodon and amphetamine – 2.8%; marijuana – 0.8%; glue – 0.7%; hashish – 0.2%; heroin – 0.2%). The Committee asks to be kept informed on the implementation of this policy, namely on its impact concerning trends in drug consumption.

### ***Immunisation and epidemiological monitoring***

In its previous conclusion, the Committee took note of the immunisation coverage rate of children in FBiH, which for all of the vaccines except one was low, i.e., below 90%. The Committee asked if any steps were being taken to increase the coverage rates. It also wished to receive information on the immunisation programmes in the other Entities and cantons. From the World Bank Indicators, the Committee notes that the immunisation coverage rate in BiH during the reference period remained below 90%. The report provides information on immunisation coverage rate only in RS. Therefore, the Committee asks the next report to provide the immunisation coverage rate on a State level and for each Entity. The Committee emphasises that, if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

In its previous conclusion the Committee asked to be kept informed on the results of the national pandemic influenza plan and strategy to respond to AIDS. The report does not contain this information. The Committee accordingly reiterates its request.

### ***Accidents***

The Committee notes that States must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school and accidents during leisure time (Conclusions 2005, Republic of Moldova). According to the

report, there is a legal framework in the different entities with measures to prevent traffic accidents, accidents at home and similar accidents. A road safety strategy and related action plan have yet to be adopted. The Committee asks to be provided with information on the other types of accidents, including domestic accidents, accidents at school and accidents during leisure time.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that measures have been taken to guarantee a healthy environment.

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

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

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

With regard to family and maternity benefits, the Committee refers, respectively, to its conclusions relating to Articles 16 and 8§1 (Conclusions 2015).

### ***Risks covered, financing of benefits and personal coverage***

The Committee refers to its previous conclusions for a description of the social security system in Bosnia and Herzegovina and relevant legislation in the different entities, and takes note of the legislative developments mentioned in the report for each entity. It notes that the system continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the public budget of the entities.

According to official statistics (UN data, 2016), the population of Bosnia and Herzegovina was estimated to be 3 802 000 in total, and the economically active population was estimated to be 1 074 000 (801 000 employed, of which 606 000 employees, 168 000 self-employed and 27 000 family workers; 273 000 unemployed persons – the inactive persons of working age were on the other hand 1 415 000) according to the Labour Force Survey 2016.

**Health insurance** in Bosnia and Herzegovina is not regulated at state level but at the level of the entities and, in the case of the FBiH, at the level of Cantons. The Committee notes from Missceo and the report that in all three entities, mandatory health insurance covers both employed and self-employed persons and their dependant families, as well as farmers, pensioners and, upon certain conditions, unemployed persons or other recipients of social welfare benefits. In addition, depending on the entities, further categories of people are covered by mandatory or extended insurance or can subscribe to voluntary insurance. The report does not provide, however, the information requested as regards the percentage of the total population effectively covered in each entity. In addition, the Committee notes that the UN Committee on Economic, Social and Cultural rights (CESCR) had pointed out, in its concluding observations 2013, disparities in the level of enjoyment of economic and social rights, in particular regarding social protection, social services and access to health care between the three entities, as well as between Cantons within the Federation. The CESCR had notably recommended to ensure that disadvantaged and marginalized groups have equal access to health-care services and adequate health insurance throughout the State, including through harmonizing the health-care system, and that the inter-entity agreement on health insurance should be effectively implemented with a view to guaranteeing access to health care by persons who move from one entity to another. The Committee asks the next report to provide updated information on these points.

As regards the other branches of social security, the report indicates that in 2015, in the FBiH, on average the beneficiaries of unemployment benefits were 10 459 per month, the beneficiaries of healthcare were 257 735 per month, the beneficiaries of pension/disability benefits were 445 per month, the beneficiaries of personal disability allowance were 42019. In the RS, the beneficiaries of unemployment benefits were 14 011 in 2014.

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed and that States Parties must ensure this right through the existence of a social security system established by law and functioning in

practice. In particular, health insurance should extend beyond the employment relationship and must cover a significant percentage of the population. The social security system should furthermore cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.

As the report does not provide the information requested regarding the total number of persons insured against each risk, out of the total number of active population in the three entities, the Committee considers that it has not been established that the existing social security schemes cover a significant percentage of the active population.

