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Conclusions 2012

(BOSNIA AND HERZEGOVINA)

Articles 1, 9 and 20
of the Revised Charter

This text may be subject to editorial revision.

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

A presentation of this treaty as well as statements of interpretation formulated by the Committee appear in the General Introduction to the Conclusions.¹

The European Social Charter (revised) was ratified by Bosnia and Herzegovina on 7 October 2008. The time limit for submitting the 2nd report on the application of this treaty to the Council of Europe was 31 October 2011 and Bosnia and Herzegovina submitted it on 11 November 2011. On 14 June 2012, a letter was addressed to the Government requesting supplementary information regarding Article 1§2. The Government submitted its reply on 28 November 2012. Comments on the report from the Union of Association of Employers of Srpska were registered on 13 December 2011 and the Government submitted a response to these comments on 17 May 2012.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Bosnia and Herzegovina has accepted Articles 1, 9 and 20 from this group.

The reference period was 1 December 2008 to 31 December 2010.

The present chapter on Bosnia and Herzegovina concerns 6 situations and contains:

- 0 conclusions of conformity;
- 2 conclusions of non-conformity: Articles 1§1 and 20.

In respect of the other 4 situations concerning Articles 1§2, 1§3, 1§4 and 9, the Committee needs further information in order to assess the situation. The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Government consequently has an obligation to provide this information in the next report on the articles in question.

The next report from Bosnia and Herzegovina deals with the accepted provisions of the following articles belonging to the second thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),

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

The deadline for the report was 31 October 2012.

¹*The conclusions as well as state reports can be consulted on the Council of Europe's Internet site (www.coe.int/socialcharter).*

Article 1 - Right to work

Paragraph 1 - Policy of full employment

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

Employment situation

The Committee notes from the report that the GDP growth rate in Bosnia and Herzegovina fell from 10.9 % in 2007 to 0.5 % in 2010. Following several years of relatively stable growth of GDP, the rate fell very sharply in 2010.

The Committee notes from Eurostat that the country is characterised by a very low employment rate, which stood at 39.3 % in 2010.

The report indicates that the registered unemployment rate increased from 40.6 % in 2008 to 43.1 % in 2010. However, this figure seems to overestimate real unemployment. According to the Labour Force Survey (LFS) conducted in 2010, unemployment was estimated at 27.2 %. In any event, whether using the registered unemployment rate or the one provided by the LFS, the unemployment rate is very high.

Youth unemployment, standing at 57.5 %, or the long-term unemployment rate, 85.9 % in 2010, are also very high.

The Committee notes that for the period under evaluation the country has experienced a sharp decline in GDP of more than 10 % reflecting the effects of the global economic crisis. Moreover, the labour market exhibits negative features, characterised by low participation rates and extremely high unemployment.

Employment policy

The 2010-2014 "Employment Strategy" aims to increase the quality and quantity of jobs and promote social inclusion. The specific goal of increasing the number of active measures is mentioned, especially for long-term unemployed and disadvantaged youth, through subsidised employment, self-employment programmes and vocational training. An Action Plan for the implementation of the Employment Strategy is currently being drafted.

According to another source a more integrated approach to employment, encompassing all relevant sectoral policies, would be needed to address the country's considerable labour market challenges. Entity governments continue to lack the capacity to implement appropriate active labour market measures. Employment services are focusing on activities related to unemployment benefits rather than on mediation and services for job-seekers¹.

The Committee takes note of the employment-related projects implemented during the reference period. Likewise, it also notes the cash benefits and other entitlements which arise during unemployment under the Law on Mediation in Employment and Social Security of Unemployed Persons.

The Committee recalls that in assessing national situations under Article 1§1 it primarily looks at active labour market policies adopted by States, rather than at schemes consisting of unemployment benefits.

It also notes from another source² that funds in Bosnia and Herzegovina are distributed first to cover staff expenditure and other expenses for running the Employment Services, and second, to cover for law-bound expenditure for benefits and costs related

to people who are insured and entitled to benefits. All other activities, including active labor market measures, are funded out of what is left. The financing system makes planning of revenue, expenditure, and implementation of labor market measures uncertain and difficult.