### ***Adequacy of the benefits***

As regards **unemployment** benefits, the Committee previously found that the situation was not in conformity with Article 12§1 of the Charter on the ground that the duration of payment (3 months for a period of contributions of 5 years) was too short (Conclusions 2013). It notes that this situation has not changed in any of the entities (see details below) and accordingly maintains its finding of non-conformity on this point:

- As regards the FBiH, under Article 29 of the Law on Mediation in Employment and Social Security of Unemployed Persons, a person is entitled to unemployed benefits if he/she had been paying contributions for at least eight months in the last 18 months. When determining eligibility for unemployment benefit a period of 12 months is counted as a year of work and part-time work is converted into full time work. The unemployment benefit amounts to 40% of the average net salary paid in the FBiH in the last three months before the termination of employment of the unemployed person, and is paid for 3 months, for a contributory period between 8 months to 5 years, up to 24 months for over 35 years of contributions. According to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), the law does not provide for an initial period during which a person has the right to refuse a job or a training offer that does not match his/her previous skills without losing unemployment benefit. In this respect, the report indicates that the entitlement to unemployment benefit shall cease inter alia if the unemployed person has failed, without reasonable cause, to accept suitable employment. The Committee asks the next report to clarify what is considered to be "suitable employment" and what are the available remedies to contest a decision refusing entitlement to unemployment benefits.
- In the RS, a person is entitled to unemployment benefits if he/she has been working for at least eight months uninterruptedly in the last 12 months or 12 months with interruptions in the last 18 months. Self-employed persons are also entitled to unemployment benefits if her/his business has ceased to run due to economic or technological reasons. The duration of payment depends on the length of insurance of the unemployed person: one month, for an insurance period of up to 12 months; two months, for an insurance period of up to 2 years; three months for an insurance period of up to 5 years; six months, for an insurance period of five to 15 years; nine months for an insurance period of 15 to 30 years and 12 months for an insurance period of over 30 years. The amount of unemployment benefit corresponds respectively to 35% or 40% of the average net salary paid to the unemployed person in the last three months of his/her employment, depending on whether he/she has up to 15 years of pensionable service or more. According to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), the amounts of unemployment benefit cannot be lower than 30% or higher than one average net salary paid in the RS in the last year.
- In the BD, according to the information provided to the Governmental Committee (Governmental Committee Report concerning Conclusions 2013), a person with

five years of contributions is entitled to unemployment benefit and related rights for a period of three months, the payment period is six months if the person has paid contributions for 5 to 15 years, nine months if he/she paid contributions from 15 to 25 years and 12 months for a contribution period of over 25 years. The payment of unemployment benefit can be stopped before its expiration in case, inter alia, of unjustified refusal or wilful interruption of training or in case of refusal "without a good reason, of a job in the place of residence or at a distance of 50 kilometres from the place of residence that suits the person's qualifications and ability to work." The entitlement will not cease when the person refuses a job that does not suit his/her qualifications and ability to work, or a job that is more than 50 kilometres from their place of residence. The amounts of unemployment benefit are 35% or 40% of the average net salary paid to the person during his/her last three months of employment depending on whether he/she has up to 10 years of pensionable service or more. The amount of the benefit cannot be lower than 20% or higher than one average net salary paid in DB in the last year. Accordingly, the minimum unemployment benefit corresponds to 20% of the average net wage.

As regards **sickness** benefits, the Committee takes note of the following information:

- In the FBiH, sickness benefits are paid to employees registered in the mandatory health insurance scheme. The benefit consists of a salary compensation, calculated on the basis of the salary paid to the insured person in the month preceding the sickness, or the average wage at the cantonal level, if the person did not earn any salary during the reference month. The benefit corresponds to 80% of the base for compensation, but cannot be lower than the minimum salary for the reference month. The salary compensation will be 100% of the base for compensation if the temporary incapacity to work results from occupational injuries or diseases, to pregnancy and childbirth, or to transplantation of tissue and organs for the benefit of another person.
- In the RS, the salary compensation is paid by the employer for the first 30 days of sick leave and the by the Health Insurance Fund for a maximum period of 12 months. The base for calculating the salary compensation is the net salary that the worker would have received for regular work, but the basis for calculating the salary compensation cannot be higher than the salary on which contributions for health insurance are calculated and paid.
- The Committee notes from Missceo that in the BD the benefit corresponds to 80% of the last month's net salary and 100% if the incapacity is due to a work related injury.

As regards **Old age** benefits, the Committee refers to its assessment under Article 23.

The report does not contain information on the contributory benefits granted in respect of **work accidents and occupational diseases** or **invalidity** (other than the non-contributory disability allowances and other allowances granted to victims of war). The Committee asks that such information be provided in the next report.

In its previous conclusion (Conclusions 2013), the Committee recalled that where the Eurostat at-risk-of-poverty indicator is not available, it uses the monetary value of the poverty line to assess the adequacy of benefits and considers that the situation is in conformity with the Charter if the minimum level of the income-replacement benefits (old-age, sickness and unemployment) does not fall below the poverty line indicator. It accordingly pointed out that, if the information regarding the minimum levels of income-replacement benefits and the poverty line indicator were not provided, there would be nothing to establish the conformity of the situation. It furthermore asked for information as regards the level of minimum wage, during the reference period, in all the entities. As the report does not provide the information requested, the Committee reiterates its requests and recalls that information on the minimum levels and duration of payment of all social security benefits should be systematically

provided in all reports concerning Article 12§1. It considers in the meantime that it has not been established that the levels of social security benefits are adequate.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing social security schemes cover a significant percentage of the active population;
- the minimum duration of payment of unemployment benefit for people who have been insured up to five years is too short;
- it has not been established that the levels of social security benefits are adequate.