The Committee asks the next report to provide information of expenditure on active labour market policies (as a share of GDP), on the participation in active labour market measures as a percentage of the unemployed ('activation rate') and on the duration of unemployment spells before being offered participation in a measure.

Given the particular concern raised by long-term unemployment and youth unemployment, the Committee asks for information on the outcome of measures specifically made available to these groups (how many persons in these categories received activation offers, what were the effects, etc.).

Finally, the Committee recalls that labour market measures should be targeted, effective and regularly monitored. It asks in this respect whether the employment policies in place are monitored and how their effectiveness is evaluated.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

¹European Commission, *Bosnia and Herzegovina 2011 Progress Report*

²*Employment Services and Active Labour Market Programs in Eastern European and Central Asian Countries*, Arvo Kuddo, October 2009

Article 1 - Right to work

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

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

Prohibition of discrimination in employment

The Committee recalls that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion (Conclusions 2006). Legislation should cover both direct and indirect discrimination. As regards indirect discrimination, the Committee recalls that Article E of the Charter prohibits: "all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (Autism Europe v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52).

As with other states that have accepted Article 20 of the Charter, the Committee will examine BiH's legislation prohibiting discrimination based on gender under this provision.

The Committee has concluded that exceptions to the ban on discrimination may be authorised for essential occupational requirements or to permit positive action (Conclusions 2006, Bulgaria).

The Committee has also concluded that in order to make the prohibition of discrimination effective, domestic law must at least provide for:

- the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations (Conclusions XVI-1, Iceland).
- protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action (Conclusions XVI-1, Iceland). T
- appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimination must be adequate, proportionate and dissuasive. The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed

In disputes relating to an allegation of discrimination in matters covered by the Charter, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment.

The Committee considers that other means of combating discrimination in accordance with Article 1§2 of the Charter include:

- recognising the right of trade unions to take action in cases of discrimination in employment, including action on behalf of individuals (Conclusions XVI-1, Iceland).

- granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action.
- setting up a specialised and independent body to promote equal treatment, particularly by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Iceland).

The Committee recalls that States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority (Conclusions 2006, Albania).

The Constitution of Bosnia Herzegovina as well as the constitutions of the entities (Republika Srpska and the Federation of Bosnia and Herzegovina) as well as the Statute of the Brcko District all prohibit discrimination on certain grounds.

The report refers to the Law on the Prohibition of Discrimination of Bosnia and Herzegovina 59/09, but provides no details as to its scope, prohibited grounds etc. However the Committee notes from other sources (European Commission against Racism and Intolerance (ECRI) report on Bosnia and Herzegovina 2011) that it sets out a non exhaustive list of protected grounds including race, skin colour, national language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership of a trade union or any other association, education, social status, sex, sexual expression or sexual orientation and every other circumstance. It covers a wide range of sectors including employment. It includes a definition of both direct and indirect discrimination, covers harassment and instructing others to discriminate⁴. The Law applies to the actions of all public bodies at the level of the state, Entity, Canton and Brcko District, municipal institutions and bodies and legal persons exercising public powers, as well as to the actions of all individuals and legal entities.

The Law does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons on grounds covered by the Law. However, it also includes a long list of express exceptions to the principle of equal treatment, in addition to the general exception based on an objective and reasonable justification for different treatment. Religious groups in particular are granted broad exemptions from the obligation of equal treatment, notably in the field of employment.

The Law sets out the various forms of legal proceedings that may be brought by victims of discrimination, provides for courts to order temporary protection measures, sets out a shifting burden of proof, provides for third-party interventions and collective suits and protects persons who bring proceedings, or who act as witnesses, against reprisals. It defines breaches of the Law as minor offences, subject exclusively to fines. The fines that may be imposed on persons or bodies who cause discrimination by failing to co-operate with a request or recommendation of the Ombudsmen or with a court order are higher than those that may be imposed for other discrimination offences. Fines may also be imposed where a person suffers discrimination because of their participation in discrimination proceedings.