## **Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

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

The Committee notes that Bosnia and Herzegovina has not ratified the European Code of Social Security. Therefore, the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on the compliance of the States bound by the Code.

The Committee recalls that Article 12§2 obliges States to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention No. 102 relating to social security; six of the nine contingencies must be accepted, although certain branches count for more than one part (medical care counts for two parts and old-age counts for three).

The Committee notes that Bosnia and Herzegovina has accepted Parts II to VI, VIII and X of the ILO Convention No. 102. Part VI is no longer applicable as a result of the ratification of Convention No. 121.

The Committee in its last assessment (Conclusion 2013) wished to be informed of the replies to the direct request raised by the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) published in 2013 (102nd ILC session). The Committee notes that the current report refers to the submission to the ILO of a report on implementation of Convention 102 and provides information on the legal framework in Bosnia and Herzegovina, which is described in more detail under Article 12§1.

The Committee recalls that in order to assess whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, it has to be provided with information regarding the branches covered, the personal scope and the level of benefits offered. The Committee refers to its conclusion under Article 12§1 where it notes that the social security system of Bosnia and Herzegovina continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors).

The Committee refers to its conclusion under Article 12§1 that it has not been established that the existing social security schemes cover a significant percentage of the active population. The Committee also refers to its conclusion under Article 12§1 that it has not been established that the levels of social security benefits are adequate. Taking into account its assessment under Article 12§1, the Committee considers that it has not been established that Bosnia and Herzegovina maintains a social security system at a level at least equal to that necessary for ratification of the Code.

### *Conclusion*

The Committee concludes that the situation is not in conformity with Article 12§2 of the Charter on the grounds that it has not been established that Bosnia and Herzegovina maintains a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

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

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

### ***Types of benefits and eligibility criteria***

#### **Social assistance**

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

Social protection is governed by the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children. This law determines social welfare policy of FBiH. Funds for financing social protection are provided from municipal and cantonal budgets. Beneficiaries of social security benefits are persons in need, in particular children without parental care, persons with disabilities, elderly persons without family, persons of socially unacceptable behaviour etc. Cantonal legislation determines the level of permanent allowance and attendance allowance as well as the conditions of the means-test. The cantonal legislation determines the amounts of allowances and benefits, the requirements for and the procedure of granting them.

The Committee further notes from the report that the different cantonal laws also provide for the conditions of the means test for eligibility for permanent allowance. The report acknowledges that the cantonal laws are not harmonised, and therefore, it may be that they do not accord the same social protection to all citizens. Some cantons have delayed the passage of the law and or passed a law that was not in line with the basic principles and minimum entitlements set forth in the Federation Law. Furthermore, some cantons have passed the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children while others have passed a law only governing social protection. According to the report, this situation has contributed to social security in the Federation of Bosnia and Herzegovina being fragmented as regards its funding and discriminatory against beneficiaries (unequal treatment on the basis of the canton of residence).

##### ***Republika Srpska (RS)***

The Law on Social Protection regulates the system of social protection, the beneficiaries of social security scheme, entitlements under social security scheme, the procedure and conditions of entitlement, activities of social care institutions, funding, monitoring and other issues relevant to the operation and implementation of social protection. According to the report, social protection is an activity of general interest to the RS and aims at providing assistance to people when they are in need. A situation of need is a situation in which a person needs help to overcome social and other difficulties, provided that his/her basic needs cannot be satisfied through other social security systems.

The beneficiaries of social security are individuals, family members or a family as a whole. The rights are exercised through cash benefits, social security services and other measures aimed at meeting the basic needs and preventing destitution. In addition to the rights under this Law, any local government may issue a decision to provide additional entitlements and services and set conditions and criteria for granting them. For the purpose of the above mentioned law, social protection entitlements are, among others, an allowance, an attendance allowance, one-time cash assistance and counselling.

According to the report, in the period from 2012 to 2015, the RS Government through the Ministry of Health and Social Welfare has significantly improved and modernised the system of social, family and child protection. Under the Law on Social Protection, which was

adopted in March 2012 individual amounts of allowances for social welfare beneficiaries have been significantly increased.

### **Brčko District (BD)**

The Law on Social Protection defines activities in relation to social assistance. Material assistance consists of, among others, a permanent basic allowance, an attendance allowance and one-time cash assistance. The permanent basic allowance is a monetary benefit amounting to 21% of the average monthly salary earned in BD for the preceding month published in the Statistical Report of the Statistics Agency Branch of BD. It is granted to an indigent person under the following conditions: residence in the territory of the District; incapacity to work; lack of any income; lack of any relatives who are responsible by law to maintain that person. In order to determine eligibility, a means test is carried out in accordance with the Law on Administrative Procedure of BD, whereby the evidence of facts relevant to the exercise of the entitlement is collected and the family circumstances of the potential beneficiaries are checked. The allowance is paid on a monthly basis and the entitlement is exercised as of the first day of the month following the month of application. As regards one-time assistance, it cannot exceed the amount of permanent basic allowance or any other material assistance paid in the current month in pursuance of the Law on Social Security of BD and may be granted to a beneficiary up to three times a year. The most common reasons for applying are the purchase of drugs that are not on the essential drug list of the Health Insurance Fund of BD, and the purchase of food, wood and coal.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories but are still in need, are also entitled to appropriate assistance. Under Article 13 social assistance should be provided as a subjective right of any person without resources. There must be a precise legal threshold below which a person is considered in need and a common core of criteria underlying the granting of benefits. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person.

The Committee asks the next report to confirm that social assistance is provided in all Entities, as a subjective right of *any single person*, whether or not capable of working and whether or not belonging to a vulnerable category, on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means.

### **Medical assistance**

As regards FBiH, health care services as defined in the basic package of health care rights for insured persons, as well as health care services as defined in the basic package of health care rights for uninsured persons are provided in health care facilities that are included in the network of primary health care and the network of hospital health care systems.

The Committee notes that Article 3 of the Law on Health Care of the Federation provides that every person has a right to health care and to achieving the highest possible level of health. Health services are provided on the same terms and conditions to all persons who are insured through a basic package of services. Paragraph XI of the Basic package of health care rights includes a package for uninsured persons with a domicile in the territory of FBiH. The Committee notes that the package covers all uninsured persons under 18 years of age (same entitlements as insured persons), emergency medical aid in life threatening situations, treatment of serious contagious diseases, health care during pregnancy and childbirth, health care in cases of specific chronic diseases etc.

The Committee considers that the right to medical assistance should not be confined to emergency situations and that a system not including primary or specialised outpatient medical care, which a person without resources might require, does not sufficiently ensure health care for poor or socially vulnerable persons who become sick (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No 46/2007, Decision on the merits of 3 December 2008). Furthermore, the seriousness of the illness cannot be a factor in refusing to grant medical assistance. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition.

In its previous conclusion the Committee asked whether adequate medical assistance was available to any person in need, under what conditions and to what extent in all entities. It also asked whether persons from one entity seeking medical care in another entity were entitled to medical assistance on the same level as their own residents, or whether they could only obtain emergency care free of charge. On the basis of the information at its disposal, the Committee observes that there is no evidence that medical assistance is provided to all persons without resources in all Entities. Therefore, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.

### ***Level of benefits***

The Committee takes notes of the detailed information regarding expenditure on social protection, including the number of beneficiaries as well as funding allocated by local Governments in RS.

To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- basic and additional benefits: the report does not provide information regarding the amount of basic and additional benefits paid to a single person without resources in each Entity. The Committee requests that the next report provide information on monetary values of all social assistance benefits.
- Poverty threshold: the Committee recalls that to assess the situation under this provision it needs information regarding the poverty threshold, defined as 50% of the median equivalised income. In the absence of this indicator, the Committee takes the national poverty threshold into account. The Committee asks the next report to provide this information.

The Committee considers that in the absence of any information regarding the amounts of social assistance benefits paid to a single person without resources and the poverty threshold, it has not been established that the level of social assistance is adequate. Therefore, the situation is not in conformity with the Charter.

### ***Right of appeal and legal aid***

According to the report, in FBiH the Social Welfare Centres are the first instance bodies deciding on social assistance entitlements. The procedure for exercising the right to social protection is defined in the Law on Administrative Procedure. Administrative disputes are settled in the cantonal courts. As regards BD, a person dissatisfied with the decision of an appellate body may initiate an administrative dispute at the Court of BD. At the request of a party or its legal representative or ex officio, authorised officers of the Sub-Department for Social Security may institute proceedings for exercising the right in accordance with the Law on Social Protection of BD. The procedure for exercising the right to social protection is governed by the Law on Administrative Procedure of BD. As regards RS, the right to social protection is enforced by social care institutions. The Committee asks the next report to provide information regarding the right of appeal against decisions of social care institutions

in RS. The Committee asks whether the review bodies are empowered to judge the case on its merits and not only on points of law.

### ***Personal scope***

The Committee recalls that, under Article 13§1, States are under obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

### ***Nationals of States Parties lawfully resident in the territory***

The Committee recalls that under Article 13§1, foreigners who are nationals of the States Parties and are lawfully resident in the territory of another States Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals. Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality. Equality of treatment also implies that additional conditions such as the length of residence, or conditions which are harder for foreigners to meet, may not be imposed.

The Committee further recalls that under the Charter, nationals of States Parties lawfully resident in the territory cannot be repatriated on the sole ground that they are in need of assistance. Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if there are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family. The Committee asks whether the legislation and practice comply with these requirements.