Under the law the State Ombudsman institution is designated as the central institution competent for protection from all forms of discrimination. It is granted the power, within its competences, to receive individual and group complaints related to discrimination, provide information to victims, refuse to accept a complaint or initiate an investigation, propose mediation, collect and analyse statistical data on discrimination cases, report on discrimination to the various parliaments of Bosnia and Herzegovina, inform the public about manifestations of discrimination, conduct surveys, provide opinions and recommendations with the aim of preventing discrimination, initiate and participate in discrimination proceedings, monitor and advise on legislation, raise awareness on discrimination-related issues, and improve policy and practices aimed at ensuring equal treatment.

The report refers to the Law on Labour in BiH Institutions (Official Gazette of BiH "26/04, 7/05, 48/05, 60/10) which provides that a person seeking employment with an employer shall be recruited without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion or conviction, national or social origin, sexual orientation, property, birth or other status, political party membership or non-membership, bodily impairment or any other grounds contradictory to basic human rights and freedoms laid down in the BiH Constitution and the law.

Brcko District

Labour Law of BD ("Official Gazette of BD of BiH" 19/06, 19/07, 25/08) ("Official Gazette of BD of BiH" 19/06, 19/07, 25/08) prohibits discrimination in employment on grounds of race, ethnicity, colour, gender, language, religion, political or other opinion or conviction, social origin, property, membership or non-membership in a trade union or political party, physical and mental condition. It applies also to recruitment and training. The report states that persons who believed they have been discriminated against may seek court protection.

Federation of Bosnia and Herzegovina

Labour Law of FBiH („Official Gazette of FBiH" 43/99, 32/00, 29/03) provides that discrimination in employment (including recruitment) shall be prohibited on grounds of race, colour, sex, language, religion, political or other opinion, national or social affiliation, financial situation, birth or any other circumstances, membership or non-membership in a political party, membership or non-membership in trade union, and bodily or mental problems.

Article 5 of the Labour Law prescribes that any distinction made in good faith shall not be considered discrimination, which is based on the requirements pertaining to a certain job, on the inability of a person to perform jobs related to a specific work place or to master the necessary professional training and the activities intended for improvement of the position of persons in an unfavourable economic, social, education or physical situation.

A person whose rights have been violated may file a complaint with a court. In court proceedings there is a shift in the burden of proof. If the court finds in favour of the employee the court will order reinstatement of the employee into previous position, as well as provision or restoration of all rights arising from the contract of employment. The Labour Law does not specifically provide for compensation to employees who are found to be in any way discriminated against, but in such instances, according to the report legal provisions on employee's rights to damages sustained at work or in connection with work in accordance with the Law on Obligations are applicable. The Committee asks what in practice this means. However it notes that a new Labour Law, has been

prepared that specifically provides for compensation, defines direct and indirect discrimination, and prohibits harassment.

Labour Inspectors are responsible for the supervision of the Labour Law of FBiH and may impose fines in cases of breach. However according to the report there is no data about discrimination at work, other than generalized statements of the inspectors that it exists.

Republika Srpska

Labour Law of RS ("Official Gazette of RS" 55/07)("Official Gazette of RS" 55/07) Article 5 of the Law protects employees and persons seeking employment from discrimination on grounds of race, ethnicity, colour, gender, language, religion, political or other opinion or conviction, social origin, property, membership or non membership in a trade union or political party, physical and mental condition or any other characteristics which are not directly related to the nature of employment. the legislation defines both direct and non direct discrimination. It also allows for exceptions, the Committee wishes to receive further information on how these have been interpreted. The law also prohibits harassment and other forms of degrading treatment.

Article 112 stipulates that a person seeking employment and worker may claim compensation for damages before the competent court in accordance to the law and that in case of a dispute the employer shall have a burden of proof. If the court finds that the claim is grounded, it shall order the employer to reinstate and ensure the exercise of the denied rights to the defendant or to pay the appropriate monetary compensation.

Overall

However the Committee is unclear as to how the different pieces of legislation interact, does the Law on the Prohibition of Discrimination of Bosnia and Herzegovina 59/0 prevails over law at Entity and District level? The Committee asks for further information on this point. It highlights that at the Entity and District level sexual orientation and age are not explicitly included in the grounds on which the legislation bans discrimination, and at the state level discrimination on grounds of age and disability are not explicitly mentioned. The Committee asks whether age, disability and sexual orientation are prohibited grounds of discrimination at all levels. It further asks for confirmation that all persons within the territory are legally protected against indirect discrimination, that the notion of reasonable accommodation has been incorporated in relation to disability discrimination, that all person who believe that they have been discriminated against have access to the courts and that there is a shift in the burden of proof, as well as information on the rules on compensation. The Committee notes that there is the wide-ranging list of exceptions to the principle of equal treatment laid out in the state Law on the Prohibition of Discrimination, which potentially go beyond genuine occupational requirements, asks for any case law on these.

The Committee requests information on the number of discrimination cases before the courts at all levels and the number of cases brought before the Ombudsman.

It also requests detailed information on the employment situation of persons with disabilities, including how many persons with disabilities are in employment.

The Committee notes from other sources that discrimination inter alia on the grounds of sexual orientation is not uncommon and that ethnic discrimination in employment remains a problem, in particular for the Roma (report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe March 2011, European Committee on Racism and Intolerance report on BiH 2011 EU Commission staff working document 2010). It therefore asks what measures are being taken to raise

awareness of rights and to ensure effective implementation of non discrimination in employment in all parts of the country.

The Committee asks whether non nationals have full access to employment , and in particular whether there are posts in the public sector which are reserved to nationals and if so what is the justification for these restrictions.

Prohibition of forced labour-Coercion in connection with domestic work

Article II of the Constitution of Bosnia Herzegovina prohibits forced labour.

Prison work

The report provides much information on prison work. Basically prisoners may work if they wish. Work such as farm work, production units, in the prison, or outside the prison, the working hours and conditions are governed by the ordinary labour legislation. Prisoners are remunerated for their work. For other matters relating to prison work not dealt with above, the Committee refers to its statement of interpretation and to its questions in the General Introduction.

Coercion in connection with domestic work

The Committee refers to its statement of interpretation and question in the General Introduction in this respect.

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

Requirement to accept the offer of a job or training

The Committee considers that in general the conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment, should be assessed under Article 12§1 of the Charter (or Article 12§3 in the case of new developments). However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2. (See General introduction to Conclusions 2008).

The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

Minimum periods of service in the armed forces

The Committee highlights that any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.

Privacy at work

The Committee refers to its statement of interpretation in the General Introduction. It asks that the next report include updated information on this issue.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 1 - Right to work

Paragraph 3 - Free placement services

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

In accordance with the constitutional and legal structure of the country, employment services are provided by the following authorities: (i) the Federation of Bosnia and Herzegovina (FBiH) Employment Institute, (ii) the Employment Institute of the Serb Republic (RS), (iii) the Employment Institute of the Brčko District (BD). At the state level, the Agency for Labour and Employment was established in 2009, with the mandate *inter alia* of cooperating with the above-mentioned employment institutes.

The Committee notes from another source¹ that concern has been raised at the lack of coordination among the large number of employment institutions at state, entity and canton levels. The Committee asks if any steps are envisaged to improve coordination among the different employment services.

It recalls that under Article 1§3, States undertake to maintain employment services free of charge for unemployed persons as well as workers looking for another job. Basic placement services such as registration of job-seekers and notification of vacancies must be provided free of charge for both employees and employers. The Committee asks for confirmation that employment services are free of charge.

It also asks whether trade union and employers' organisations participate in organising and the running of public employment services.

The Committee further recalls that in order to assess the effectiveness of employment services it looks at a number of performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time in filling vacancies. As the report contains no information on these matters it asks the next report to include such information.

Finally, it asks whether there exist private employment agencies, and in the affirmative, how they are licensed, operate and co-ordinate their work with the public employment service.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

¹*European Commission, Bosnia and Herzegovina 2011 Progress Report*

Article 1 - Right to work

Paragraph 4 - Vocational guidance, training and rehabilitation

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

Under Article 1§4 of the Charter, the Committee considers vocational guidance, continuing training for workers and the rehabilitation of persons with disabilities. As Bosnia and Herzegovina has accepted Article 9 of the Revised Charter (right to vocational guidance), the Committee refers to its conclusion under that article. The Committee here only deals with continuing vocational training and training for persons with disabilities in view of the fact that Bosnia and Herzegovina has not accepted Articles 10§3 and 15§1 of the Charter.