### ***Foreign nationals unlawfully present in the territory***

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need (including medical condition). It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187). The Committee asks the next report to confirm that the legislation and practice comply with these requirements.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 13§1 of the Charter on the grounds that:

- it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.
- it has not been established that the level of social assistance paid to a single person without resources is adequate.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 2 - Non-discrimination in the exercise of social and political rights*

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

In its previous conclusion the Committee asked the next report to confirm that in practice no restrictions applied to the beneficiaries of social assistance in their exercise of social and political rights in all Entities. It notes in this respect that the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families and Children of FBiH provides that social welfare institutions in the Federation shall not impose any restrictions in their operations on the territorial, ethnic, religious, political or any other status of beneficiaries (race, colour, sex, language, social origin and the like). This does not however appear to prohibit discrimination in the exercise of political or social rights on the basis of receipt of social or medical assistance in all circumstances.

As regards RS the Committee notes that according to Article 10 of the Constitution, citizens are equal before the law and they shall enjoy equal legal protection before the state and other authorities irrespective of their race, sex, language, national or social origin, religion, education, property, political or other conviction, social status or any other personal circumstances. With regard to voting rights, in BD the Statute of BD District guarantees fundamental rights and freedoms of citizens without discrimination on any ground. This does not however appear to prohibit discrimination in the exercise of political or social rights on the basis of receipt of social or medical assistance in all circumstances.

The Committee asks the next report to provide updated information as regards whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance in all entities.

### *Conclusion*

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

## **Article 13 - Right to social and medical assistance**

### *Paragraph 3 - Prevention, abolition or alleviation of need*

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina but highlights the significant gaps in information provided in relation to the specific requirements of Article 13§3.

In its previous conclusion (Conclusions 2013) the Committee noted that social welfare services (in FBiH) and the Centre of Social Work (in BD) provide advisory services concerning entitlements to benefits. However, no information was provided concerning RS.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide information on how these requirements are met in legislation and practice.

In the absence of information concerning all Entities as regards existence of social services specifically addressed to persons without adequate resources to offer them advice and assistance, the Committee considers that it has not been established that there are services offering advice and assistance to persons without resources.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that there are services offering advice and assistance to persons without resources.

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

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

However, most of the information in the report does not relate to Article 14§1 in substance. Therefore, the Committee asks that the next report contains a comprehensive description of the situation in law and in practice in different entities of Bosnia and Herzegovina.

### **Organisation of the social services**

Bosnia and Herzegovina is a federal state divided into two entities, the Republic of Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH) and Brcko District, which has a special district status that falls outside the jurisdiction of the Republic of Srpska. The Republic of Srpska is composed of municipalities (*opština*) and the Federation BiH is composed of municipalities (*općina*) and cantons (*kantoni*). Responsibilities for social policy are divided between the Federation Government and Cantons.

The Committee refers to its previous conclusion (Conclusions 2013) for a description of the organisation of the social welfare system.

### **Effective and equal access**

The Committee refers to its previous conclusion (Conclusions 2013) for general information on effective and equal access to social services.

In its previous conclusion (2013), the Committee asked information on the geographical distribution of social services in different entities.

The information provided in the report does not allow the assessment the geographical distribution of social services. The Committee recalls that the right to social services must be guaranteed in law and in practice and that effective and equal access to social services implies also that social services coverage on the territory shall be sufficiently wide, therefore reiterates its question and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1.

### **Quality of services**

In its previous conclusion (2013), the Committee asked that the next report provides information on the number and qualification of staff and the ratio of staff to users. The Committee also asked to know the mechanisms for supervising the adequacy of services (quality control) provided by public as well as private institutions and whether there is any legislation on personal data protection (people's right to privacy).

The report does not answer to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§1.

### *Conclusion*

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

## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

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

In its previous conclusion (Conclusions 2013), the Committee requested that the next report provides statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. and to describe any other types of support that may exist for voluntary organisations, such as, for example, tax incentives.

The report does not reply to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

In its previous conclusion (Conclusions 2013), the Committee asked that the next report provides information on the supervisory machinery in charge of monitoring the quality of services.

The report indicates that monitoring is conducted continuously and systematically and it includes direct access, control and other forms of checking the fulfillment of tasks to exercise the right to social protection. The Committee notes that the report does not provide a comprehensive answer to its question. Therefore reiterates its question as to what kind of supervisory machinery in charge of monitoring the quality of services exists both for public and private institutions and in different entities. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

In its previous conclusion (Conclusions 2013), the Committee asked if and how the dialogue with civil society in respect of social welfare services is ensured.

The report does not reply to its questions. Therefore, the Committee reiterates its questions and reserves its position on this point. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 14§2.

### *Conclusion*

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

## **Article 23 - Right of the elderly to social protection**

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

### ***Legislative framework***

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and it consequently invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision-making.

With regard to the fight against age discrimination, the Committee asked in its previous conclusion (Conclusion 2013) whether Bosnia and Herzegovina had adopted such legislation. The report provides no information. However, the Committee takes note of the Law on the Prohibition of Discrimination of 23 July 2009 (Official Gazette of Bosnia and Herzegovina No. 59/09 of 29 July 2009). It notes that while Article 2 of the law does not expressly refer to age among the prohibited grounds of discrimination, its wording is such that this ground can be included. Therefore, it asks whether there is case law on age discrimination outside employment which could protect elderly persons against such discrimination.

The Committee also requests that the next report provide information on the framework programme for elderly persons developed by the Ministry of Human Rights and Refugees. It asks in particular if the programme has been adopted.

With regard to assisted decision-making for elderly persons, the Committee previously asked whether there were safeguards to prevent the arbitrary deprivation of autonomous decision-making. The report does not provide any information on this subject, so the Committee reiterates its question.

### ***Adequate resources***

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with the median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of the practice with the obligations arising from the Charter. For this purpose, the Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The report states that there is no single pension and disability scheme at national level, as the organisation, implementation and enjoyment of rights under the scheme are a matter for the Entities which make up Bosnia and Herzegovina, i.e., the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

According to the report, the old-age pension granted by the Federation of Bosnia and Herzegovina is, in principle, paid at full rate to insured persons aged 65, as long as they have contributed for at least 20 years, or to those with 40 years of paid contributions regardless of age. The report points out that insured persons are divided into three categories: the first category receives pensions according to their contributions; the second are covered by Article 126 of the Pension and Disability Insurance Law, and the third receive financial assistance from the budget of the Federation of Bosnia and Herzegovina (cantons and municipalities). The Committee asks for information in the next report on the persons concerned by the second and third categories.

In 2015, the average old-age pension was BAM 397.35 per month (approximately €203.16) and the minimum pension was BAM 310.73 per month (approximately €158.87). The report does not provide any information on the guaranteed old age pension. In this regard, the Committee previously asked (Conclusion 2013) what was the difference between the minimum and guaranteed pensions. As the report does not provide any information on this matter, the Committee reiterates its question. In addition, it notes that there is a discrepancy between the information provided in MISSCEO and that provided in the report. It asks for the next report to clarify the situation.

In the Republika Srpska, insured persons are entitled to an old-age pension upon turning 65 and having 15 years of pensionable service. The report does not provide any information on the amount of this pension. The Committee notes, however, that according to the MISSCEO database, in 2015, the amount of this pension was, at a minimum, BAM 160.00 per month (approximately €81.81).

The report does not provide any information on the old-age pension paid in the Brčko District. However, the Committee notes from the same source that the Brčko District does not have its own pension scheme; its citizens can either choose the scheme of the Federation of Bosnia and Herzegovina or that of the Republika Srpska.

The Committee also requested information on the benefits/assistance elderly persons not entitled to any pension were entitled to. The report states that elderly persons residing in the Federation of Bosnia and Herzegovina are entitled to a permanent allowance and material assistance (Article 22(1) of the Law on Insurance Pension and Invalidity), an attendance allowance (Article 26 of the Law) and various subsidies (electricity, fuel, funeral costs, etc.).

Regarding the Republika Srpska, elderly persons in need are entitled to cash benefits, one-off assistance and the reimbursement of certain costs (funeral, firewood and coal, medication and food) and/or services (transport).

In the Brčko District, elderly persons may receive an attendance grant, one-off financial assistance of between BAM 150 and BAM 50 (approximately €76.69 and €25.56) depending on the pension received, and partial payment of electricity bills.

The Committee requests that the next report further indicate the amount of each of these allowances, benefits and subsidies. It also asks whether the grants and benefits allocated in one Entity, whether it be the Federation of Bosnia and Herzegovina, the Republika Srpska or the Brčko District, may be combined.

Finally, the Committee asked for information regarding the median equivalised income. The report provides no information on this matter. The Committee notes, however, that according to the report, most pensioners in the Federation of Bosnia and Herzegovina are below, or at least, on the poverty threshold. The report states that reforms to remedy the situation are underway. The Committee reiterates its question on the median equivalised income and also requests that the next report provide more information both on the reforms carried out by the Federation of Bosnia and Herzegovina and on the poverty threshold in Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District). The Committee points out that if no information is provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point. In the meantime, the Committee reserves its position on this issue.

### ***Prevention of elder abuse***

In its previous conclusion (Conclusion 2013), the Committee asked for information on what was done to evaluate the extent of the problem and to raise awareness about the need to eradicate elder abuse and neglect. It also asked if any legislative or administrative measures were envisaged in this area. The report does not provide any information on this issue. The Committee reiterates its questions and points out that if no information is provided in the next

report, there will be nothing to show that the situation is in conformity with the Charter on this point

Moreover, the Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as "a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organisation (WHO) and the International Network for the Prevention of Elder Abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundreds of thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are subjected to physical violence, threatened and insulted and sometimes they are raped or otherwise sexually abused.