Continuing vocational training

Article 4 of the Framework Law on Secondary Vocational Education and Training sets out the requirements for vocational education and training of adults, including continuing vocational education, re-training and other activities that ensure continuous/lifelong learning, as well as the rules on the establishment of an official register of diplomas and certificates.

The report mentions a Strategic Guidance for the Development of Education (2008-2015) which includes the objective of strengthening adult education. A register of institutions/providers of educational services for adults will be established. The Strategic Guidance envisages the adoption of a framework law on adult education as well as the development of models on adult education and training. The Committee asks to be kept informed on the implementation of this new strategy.

According to the report, the most commonly offered occupational training programmes for adults are in the field of administration, management, health and psycho-social activities, computer skills and foreign languages.

As regards the situation in the Federation of Bosnia and Herzegovina (FBiH), the report states that employment services are responsible for vocational guidance, training and retraining of unemployed persons. In 2010, 49 programmes were offered (training around 34,668 persons). The Committee asks the next report to provide figures on how many people have access to vocational training programmes in the other entities and cantons. More generally, it asks to what extent the education and training system in place meets the needs of the labour market.

In the event that companies organise training courses, the Committee asks whether employees' training costs are covered by the company or the workers themselves.

Guidance and training for persons with disabilities

According to Article 19 of Framework Law on Secondary Vocational Education and Training, children and young people with special needs shall be educated in mainstream schools. An individual programme suited to their abilities and skills shall be developed for each student. Children and young people with serious disorders and developmental disabilities may be partially or fully educated in special educational institutions. The Committee asks to be kept informed on the implementation of this law.

As regards the situation in the Federation of Bosnia and Herzegovina (FBiH), the report states that the employment services co-fund employment and self-employment programmes for persons with disabilities. In 2010, there were 11 programmes (training 347 persons). The Committee asks the next report to provide information on similar

programmes, and the number of beneficiaries, in the other entities and cantons. It also asks to what extent the persons with disabilities that participated in these training initiatives subsequently found employment.

The Committee asks if there is an overall strategy for the employment and vocational training of people with disabilities.

Finally, it asks whether nationals of the other States Parties lawfully resident or working regularly in Bosnia and Herzegovina enjoy equal treatment regarding all the aspects considered under Article 1§4.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 9 - Right to vocational guidance

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

As Bosnia and Herzegovina has not accepted Article 15 of the Charter, measures relating to vocational guidance for persons with disabilities are dealt with here.

The Employment Institutes which exist at state, entity and canton levels are responsible, inter alia, for implementing programmes of vocational/professional guidance which are free of charge.

The Employment Institutes prepare relevant indicators of labour market trends, such as the most frequent occupations, identify needs and the possibility of matching the needs, etc., in cooperation with the educational system.

In addition to guiding and informing people when choosing future occupations, the Employment Institutes also provide assistance to persons who want to change their profession, offering re-training or additional training.

The Committee also notes that with a view to assisting relevant ministries and other institutions in the area of vocational education and training, a Strategy for Development of Vocational Education and Training in Bosnia and Herzegovina for the period 2007-13 has been adopted. It asks to be kept informed on the implementation of this strategy.

The report refers to some of the manuals and brochures which are made available to students, young people without work experience and unemployed persons.

As to the situation in the Federation of Bosnia and Herzegovina (FBiH), the report mentions the existence of a system regularly providing vocational information in primary and secondary schools. It also indicates that career guidance activities are carried out by vocational information counselors, whom are mainly psychologists, pedagogues, or social workers.

According to the report, foreigners and stateless nationals enjoy access to vocational guidance on an equal footing. It mentions, however, that in FBiH there have been no such cases in practice.

The Committee asks the next report to provide additional information on the vocational guidance system, namely: (i) how many people were assisted, (ii) the ratio of vocational counsellors to persons assisted, and (iii) expenditure and geographical distribution of services.

The Committee takes note of the laws on Vocational Rehabilitation and Employment of Persons with Disabilities adopted in the Federation of Bosnia and Herzegovina and in the Republika Srpska. It also notes that pursuant to new legislation adopted in the FBiH, some legal entities have a statutory obligation to employ a certain number of persons with disabilities every year, and failing to do so, must pay an amount of money to the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities. information regarding persons with disabilities. The Committee asks the next report to specify what specific programmes of vocational guidance are in place for persons with disabilities.

Conclusion

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

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Government consequently has an obligation to provide the requested information in the next report on this provision.

Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

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

Equal rights

The Gender Equality Law of Bosnia Herzegovina provides for gender equality and equal opportunities, inter alia, in the field of employment. It provides for a definition of direct and indirect discrimination, covers all areas of employment including recruitment. It also covers harassment, mobbing, instructions to discriminate. Persons who believe that they have been the victim of gender discrimination may use the procedures set out in the Law on the Prohibition of Discrimination to enforce their rights (see Conclusion under Article 1§2 for a description of the procedures and remedies). The Committee recalls that the law provides for a shift in the burden of proof.

Victims of discrimination may be awarded compensation or if unlawfully dismissed reinstated. The Committee asks whether there are limits to the amount of compensation that may be awarded.

Persons who initiate proceedings for alleged discrimination, or who testify in discrimination cases, or refuse an instruction to discriminate are protected against reprisals under the Gender Equality Law and Law on the Prohibition of discrimination.

The report also refers to legislation which prohibits gender discrimination at the Entity and Brcko District level, however the Committee is unclear how the legislation on the Gender Equality at the state level and entity and district level inter relate. It asks for further information on this issue.

According to the report no exceptions are permitted for certain occupations. However the Committee noted under Article 8 (see conclusions 2011) that women are prohibited from working in underground mining. Section 52 of the Labour Act of the Federation of Bosnia and Herzegovina prohibits the employment of women in mines except women performing management which does not require manual work or women performing health and social protection jobs, as well as women working in education who must spend time in underground parts of mines, or those who must enter underground parts of mines to perform non-manual works. A similar prohibition regarding the employment of women in mines exists in Section 78 of the Labour Law of the Republika Srpska and Section 76 of the Labour Act of the District of Brcko. It concludes that such a prohibition is not in conformity with Article 20. The Committee asks whether there are any other occupations which are prohibited for women.

The Committee asks for further information on the legal guarantees for equal pay for work of equal value. It asks in this context whether it is possible for pay comparisons to be made across enterprises. It refers to its statement in the General Introduction in this respect.

In 2010 the Gender Equality Agency began investigations into 4 cases of gender discrimination in employment, the FbIH Gender Centre initiated 5 investigations and that of the Republika Srpska 8 involving employment. The Committee asks what powers the agency and centres have when investigating a complaint and what remedies they may order. The Committee notes that 4 complaints of gender discrimination were made to the Ombudsman for Human Rights.

The Committee asks for further information on the number of gender discrimination cases brought before the courts.

The Committee asks whether equal treatment in the field of social security is also guaranteed.

Specific protection measures

Specific measures protecting pregnant women and women who are on maternity leave, or breastfeeding exist. The Committee recalls that these are examined in the context of Article 8 of the Charter.

Position of women in employment and training and Measures to promote equal opportunities

According to the report only 35.6% of women are in employment, and the unemployment rate amongst women amounts 25.6%. The Committee asks the next report to provide information on the gender pay gap.

A 2010-2014 Strategy for Employment for Bosnia Herzegovina seeks inter alia, to increase the number of women in the labour market and to monitor gender equality in the labour market. Strategies also exist at the Entity level, no information is provided for the District of Brcko.

There is also a state Gender Action Plan adopted in 2006 which seeks also to eliminate gender discrimination in employment. The Action Plan is underpinned by a five year "Financial mechanism" (programme) and provides funding to a variety of projects designed to promote gender equality.

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

However the Committee notes that the employment rate of women is low, and that according to other sources "*.....Little progress has been made in the field of women's rights.....harmonisation of the Entity and Cantonal laws with the gender equality law proceeded very slowly.....The main mechanisms for ensuring gender equality are adequately funded but still do not monitor sufficiently implementation of the gender law and gender action plans. Cooperation between ministries and agencies, including the Ombudsman's Office, remains weak.....the labour market participation of women is low.*" (Commission staff working document Bosnia and Herzegovina 2010 Progress report COM(2010) 660).

Therefore from all the information available to it the Committee concludes that equal treatment and equal opportunities are not guaranteed in practice.

Conclusion

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

- the right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice,
- women are prohibited from working in underground mining.