### ***Services and facilities***

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities as such, the Committee notes that according to the report, the social model of Bosnia and Herzegovina prioritises family solidarity: elderly persons are cared for by their family. The report specifies that elderly persons who do not have or no longer have family to care for them are entitled to social welfare benefits. The Committee asks whether elderly persons supported by their family are nonetheless entitled to some social welfare benefits.

The Committee notes that according to the report, in the Federation of Bosnia and Herzegovina, services are provided by the municipalities through social welfare centres, NGOs and private sector stakeholders. Article 19 of the Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children lists the services to which elderly persons are entitled (material assistance, home care, humanitarian aid and the reimbursement of certain costs and services). In order to benefit from these services, the elderly persons concerned or their legal guardian must submit an application at the social welfare centre which takes a decision within 15 to 30 days. Any interested person can appeal against a decision of a centre before the Cantonal Ministry of Labour and Social Policy, except as concerns the attendance allowance, which is dealt with by the Ministry of Labour and Social Policy of the Federation. The Committee notes that audits and inspections of services are generally carried out by the relevant Cantonal Ministry.

In the Republika Srpska, the Council, a public body, helps families resolve their problems and difficulties. It also provides assistance (household services) and home-care for elderly persons. The Committee asks for more information on this issue in the next report. The report also indicates that day care centres for adults provide elderly persons with daytime accommodation, meals, medical supervision and recreational activities.

The Committee notes from the report that a joint project to support social welfare providers by the Federation of Bosnia and Herzegovina and the Republika Srpska was carried out in 2015; the aim was to strengthen the social welfare centres in the pilot areas of these two Entities. The Committee asks what measures were implemented and what their impact on elderly persons was.

Finally, the Committee notes that the services provided by the Brčko District are similar to those offered by the Federation of Bosnia and Herzegovina. The services are provided by the Sub-Department for Social Welfare of the Brčko District at the request of the person concerned or their legal guardian. Any person concerned can appeal against a decision by

the authorities before the Appeals Committee of the Brčko District and, if necessary, file an appeal against the decision before the Court of the Brčko District.

The Committee notes that the report does not address the questions asked previously (Conclusion 2013), namely, whether, firstly, the supply of home help services for the elderly matches the demand, secondly, as concerns the Republika Srpska, how their quality is monitored and if there is the possibility for elderly persons to complain about services, thirdly, if there are any services for those suffering from dementia or Alzheimer's disease and, fourthly, if there are cultural, leisure and educational facilities available to elderly persons. The Committee requests that the next report provide this information.

With regard to measures to inform people about the existence of services and facilities, the Committee requests that the next report provide information on this issue.

### ***Housing***

The Committee asked in its previous conclusion (Conclusion 2013) whether the needs of elderly persons were taken into account in national or local housing policies, whether adequate sheltered/supported housing was provided, and whether the supply of such housing was sufficient. The report does not answer any of the questions, but merely states that, regarding the Federation of Bosnia and Herzegovina and the Brčko District, elderly persons unable to care for themselves who have no other alternative, due to their health, housing or family circumstances, are likely to be placed in a host family. The Committee takes note of this information and repeats its questions.

The Committee points out that appropriate housing conditions are very important for an old person's well-being. However, it is also aware that the improvement of housing conditions of senior citizens is not an easy task. Firstly, it requires considerable public funding, as the average elderly person usually cannot afford the costs of modernisation of their dwelling or purchasing a new one of a higher standard. Secondly, improvement of housing conditions by moving elsewhere is often not a viable option in that it uproots the elderly person from their "natural" environment. Bearing in mind these constraints, it wishes to be kept informed of any public policies providing financial assistance for the adaptation of housing. It understands, on the basis of the information contained in the report, that elderly persons mainly live with their families and asks, in this regard, what proportions of elderly persons respectively live with their families, still live at home or have been placed in host families.

### ***Health care***

The report states that, according to Article 3 of the Law on Health Care of the Federation, "everyone has a right to health care". The right to health care applies to every person insured under the compulsory health care insurance scheme. Adults who are not insured are nonetheless entitled to some health services (emergency medical assistance, treatment of certain chronic illnesses, prenatal care, etc.). The report adds that specific programmes and services (orthopaedic care, home care, etc.) are provided to elderly persons in accordance with their health and personal circumstances. The report also adds that a Centre for Healthy Ageing was recently opened in Sarajevo, Modriča and Bosanska Dubica. Finally, the report stresses that the Federation Ministry has taken the decision to include, in the package of care, health care and medicine indicated on the List of Essential Medication (Official Gazette of the Federation of Bosnia and Herzegovina, No. 52/08) and those identified in the Order on the List of Medicines in Hospital Health Care that can be used through the Solidarity Fund of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 38/06, 13/08 and 38/08). The Committee requests that the next report provide details on the programmes and health care which are specific to elderly persons and on their financial contribution to the health care and medication included in the health package.

As regards the Republika Srpska, the report indicates that gerontology centres offer interdisciplinary services to elderly persons aimed at improving the quality of care, better co-ordinating the activities of service providers and training those who care for elderly persons. The centres also implement prevention programmes. The Committee asks for more information on this in the next report.

The report states that regarding the Brčko District, Article 8 of the Health Care Law provides for specific measures aimed at protecting those over 65. Health care is organised by the Department of Health and Other Services of the Brčko District, which is in charge of providing and managing primary health care, hospital care, public health activities and health insurance. Health care services are provided by four institutions: a hospital and three health care centres. The Brčko District also provides at-home nursing care. In its previous conclusion (Conclusion 2013), the Committee asked for further information on the initiative of the Assembly of the Brčko District to provide all persons over 65 with free health care. No new information is provided in the report on this subject. The Committee reiterates its question and also points out that if no information is provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

The Committee recalls the importance of establishing health care programmes and services (in particular primary health care services) specifically aimed at the elderly, as well as guidelines on health care for elderly persons. In particular, there should be mental health programmes for any psychological problems in respect of the elderly, adequate palliative care services and special training for individuals caring for elderly persons. The Committee therefore asks for information on these matters in the next report. It also asked to be informed on any new measures taken on improving accessibility and quality of geriatric and long-term care, or the co-ordination of social and health care services in respect of the elderly.

### ***Institutional care***

The report states that 21 elderly care institutions (ten public facilities, five provided by NGOs and six by the private sector) operate in the Federation of Bosnia and Herzegovina and cared for 2 161 elderly persons during the reference period. There are also six nursing homes in the Federation of Bosnia and Herzegovina in Tuzla, Zenica, Sarajevo, Bihać, Mostar and Neum. The Committee notes that there are discrepancies in some of the information provided in the report and asks for more detailed information in the next report in this regard.

In its previous conclusion (Conclusions 2013), the Committee asked whether there were sufficient places in institutions to satisfy demand. The report indicates that demand outstrips supply and that, as a result, there are long waiting lists for placement in institutions.

Regarding the Republika Srpska, the report indicates that elderly persons can, if necessary, be placed in shelters which may, or may not, be part of a social care facility. The shelters provide a number of services, including health care. The duration of a stay should not, in principle, exceed three months. The Law on the Establishment of Shelters provides a definition of the users, services and methods applicable to shelters.

The report identifies three nursing homes and private institutions in the Brčko District. The Sub-Department for Social Welfare of the Brčko District provides housing to 28 elderly persons. The report specifies that there is insufficient capacity and that the prices are relatively high.

The Committee also asked how these facilities were licensed and inspected, and whether procedures existed for complaining about the standard of care and services or about ill treatment in this type of institution. The Committee also asked which authority or body was responsible for the inspection of homes and residential facilities (both public and private).

The report does not provide any information on these issues, so the Committee reiterates its questions.

*Conclusion*

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



**CONCLUSIONS RELATING TO CONCLUSIONS OF NON-  
CONFORMITY DUE TO A REPEATED LACK OF INFORMATION IN  
CONCLUSIONS 2015**

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Bosnia and Herzegovina in response to the conclusion that it had not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

The Committee notes that the report submitted by Bosnia and Herzegovina contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the information submitted by Bosnia and Herzegovina in response to the conclusion that it had not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

The Committee notes that the report submitted by contains no new information in response to this conclusion of non-conformity. In the absence of the requested information, the Committee reiterates its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that adequate compensation was provided for in cases of unlawful dismissal during pregnancy or maternity leave in the Republika Srpska.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, where the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave is not possible (e.g. if the enterprise has closed down) or the employee concerned does not wish to be reinstated, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

In its previous conclusion (Conclusions 2015), the Committee had noted the information in the report concerning the unemployment benefits available to the employee, the fines which could be imposed on the employer and the fact that no case law was available concerning the unlawful dismissal of employees during pregnancy or maternity leave, but it had reiterated its request for clarification as regards the compensation available, in addition to reinstatement or instead of it, to women unlawfully dismissed during pregnancy or maternity leave. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 8§2 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 8§2 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§2 of the Charter on the ground that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave in the Republika Srpska.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina.

The Committee recalls in this connection that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of women. The regulations must lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (where applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.

In the light of these criteria, the Committee had previously noted that in the Federation of Bosnia and Herzegovina there was no specific prohibition to perform night-work for women who are pregnant, have recently given birth or are breast-feeding and had asked for further details concerning any relevant regulations. As the report does not provide any information in this respect, the Committee maintains its finding of non-conformity with Article 8§4 of the Charter on this point.

The Committee recalls that the situation concerning other aspects covered by Article 8§4 will be examined in the framework of the regular reporting cycle (Conclusions 2019) and asks that relevant and updated information be provided in that context.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the ground that it has not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina.

## **Article 16 - Right of the family to social, legal and economic protection**

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2016 on conclusions of non-conformity for repeated lack of information in Conclusions 2015.

The Committee takes note of the fact that Bosnia and Herzegovina has submitted no information in response to the conclusion that it had not been established that it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the ground that it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement.