January 2015

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2014

(BOSNIA AND HERZEGOVINA)

Articles 2, 4, 5, 6, 21, 22 and 28
of the Revised Charter

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

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

The following chapter concerns Bosnia and Herzegovina, which ratified the Charter on 7 October 2008. The deadline for submitting the 4th report was 31 October 2013 and Bosnia and Herzegovina submitted it on 28 May 2014.

The report concerns 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).

Bosnia and Herzegovina has accepted all provisions from this group except Article 4§1, 4§2, 4§4, 4§5, 26§1, 26§2 and 29.

The reference period was from 1 January 2009 to 31 December 2012.

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

- 1 conclusion of conformity: Article 2§1.
- 3 conclusions of non-conformity: Articles 2§3, 2§4 and 2§7.

In respect of the other 12 situations related to Articles 2§2, 2§5, 2§6, 4§3, 5, 6§1, 6§2, 6§3, 6§4, 21, 22 et 28, 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 Government to remedy that situation by providing this information in the next report.

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

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 October 2014.

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

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

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

The Committee takes note legislation governing working time in all the entities of Bosnia and Herzegovina.

BiH

The Labour Law in the Institutions of BiH (Official Gazette of BiH No 60/10) provides in Article 19 that the number of working hours shall be 40 hours a week. Article 20 provides that overtime work cannot exceed 10 hours a week and can be ordered only in case of *force majeur*. Articles 21 and 22 of the Labour Law provide for the establishment of flexible working time arrangements, during which work may be redistributed in the manner that some weeks are longer and others shorter, on condition that the average working hours shall not exceed 40 hours a week. The Labour Law in the Institutions of BiH also applies to civil servants.

The Committee recalls that Article 2§1 of the Charter guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The Charter does not expressly define what constitutes reasonable working hours. The Committee therefore assesses the situations on a case by case basis: extremely long working hours e.g. those of up to 16 hours on any one day or, under certain conditions, more than 60 hours in one week are unreasonable and therefore contrary to the Charter (Conclusions XIV-2 (1998), the Netherlands).

The Committee recalls that flexibility measures regarding working time are not a such in breach of the Charter. It recalls (*Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

1. they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours referred to above must not be exceeded in any case.
2. they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
3. they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

The Committee asks what the reference period is for averaging working hours and whether in the context of flexible working time arrangements there is a limit to an individual working week and working day.

FBiH (Federation of Bosnia and Herzegovina)

The FBiH Labour Law provides in its Article 20 that the average working hours may not exceed 40 hours a week. The branch collective agreement determines the precise duration of working hours in full-time employment. Working longer hours than full-time is considered overtime that can be introduced in cases and in the manner determined by law. The only reason for overtime is *force majeur* and it cannot exceed 10 hours a week. The working hours apply to all civil servants and employees in FBiH.

RS (Republica Srpska)

The right to just conditions of work is guaranteed by the RS Labour Law and the General Collective Agreement. Article 40 of the RA Labour Law provides that full-time working hours are 40 hours a week. The Law does not provide for daily working hours as they depend on the organisation of work with the employer. The Committee asks what rules apply to overtime work and flexible working arrangements in RS. It also asks whether there is an absolute limit to weekly and daily working time, including overtime.

BD (Brčko District)

Article 22 of the BD Labour Law determines that the number of working hours is 40 hours a week. Article 25(3) of the Law on Amendments to the Labour Law provides for the possibility that an employee may work overtime up to 10 hours a week and up to 300 hours in a calendar year at the request of an employer, provided that the employee gives written consent.

Article 71 of the Law on Civil Services provides that in cases of *force majeur* or extraordinary situations an employee may be requested to work 12 hours a day or 52 hours a week.

The Committee takes note of working time regulations for police officers and defence officers in all entities.

The Committee recalls under Article 2§1 of the Charter an appropriate authority must supervise whether the limits are being respected (Conclusions I (1969), Statement of Interpretation on Article 2§1).

According to the report, in the period 2008-2012 the labour inspectors found 23 irregularities and violation of rights respecting daily and weekly working hours and took necessary measures and actions to rectify them.

In this regard, Article 201 of the Labour Law of BiH provides for a fine in the amount between BAM 800 and 3 000 BAM to be imposed on an employer who signs an employment contract with an employee stipulating working hours to exceed 40 hours a week or who does not inform relevant body about introduction of overtime. In FBiH an employer who acts contrary to the Articles of the provisions of the law respecting overtime work perpetrates a misdemeanour carrying a fine and the Labour Inspection prohibits such overtime work. If an employer fails to inform the relevant labour inspector about the introduction of overtime, he/she perpetrates a misdemeanour being liable for a fine from 1 000 to 7 000 BAM.

The RS Labour Law provides for fines which are perpetrated when an employer requires an employee to work longer than his/her working hours and if the employer fails to make a schedule of working hours. For these misdemeanours the employer is fined in an amount from BAM 1000 to 7000 BAM.

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

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 2§1 of the Charter.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

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

The report states that workers are guaranteed the right not to work on public holidays. Employees performing work on public holidays are entitled to their base salary, in proportion to the duration of the work, increased by 35% (Decision of the Council of Ministers, VM 234/08 of 29 December 2008; Article 36 of the Law on Salaries and Benefits in BiH Institutions). As Bosnia and Herzegovina has not passed a law regulating public holidays at the state level, employees exercise their rights in respect of public holidays in accordance with the respective laws of the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and Brčko District (BD).

In **FBiH**, public holidays are defined and regulated by several different laws; the report mentions the following public holidays: 1-2 January, 1-2 May, 1 March, 25 November. Religious holidays are not considered public holidays: under Article 47 of the Labour Law, employees are entitled to up to four days absence in a calendar year for their religious and traditional practices, an absence of two days being with salary compensation (paid leave).

Under Article 72 of the Labour Law, the employees are entitled to their salary for the period of time in which they do not work for legitimate reasons defined by law, cantonal regulations, collective agreements and employees' work rules. The Committee asks whether this right to public holidays with pay applies to all workers, both in the public and private sector.

The Committee recalls that, under Article 2§2 of the Charter, work should be prohibited during public holidays, except in special circumstances. It notes that the report acknowledges that the prohibition to work on public holidays is often disregarded in practice. It asks whether the law provides for restrictive criteria defining the circumstances under which work on public holidays may be allowed and how the authorities control the implementation of such criteria.

As regards the compensation for work performed on public holidays, Article 71 of the Labour Law provides for a salary bonus, in accordance with the collective agreements, employees' work rules and employment contracts. Under the General Collective Agreement, employees working on a public holiday due to the requirements of the work process are entitled to a salary bonus of at least 50%. The same applies to civil servants and police officers. The Committee asks whether the increased salary (150%) is paid in addition to the salary due on account of the public holiday with pay (100%), making a total of 250%.

In **RS**, there are five public holidays (seven days: 1-2 January, 9 January, 1-2 May, 9 May, 21 November) and eight religious holidays (14 days). Article 8 of the Law on Public Holidays provides for the right to paid leave, by one's own choice, of two days in a calendar year of the days of one's own religious holidays.

The Committee asks whether work is in principle prohibited on public holidays, what exceptions, if any, are set by the law and how the authorities control the respect of the relevant provisions.

Article 95 of the Labour Law determines that compensation of at least 100% of the average salary applies to public holidays. The Committee asks that the next report clarify whether this compensation corresponds to the salary paid to all workers, even when they don't work on public holidays, or whether it corresponds to the salary paid for working on public holidays, in addition to the salary due in respect of the public holiday.

The report states that the General Collective Agreement and Branch Collective Agreements do not contain provisions governing compensation for salary for the public holidays, but regulate only the bonuses for work performed on public holidays. Accordingly, Article 28 of the General Collective Agreement provides that the base salary is increased for work on public holidays at least by 50%. In the Branch Collective Agreements and employees' work rules, the bonus might be higher. The Committee asks whether the increased salary (150%) is paid in addition to the salary due on account of the public holiday with pay (100%), making a total of 250%.

In **BD**, five days are considered public holidays (1-2 January, 8 March, 1-2 May); days off for religious holidays are determined by the District Assembly for each calendar year and civil servants are entitled to paid leave on religious holidays for two days in a calendar year. The Committee asks whether workers in the private sector are entitled to religious holidays and under what conditions.

The Committee asks whether work is in principle prohibited on public holidays, what exceptions, if any, are set by the law and how the authorities control the respect of the relevant provisions.

Article 61 of the BD Labour Law provides that an employee is entitled to compensation for the period in which he/she does not work for legitimate reasons defined by law, cantonal regulations, collective agreements and employees' work rules. In particular, Article 8 of the Law on Salaries of Employees in the BD Public Administrative Bodies provides that employees are entitled to their base salary during public and religious holidays. The Committee asks whether this provision refers to the salary due to all workers, even when they don't work on public holidays, or whether it refers to the salary paid for working on public holidays, in addition to the salary due in respect of the public holiday. It furthermore asks whether this provision concerns all workers or only civil servants.

Article 60 of the BD Labour Law provides for the right to a salary bonus for work on public holidays. This bonus corresponds to 35% for civil servants (Article 9 of the Law on Salaries of Employees in the BD Public Administrative Bodies) and police officers (Article 95§5 of the Law on Police Officers). The Committee asks whether the increased salary (135%) is paid in addition to the salary due on account of the public holiday with pay (100%), making a total of 235%. It also asks what bonuses apply, if any, to private sector workers for the work performed on public holidays.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available and of the outstanding questions, the Committee defers its conclusion.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

As regards the situation in **BiH**, the Committee notes that the report indicates, on the one hand, that the paid annual leave is comprised between 18 and 30 working days (Articles 25-29 of the Labour Law in the Institutions of BiH and Article 46 of the Law on civil service) and, on the other hand states that the Law guarantees an annual leave of at least four weeks. The Committee recalls that Article 2§3 of the Charter guarantees the right to a minimum of 20 working days annual holiday with pay and asks that the next report clarify what the minimum paid annual leave is.

Article 29 of the Labour Law provides that an employee may not waive his/her right to take annual leave nor may he/she be denied the right to take annual leave, nor may he/she be paid compensation in lieu of annual leave.

The leave can be used in two parts, one of which should be of at least ten consecutive days, while the rest of the leave can be taken until 30 June of the next year. The Committee recalls in this respect that, to be in conformity with the Charter, an employee must take at least two weeks of uninterrupted annual holiday during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement. In the light thereof, the Committee asks that the next report clarify whether the law satisfies the Charter's requirement. In the meantime it reserves its position on this issue.

The Committee furthermore asks whether workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time.

In addition to the abovementioned rules, the report indicates that different provisions apply to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), Republika Srprska (RS) and Brčko District (BD).

FBiH Labour Law, the Law on Employees in the Civil Service and the Law on Employees in the FBiH Public Administrative Bodies all provide for a paid annual leave of at least 18 working days, which is less than the period of 20 working days set by Article 2§3 of the Charter. According to the report, these texts are being revised with a view to bringing the situation in conformity with the Charter. In the meantime, however, the Committee finds that the situation was not in conformity with the Charter during the reference period. The Committee notes that a minimum period of leave of 18 days is also provided by the Law on Police Officers, it asks whether amendments are also under way in this respect.

An employee cannot waive the right to annual leave nor may it be denied to him, nor may any compensation be paid in lieu of unused annual leave (Article 45 of the Labour Law).

The annual leave can be divided in two parts, one of which should be taken without interruption for at least 12 days, while the remainder can be taken until 30 June next year (Article 44 of the Labour Code).

The Committee notes that, according to the report, the duration of the annual leave does not include the period of temporary incapacity for work (Article 43§2 of the Labour Law), it asks whether this means that, in case of injury or illness occurring before or during the annual leave, the worker can postpone the unused part of annual leave.

In **RS**, the minimum period of paid annual leave is 18 days (Article 57 of the Labour Code). According to the report, a new law is being drafted to provide for a minimum annual leave of four weeks. In the meantime, the Committee finds that the situation was not in conformity with the Charter during the reference period.

The Committee asks the next report to indicate:

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

In **BD**, the minimum period of paid annual leave is 18 days (Article 32 of the Labour Code, Article 113 of the Law on Police Officers). On this point, the Committee finds that the situation is not in conformity with the Charter. A minimum annual leave of 20 days is provided for civil servants and employees under the Law on Civil Service in the BD Public Administration Bodies. This Law also provides that the annual leave can be divided in two parts and that the period of temporary incapacity is not included in the annual leave.

The Committee asks the next report to indicate:

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

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations and to apply compensatory measures to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above, or because they have not yet been applied.

Elimination or reduction of risks

The Committee notes that Bosnia and Herzegovina (BiH) consists of two entities, the Republic Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), along with Brčko District (BD). The authority over occupational safety and health resides at the level of each of these three units and each of them has its own occupational safety and health regulations. There are no health and safety regulations or monitoring bodies at state level; the report indicates that, until new legislation is adopted, the law taken over from 1990 applies, although the report aknowledges that this law does not fully correspond to international standards in the area of occupational health and safety. The Committee notes from the ILO (Occupational health and safety country profile) that management and implementation of occupational health and safety systems on the national and local level is reduced to a declarative application of the existing rules. The report confirms that the enforcement of the 1990 Law faces difficulties and is outdated.

Legislation on occupational health and safety has only been adopted in RS (Official Gazette No. 1/08, 13/10) and, in 2013 (outside the reference period), in BD. The report does not provide details on their implementation in practice. The Committee recalls that the first part of Article 2§4 requires states to eliminate risks in inherently dangerous or unhealthy occupations. This implies in particular the states' obligation to introduce policies and measures aimed at improving health and safety at work and preventing accidents and threats to health, particularly by reducing to a minimum risk factors in the working environment. It asks that the next report provide comprehensive and updated information in this respect and it finds in the meantime that the requirement to eliminate or reduce occupational risks was not adequately satisfied during the reference period. Accordingly, it considers that the situation was not in conformity with Article 2§4 on this issue.

Measures in response to residual risks

As regards the compensation measures in response to residual risks, the Committee notes from the report that workers who are exposed to risks at work are entitled to additional days of annual leave in FBiH, RS and BD. In some cases, reduction of working hours is also provided for (for example, in FBiH, under Article 31 of the Labour Law, in RS under Article 41 of the Labour Law).

The Committee asks that the next report indicate, with reference to the relevant legislation, what the activities and risks concerned are and, in particular whether the sectors and occupations that are taken into account include those that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to

ionising radiation, extreme temperatures and noise. In the meantime it reserves its position on this issue.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

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

It notes that BiH Labour Law (Article 24) provides for a weekly rest period of at least 24 consecutive hours. According to the report, the usual practice in the institutions of Bosnia and Herzegovina is that the weekly rest period corresponds to the weekend (Saturday and Sunday).

The Committee recalls that, although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two–day rest period. It asks whether the law guarantees that the weekly rest may not be deferred more than 12 consecutive days. It furthermore asks whether the law guarantees that workers may not waive their right to weekly rest or have it replaced by financial compensation.

In addition to the abovementioned rules, the report indicates that different provisions apply to the sub-state levels of governance, namely Federation of Bosnia and Herzegovina (FBiH), Republika Srprska (RS) and Brčko District (BD).

FBiH Labour Law (Article 39) provides for a weekly rest period of at least 24 uninterrupted hours, usually on Sunday (except for employees working in shifts, who have another day in the week as weekly rest period).

RS Labour Law (Article 56) provides for a weekly rest period of at least 24 uninterrupted hours.

BD Labour Law (Article 31) provides for a weekly rest period. The Committee asks what its duration is, according to the relevant provisions. It notes that, as regards civil servants, Article 73 of the Law on Civil Service in the BD Public Administrative Bodies provides for at least 24 consecutive hours as weekly rest.

In **FBiH**, **RS** and **BD**, if an employee has to work on the day of his/her weekly rest, he/she is provided with another rest day within the period determined by the employer and the employee. The Committee asks whether the law provides for guarantees that the weekly rest may not be deferred more than 12 consecutive days. It also asks whether the law guarantees that workers may not waive their right to weekly rest or have it replaced by financial compensation.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 6 - Information on the employment contract

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

The Committee recalls that Article 2§6 guarantees the right of workers to written information when starting employment. This information must at least cover essential aspects of the employment relationship or contract, namely the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work

According to the report, Article 12 of the Labour Law in the Institutions of BiH provides for a mandatory content of employment contracts. Pursuant to this provision, an employment contract has to contain all data concerning the rights and obligations deriving from employment. Further, the Rulebook on the Internal Structure of the Ministry of Security of BiH, which governs labour relations in the institution, is available to all employees at the start of employment. As regards civil servants, the relevant legislation is available on the website of the Civil Service Agency of BiH. The Committee asks that the next report clarify whether all the abovementioned elements of information required by Article 2§6 of the Charter are provided in writing to workers when starting employment.

In addition to the abovementioned rules, the report indicates that different provisions apply to the sub-state levels of governance, namely Federation of Bosnia and Herzegovina (FBiH), Republika Srprska (RS) and Brčko District (BD).

The Committee finds that the situation in **FBiH** is in conformity with Article 2§6. It notes from the report that Article 21 of the Labour Law provides that the written contract of employment includes the details required by Article 2§6 of the Charter; when the employment contract is concluded orally, the employer must nevertheless provide the employee with a written statement containing all the elements of a written contract. If the employer fails to deliver a written statement of employment contract for a specified period of time, the contract will be considered an employment contract of indefinite duration unless otherwise provided by collective agreement or if the employer proves that the contract was concluded for a specified period of time. An employer who fails to deliver a written statement to an employee or concludes an employment contract not containing all statutory elements perpetrates a misdemeanour carrying a fine in an amount from BAM 1,000 to BAM 7,000 (€510-3571 at the rate of 31 December 2012). In addition, Article 31(2) of the Law on Civil Service provides for an obligation of any appointed civil servant to receive a written job description and description of the conditions of service prior to taking office.

The report states that **RS** Labour law does not bind the employer to inform the workers in writing of the essential aspects of the employment contract or relationship, but Article 68 obliges

employers to enable workers to familiarize themselves inter alia with the labour, health and safety rules and regulations, including the rights and obligations deriving from collective agreements and workers' work rules, within 30 days from the starting of employment. The Committee asks that the next report clarify whether all of the abovementioned elements of information required by Article 2§6 of the Charter are provided in writing to workers when starting employment.

Article 14 of the **BD** Labour Law provides the content of an employment contract, that must be in writing and contain information on workers' labour rights. An employment contract or a decision on appointment lists all details providing the employee with written information about his/her job, working hours, breaks, pay, annual leave and other rights arising from employment. The Committee asks that the next report clarify whether all the abovementioned elements of information required by Article 2§6 of the Charter are provided in writing to workers when starting employment.

Conclusion

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

Article 2 - Right to just conditions of work

Paragraph 7 - Night work

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

Article 22(4) of the Labour Law in the Institutions of BiH defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day. The Committee asks who is considered to be a night worker.

It furthermore recalls that Article 2§7 of the Charter requires States parties provide for compensatory measures for night workers, which must at least include the following:

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

In the light thereof, the Committee asks that the next report indicate whether and how these requirements are complied with.

In addition to the abovementioned rules, the report indicates that different provisions apply to the sub-state levels of governance, namely Federation of Bosnia and Herzegovina (FBiH), Republika Srprska (RS) and Brčko District (BD).

In **FBiH**, Article 34 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day (between 22.00 hours and 5.00 hours in the morning in the agricultural sector).The Committee asks who is considered to be a night worker.

The report indicates that neither the Labour Law or the Law on Safety and Health at Work require a medical examination prior to starting a night job or periodic examinations of employees in night jobs. However, a reform of the Labour Law in this respect is envisaged, aimed at introducing the employer's obligation to provide periodic medical examinations for employees in night jobs at least once every two years. The Committee finds that the situation was not in conformity with Article 2§7 of the Charter during the reference period. It takes note of the information provided on the envisaged reform and asks the next report to provide information on the new legislation and how it complies with the Article 2§7 requirements concerning medical examinations and possibilities of transfer to daytime work.

As regards consultation with workers' representatives, the Committee notes that, before ordering night work, the employer is obliged to consult the Employees' Council or the Trade Union, if a Council has not been established. Any decision on the introduction of night work taken without consultation with the Employees' Council is null and void according to Article 25 of the Law on Employees' Council.

In **RS**, Article 50 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day. Night work of employees aged under 18 is prohibited, except in certain exceptional circumstances (major break downs, force majeur, protection of interests of the RS) and it is in these cases considered to be the work performed between 20.00 hours and 6.00 hours in the morning (between 19.00 hours and 7.00 hours in the morning of the following day in industry). The Committee asks who is considered to be a night worker.

Article 15(1) of the Law on Safety and Health at Work provides that an employer is obliged to "provide required medical examinations of employees in accordance with this Law on the basis of a risk assessment and evaluation by occupational health services". The Committee asks that the next report clarify whether this means that medical examinations are only provided upon the employee's request and the agreement of the occupational health services. It notes the information provided on medical examination of police officers, but asks whether other categories of night workers are entitled to free medical assessments before starting night work and regularly thereafter and under what circumstances they can be transferred to daytime work.

The Committee also asks whether the law provides for continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

In **BD**, Article 27 of the Labour Law defines night work as the work performed in the period between 22.00 hours and 6.00 hours in the morning of the following day. The Committee asks who is considered to be a night worker.

The Law on Safety and Health at Work adopted in 2013 (outside the reference period) provides for the employer's obligation to make a risk assessment for each job and, on the basis of such risk assessment, a doctor prescribes preliminary and periodical medical examinations of workers. The Committee asks whether night work is systematically considered to require preliminary and periodical medical examinations or whether this is left to a case by case assessment. The Committee also asks whether the law provide for continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.

Conclusion

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

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

The Committee recalls that under Article 4§3 the right of women and men to equal pay for work of equal value must be expressly provided for in legislation (Conclusions XV-2 (2001), Slovak Republic).

The Committee takes note of the legislation on equal pay in each entity separately.

BiH

Article 12 of the Law on Gender Equality of BiH (Official Gazette of BiH 16/03, 102/09) provides that any discrimination on the basis of gender is prohibited. Discrimination is defined as, among others, failure to pay equal wages and other benefits for the same work or work of equal value.

A person believing he/she is discriminated against with different pay for the same work or work of equal value may file a complaint with the competent court.

Article 3 of the Law on Salaries and Benefits in BiH Institutions sets forth the principles for determination of salaries and other benefits for employees in the institutions of Bosnia and Herzegovina, where the basic principle is "equal pay for equal or similar work".

FBiH

Article 5 of the FBiH Labour Law has a general provision prohibiting any discrimination of employees on the grounds of gender or any other grounds in respect to recruitment, training, promotion, terms and conditions of employment, termination of the contract of employment or other matters arising out of labour relationship.

Article 6 of the General Collective Agreement determines that employers must provide equal pay for work of equal value, regardless of their ethnic, religious, regional, gender, political or union membership or affiliation of an employee.

Article 3 of the Law on Salaries and Benefits in FBiH Institutions (Official Gazette of FBiH No. 45/10, 111/12) provides that, while determining salaries and benefits of employees, the principle of "equal pay for the same job" is respected. According to this principle, the government employees who are in the same jobs or perform the same or similar duties are entitled to the same base salary by level of education.

RS

Article 90 of the RS Labour Law provides that a worker earns his/her salary in accordance with the collective agreement, employees' work rules and employment contract. Workers are guaranteed equal pay for the same work or work of equal value. The Law provides that the work of equal value means the work which requires the same level of education, working capacity, responsibility and physical and intellectual effort. Should an employee's rights be violated the employee is entitled to sue for damages.

BD

Article 4(1) of the BD Labour Law provides, that any person employed may not be discriminated against on grounds of sex and in case of violation of this provision, paragraph 3 of this Article

provides that any person whose rights have allegedly been violated can file a lawsuit with the competent court. If the claimant provides evidence showing the existence of any acts prohibited by this Law, the defendant is required to prove that such a distinction does not constitute discrimination.

Article 1(a) of the Law on Salaries of Employees of the BD Public Administrative Bodies provides, *inter alia*, that in determining the amount of salaries and other benefits of employees of the BD Public Administrative Bodies the principle of the same pay for the same or similar work is respected.

Guarantees of enforcement and judicial safeguards

BiH

An employee believing that he/she is a victim of discrimination or that it was discrimination that violated his/her right may seek the protection of the right in accordance with the Law on Prohibition of Discrimination BiH. Victims of discrimination are entitled to compensation under the Law on Contracts and Torts. A fine from BAM 1,000 to BAM 30,000 is imposed on a legal person for a failure to undertake appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender at work and in employment, as defined in Article 12 of the Law on Gender Equality of BiH.

BD

According to the report there have not been any lawsuits alleging gender discrimination and equal pay for equal work of men and women. Enforcement of the legal provisions above is under the oversight of the statutory authorities (Labour Inspectors, Administrative Inspectors and Internal Control). Effective legal remedies are provided for in case of violations of Article 4 of the BD Labour Law (Article 110(1)).

The Committee recalls that under Article 4§3 of the Charter domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court. Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation, that is, compensation which is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender (Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol). In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay (Conclusions XVI-2, Malta).

The Committee further recalls that when the dismissal is the consequence of a worker's complaint concerning equal wages, the employee should be able to file a claim for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts should have the competence to fix the amount of this compensation, not the legislator (Conclusions XIX-3, Germany).

The Committee asks whether the legislation in the entities meet these standards.

Methods of comparison and other measures

According to the report, in order to create conditions for reducing the wage gap between women and men, BiH has taken actions to eliminate the barriers that prevent equal participation of men and women in all pay grades. In this regard, the Agency for Gender Equality of BiH and Entity gender centres have been working on gender mainstreaming in 2008-2013.

The Committee notes from the report that the BiH statistical system does not collect data about the differences in pay between men and women, although some researchers suggest that there are differences because male workers predominantly occupy the highest-paying positions. According to the report, there are no cases of differences in pay for the same work or work of equal value and, according to the information in the possession of the Agency for Gender Equality of BiH, there have been no lawsuits for or complaints against violations of this right.

The 2012 RS Report on Inspections has no information about inspections and oversight when it comes to the difference in determined or paid salaries between men and women.

The Committee requests that the next report provide information on the unadjusted pay gap, that is, the difference between the average salary of men and women in all occupations. It further asks for information concerning the adjusted pay gap, that is, that between women and men performing equal work or work of equal value.

The Committee recalls that under Article 20 and 4§3 States must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;

- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

The Committee asks what measures are taken in this respect.

Conclusion

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

Article 5 - Right to organise

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

The report indicates that the right to freedom of association is guaranteed by the Constitution of Bosnia and Herzegovina (BiH) (Annex IV of Dayton Peace Agreement in its Article 2), as well as by the Constitution of the Federation of Bosnia and Herzegovina (FBiH) (Article 2), the Constitution of Republica Srpska (Article 1 and 10), and the Statute of Brcko District (BD). Also, more detailed provisions regarding trade unions and employers' organisations are provided by the labour laws adopted at the level of the entities and BD, as well as in the general and branch collective agreements.

Forming trade unions and employers' organisations.

As regards forming trade unions, the report indicates that in BiH trade unions, like other associations, can be founded by at least three physical persons who are nationals of BiH, foreigners who have residency in BiH or legal persons registered in BiH. In order for the association to fulfil the requirements for registration, the founding Assembly of the association needs to adopt the founding act, the statute of the association and to nominate the management in accordance with the law. According to Article 12 of the Law on Associations and Foundations of BiH, the Statute of an association shall include, *inter alia*, the name and the address of the association, its objectives and activities, the procedures of admission and dismissal of its members, the bodies of the association, quorum and rules of voting, and representation of the association.

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

The report further indicates that an organisation of employees and employers, as well as other associations may voluntarily stop performing their activities as trade unions on the basis of the decision of the Assembly of the association, and, exceptionally, in accordance with Article 51(b) of the Law on Associations and Foundations of BiH, the Court of BiH may prevent such organisations from performing their activities. The report indicates that the Court of BiH has not issued any order to prevent an association of employees or employers from its activity or to suspend or dismiss it. The Committee asks what criteria are applied in the decision-making of the Court. It wishes to receive information on any instance where the Court of BiH exercised its power to ban trade unions or employers' organisations in the next report.

The report indicates that all organisations have the right to found and join federations and confederations and to associate with international organisations of employees and employers. The report further illustrates the registration proceedings of the Association of Independent Trade Unions of BiH which submitted an application on 24 May 2002 for being registered into the Registry of Associations of BiH. Since the competent institutions failed to register the Association and following the rejection of the appeal by the Review Committee of the Council of Ministers of BiH, the Association of Independent Trade Unions of BiH filed an application with the Court of BiH. Based on the decision of the Court of BiH which admitted the Association's claim, on 5 May 2012 the Association was finally registered in the Registry of Associations and Foundations of BiH kept by the Ministry of Justice. The Committee takes note that the process of registration of the Association of Independent Trade Unions of BiH took 10 years. The report also illustrates that the Association of Employers of BiH was founded on 7 July 2004. Its

founders are: the Association of Employers of FBH, the Association of Employers of RS, the Association of Private Employers of RS and the Association of Employers of BD. On 3 September 2004 the Association of Employers of BiH registered into the Registry of Associations and Foundations in accordance with the Law on Associations and Foundations BiH.

The report indicates that in the FBiH the right to organise is guaranteed by the Labour Law of FBiH (Articles 9 to 11). Trade unions and employers' associations are founded without any prior approval of any government body. The report indicates that employees have the right to found a trade union on a voluntary basis and to join it under conditions that may be determined only in the Statute or rules of that trade union. The same rights are granted to employers when founding their associations. As regards the registration, the report only mentions that the registration of trade unions is done in accordance with the Law on Associations and Foundations (Official Gazette of FBiH No. 45/02).

The report indicates that according to the Labour Law of RS (Articles 6 to 9), employees have the right to form a trade union and join it in accordance with the Statute and rules of that trade union. Also, the employers shall be entitled at their own discretion to form employers' associations and to join them in accordance with the Statute and rules of the associations. Trade unions' and employers' associations are founded without any prior approval of any governmental body.

Regarding the registration of trade unions in RS, the report indicates that trade unions are entered into the registry of trade unions prescribed and kept by the ministry responsible for labour affairs. Trade unions and employers' organisations become legal entities in accordance with the Law on Associations and Foundations that regulates establishment, registration, internal organisation and dissolution of associations and foundations. According to Article 2(1) of this Law, an association is "any form of voluntary associating of more than one physical or legal person for the purpose of promotion or achievement of a common or general objective in accordance with the law and Constitution, without gaining of profit". According to the same Law, associations may be founded by at least three physical or legal persons, and a member of the association may be any physical or legal person who voluntarily joins the association in a manner prescribed by the Statute. The report indicates that according to the Labour Law, organisations of employees and employers do not become legal entities and the trade unions are registered with the responsible ministry following the entry into the court's registry instead. The Committee understands that registration in the court's registry precludes registration in the registry kept by the Ministry for Labour Affairs. It asks the Government to confirm this understanding and provide clear information on the different steps of the registration procedure.

As regards forming trade unions in the BD, the report briefly indicates that the Labour Law of BD (Article 5 – 8) guarantees the right to form trade unions. In addition, according to the Labour Law of BD, employees can set up employees' councils through which they may protect their labour rights. Pursuant to Article 93 of the Labour Law of BD, the employees' council may be founded with an employer that has at least 15 employees. The Committee requests more detailed information as regards the registration procedure of trade unions and employers' organisations.

Overall, the Committee notes that the report merely provides information with regard to the registration procedure of trade unions and employers' organisations itself. In order to assess the situation on this point in BiH, the entities and BD, the Committee asks that the next report clearly describe: a) the conditions that may have been laid down for registering a trade union or an employer organisation and the cases in which registration may be refused or cancelled; b)

which political or administrative authority takes decisions relating to registration; c) what criteria are applied in the decision-making process and what margin of discretion is left to the authority in question; d) what administrative and/or legal remedies are available for challenging decisions concerning registration. The Committee also wishes to be informed of the grounds for any refusals or cancellations of registration in practice and of any legal decisions on this matter. Furthermore, the Committee wishes to know whether registration fees are charged. In this regard, it recalls that if fees are required, they must be reasonable and calculated solely to cover strictly necessary administrative costs (Conclusions XV-1 (2001) XVI-1 (2003), United Kingdom). Pending the receipt of this information, the Committee decides to reserve its position on this point.

Freedom to join or not to join a trade union

The report indicates that in BiH, employees and employers have the right to found organisations of their choice and to join them, without any prior approval. Article 3 of the Labour Law in the Institutions of BiH provides that employees have discretion to organise a trade union and become its member, that is associate in more complex associations, select their representative bodies in accordance with the Law, Statute or rules of the trade union. Article 4 of the Labour Law in the Institutions of BiH provides that an employer cannot interfere in the establishment, functioning or management of the trade union or he cannot provide advocacy and assistance to the trade union aimed at controlling it; while Article 5 provides that the legal activity of the trade union cannot be permanently or temporarily banned.The report clearly indicates that the provisions of the Labour Law in the Institutions BiH do not provide for fines for a failure to respect the above mentioned rights. The report indicates that an employee cannot be put in a less favourable position due to membership or non-membership in a trade union.

In FBiH**,** the report indicates that joining or leaving a trade union is on a voluntary basis and employees or employers cannot be put into an unfavourable position due to their membership or non-membership in trade union or association. The Committee takes note from the report that Article 93 of the Labour Law stipulates that an employer may terminate the employment contract of the union representative during the course of performing his/her duty and for six months after the end of his/her mandate as trade union representative only with the prior approval of the FBiH Ministry of Labour. An employer who acts in contravention of Article 93 of the Labour Law is responsible to pay a fine of BAM 1 000 to BAM 7 000. The Committee asks that the next report provide statistics on the number of complaints of anti-union discrimination lodged with the competent authorities (labour inspectorate and judicial bodies), the results of any investigation or legal proceedings, and their average duration.

In this context, the Committee takes note that the ILO-CEACR expressed its concern with regard to the information provided by ITUC that: (i) dismissals of trade union officials are not infrequent, which in a country with an unemployment rate of almost 50% discourages many workers from joining a union; (ii) according to the Confederation of Trade Unions of Bosnia and Herzegovina (KSBiH), multinational companies especially in the commerce sector strongly oppose trade unions and workers are threatened with dismissal if they join a union; (iii) certain acts of anti-union discrimination and interference recently occurred in the tobacco sector (Direct Request (CEACR) adopted 2011, published 101st ILC session (2012). The Committee asks for the Government’s comments on the information obtained from the abovementioned source and asks that the next report provide for detailed information on any complaints relating to anti-union discrimination lodged with the competent bodies (labour inspectorate and/or judicial bodies) including the sanctions imposed and remedial measures taken.

The report indicates that in RS, employees or employers have discretion to decide whether they will leave the trade union or association. Article 78 of the Labour Law of BD prevents dismissal of a union representative for three months after the union representative completed his/her office. Article 111 of the amended Labour Law of BD ("Official Gazette of BD" No: 20/13) provides a fine of BAM 1 000 to 7 000 for the employer who fails to respect this right.

Concerning freedom to join or not to join a trade union, the Committee recalls that: a) workers must be free not only to join, but also not to join trade unions (Conclusions I (1969), Statement of Interpretation on Article 5); b) the freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom (see Confederation of Swedish Enterprise against Sweden, complaint No. 12/2002, decision on the merits of 15 May 2003); c) national law must guarantee the right of workers to join a trade union and provide effective sanctions and remedies for failure to respect this right; d) trade union members must be protected by law from any detrimental consequences that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities (Conclusions 2010, Republic of Moldova); e) where discrimination has occurred, national law must provide for adequate compensation proportionate to the damage suffered by the victim (Conclusions 2004, Bulgaria); f) no worker may be forced to join a trade union or to remain a union member. Any form of compulsory trade union membership imposed by national law is contrary to Article 5 (Conclusions III (1973), Statement of Interpretation on Article 5); g) to enforce respect for this freedom, national law must clearly prohibit any closed shop practices (whether pre- or post-entry) or security clauses (automatic deductions from the wages of all workers, whether or not union members, intended to finance a trade union present within the undertaking) (Conclusions VIII (1984), Statement of Interpretation on Article 5); h) consequently, the existence of priority clauses in collective agreements or authorised by law, which in practice give priority to members of certain trade unions in matters of recruitment and termination of employment, infringes the freedom guaranteed by Article 5 (Conclusions XIX-3 (2010), Iceland). Lastly, the Committee recalls that the same rules apply to employers' freedom of association.

The Committee asks that the next report provide detailed information on compliance with the abovementioned rules in BiH, the FBiH, RS and the BD.

Trade union activities

The report underlines that the associations of employees and employers in BiH have the right to adopt their statutes and rules, freely select their representatives, organise their management or activities or formulate their programmes. Article 4 of the Labour Law in the Institutions of BiH provides that an employer cannot interfere in the establishment, functioning or management of the trade union or provide advocacy and assistance to the trade union aimed at controlling it.

The report indicates that Article 10 of the Labour Law in FBiH prohibits mutual interference of employers and employees' organizations in the establishment, functioning or management. The Law especially prohibits employers' associations from providing assistance to trade unions with the aim of controlling them. Article 11 of the Labour Law expressly provides that the legal activity of the trade union or employers' association cannot be prohibited on a permanent or temporary basis.

Operations and conditions of operations of a trade union in accordance with its role and tasks are determined by the collective agreement. The General Collective Agreement stipulates that

an employer is responsible to provide for and ensure working the conditions and operations of a trade union in its employees' work rules in accordance with the General Collective Agreement and the collective agreement for the particular activity.

The Committee recalls that trade unions and employers' organisations must be largely independent where anything to do with their infrastructure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme (Conclusions XII-2 (1992) Germany). The Committee notes that the ILO-CEACR in a Direct Request (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012)) noted the Government's indication that the sanctions for acts of interference in the FBiH were inadequate and that during the legislative process of amending the Labour Act, supplementing the punitive provisions with regard to fines was being considered. The Committee requested the Government to inform it on any progress concerning the amendments of the Labour Law. The Committee notes from the Government's report that: (i) section 10(a) of the Labour Act of the FBiH prohibits mutual interference of employers' and workers' organisations in the establishment, operation or management of their organisations, including advocating or assisting a union in order to control it; and (ii) the draft of the new Labour Act prescribes fines if employers prevent the access of union representatives to the company premises, or fail to comply with the collective agreement. The Committee asks to be informed of any new developments regarding the draft of the new Labour Law on this aspect.

The Committee notes from the report that in RS, the Labour Law prevents employers and their associations, who act on their own behalf or through their proxy, from interfering with the organisation and work of their trade union or from controlling its work through providing material and other support to the trade union. Also, when acting on its own behalf or through its proxy, the trade union is prevented from interfering with the organisation, operation and management of the association of employers. Article 179 of the Labour Law provides that supervision of the application of this Law, regulations based on the Law, collective agreements and employees' work rules is carried out by the work inspectors. The report indicates that lawful activities of the trade unions and associations of employers may not be permanently or temporarily prohibited.

Concerning trade union activities, the Committee recalls that: unions and employers' organisations must have broad autonomy regarding their internal structure or functioning. They must be entitled to perform their activities effectively and devise a work programme (see Conclusions XII-2 (1992), Germany). Consequently, excessive State interference constitutes a violation of Article 5. Such autonomy has different facets: a) trade unions are entitled to choose their own members and representatives; b) severely restricting the grounds on which a trade union can lawfully discipline members constitutes an unjustified incursion into the autonomy of trade unions inherent in Article 5 (Conclusions XVII (2004), United Kingdom); c) union leaders must have a right of access to the workplace and union members must be able to hold meetings there within limits linked to the interests of the employer and business needs (Conclusions XV-1 (2000), France).

The Committee asks that the next report provide detailed information on the implementation of the above principles in BiH, in each of the entities (FBiH and RS) and in the BD.

Representativeness

As regards representativeness, the report indicates that according to Article 92 of the Labour Law in the Institutions of BiH, a representative trade union is a trade union registered at the level of BiH or two or more trade unions who act together and whose majority members are employees of one employer in the headquarters of the employer. The representative status of a

trade union is confirmed by the Council of Ministers following a proposal of the Ministry of Justice of BiH and an appeal may be filed against the rejection or confirmation of the representative trade union with the Court of BiH (Article 93 of the Labour Law in the Institutions of BiH). The report informs that the representative trade union of employees has the right to:

- be consulted prior to adoption of a bylaw relating to employment and salaries of its members;
- monitor if the employer acts in accordance with this law or other regulations relating to work relationships;
- report any violation of regulations to the administrative inspectorate;
- assist and represent employees upon their request in case of violation of their rights or disciplinary proceedings or action for damages.

The Committee understands that all of the abovementioned attributes belong to the representative trade unions only, while non-representative trade unions do not enjoy any of the abovementioned rights. It asks for confirmation of this and, if applicable, wishes to receive information on any other rights and procedures from which "non-representative" trade unions are excluded. In this respect, the Committee recalls that areas of activity restricted to representative unions should not include key trade union prerogatives. In this context, a trade union that is not representative should enjoy certain prerogatives, for example, they may approach the authorities in the individual interest of an employee, they may assist an employee who is required to justify his or her action to the administrative authority; they may display notices on the premises of services and they receive documentation of a general nature concerning the management of the staff they represent (Conclusions XV-1 (2000), Belgium). Therefore, in order to assess the conformity of the situation with Article 5 of the Charter, the Committee asks what the rights of the non-representative trade unions are, and if they enjoy key trade union prerogatives in practice.

As regards employers' associations, the report does not indicate any representativeness criteria. The Committee asks that the next report provide detailed information on the legal framework governing the representativeness of employers' organisations and its implementation.

The report indicates that the current Labour Law of the FBiH does not define representativeness criteria for trade unions or employers' organisations. The Committee asks to be informed on any new developments regarding the establishment of such representativeness criteria.

The Committee notes from Eironline (Bosnia and Herzegovina: Industrial Relations Profile) that employee participation in decision-making in the workplace is mainly confined to works councils, as well as participation through trade unions in tripartite partnership with employers and entity governments. It also notes that the ILO-CEACR requested that the Government take all the necessary steps to amend the following provisions which privilege work councils relative to trade unions and place the latter in a secondary and subsidiary position vis-à-vis works councils, thus involving the risk of weakening the institutional position of trade unions: (i) section 98 of the Labour Law, as amended by section 41 of the Decree of 15 August 2000, which enables the employer to organize collective dismissals in consultation with all trade unions representing 10 per cent of workers, only if there is no works council in the enterprise; and (ii) section 108(2) of the Labour Law, which provides that if no works council has been created in the establishment, the trade union shall have the same powers and obligations as the works council in accordance with the law (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bosnia and Herzegovina (Ratification 1993). The Committee invites the Government to comment on the information obtained from the abovementioned sources.

The report indicates that Articles 142-157 of the Labour Law of RS provide rules in relation to the representativeness of the trade unions and employers' organisations. The report briefly adds that the representativeness criteria are clear, legally defined and open for court examination. Once determined, representativeness may be examined after one year if requirements are fulfilled or the critera are changed. The Committee wishes to receive detailed information on the provisions establishing the criteria based on which representativeness is determined (such as percentages, minimum number of employees) and asks whether the social partners have ever questioned them. The Committee asks that the next report provide information on the procedure and the mandate of the administrative body in charge of establishing representativeness of trade unions and employers' associations, and if the decision on representativeness is open to judicial review. The Committee recalls that criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review (Conclusions XV-1 (2000) France).

Article 156 of the Labour Law provides that the representative trade union or association of employers participates in the process of collective bargaining, social dialogue and consultations with partners at the level of its organisation and activities. Therefore in order to assess the conformity of the situation with Article 5 of the Charter, the Committee asks what the rights granted to the non-representative trade unions are, and if they enjoy key trade union prerogatives in practice.

The Committee notes from the report that the main forms of workers' representation in BD are the trade unions and the employees' councils. The latter may be founded in undertakings with at least 15 employees. The report does not indicate any representativeness criteria for trade unions or employers' organisations. The Committee asks what the prerogatives of both trade unions and employees' councils are. It also asks whether both forms of representation may coexist in undertakings with at least 15 employees, and if this is not the case, which form of employees' representation has priority/more privileges in practice.

Personal scope

The report indicates that in BiH there is no special legal provision with regard to the right to found organisations of certain categories of employees, civil servants and employees of the public sector. The laws applied in the Ministry of Security of BiH do not restrict the right to organise of employees with the purpose of protecting their economic and social interests.

The Labour Law in the Institutions of BiH, which is applied to employees and civil servants, provides for the right of employees to conclude a collective agreement (Article 90), to organise a representative trade union (Article 92), and to go on strike (Article 95). Pursuant to Article 39(f), police officers have the right to found and become members of a trade union or professional association in accordance with the law. The Law on Civil Service in the Institutions of BiH provides for the right of civil servants to found or become members of a trade union or professional association and the right to strike in accordance with the law (Article 15(1)(h) and (i)).

In FBiH, Articles 57 to 69 of the Collective agreement for Officers in Administration and Judiciary Authorities in FBiH (Official Gazette FBiH, No. 23/00, 50/00) stipulate the right to organise and unhindered work and performance of trade union activities. Signatories of this agreement assume responsibility to act in accordance with the Constitution, laws, ILO conventions, general collective agreement and this agreement. The head of the administration authority assumes responsibility not to prevent in any way the operations of the trade union, organising of trade unions and right of employees to join the trade union by his/her activities. The head of the

authority is obliged to grant a leave of absence to the union representative or any other trade union representative for performing trade union activities and participation in the trade union meetings, congresses, conferences, seminars, schools and other courses of training in the country and abroad.

The report further mentions that police trade unions at FBiH and cantonal level are founded based on the Labour Law of FBiH, Law on Citizens' Associations and Law on Civil Service of FBiH. According to collective agreements for employees in FBiH and cantonal ministries of the interior, the Minister is obliged to refrain from any act or activity that could hinder the operation and organisation of the trade union and the right of employees to join the trade union. The Cantonal Board of the Police Trade Union of Tuzla Canton Ministry of the Interior has 23 trade union branches within the territory of the Canton. Out of a total of 1,866 employees in the Tuzla Canton Ministry of the Interior, 1,730 members have joined the trade union.

The report indicates that in BD**,** Article 7(1)(f) of the Law on Civil Service in the BD Public Administrative Bodies ("Official Gazette BD" No: 28/06, 29/06, 19/07, 2/08, 44/08, 25/09, 26/09, 4/13) provides for the right of civil servants and employees to organise in trade unions. Article 44(1) of the Law on Police Officers BD ("Official Gazette BD" No. 28/06, 19/07, 2/08, 44/08, 25/09, 26/09, 4/13) provides for the right of police officers to found and join a trade union or professional association in accordance with law. The report illustrates that the Police officers of BD are members of the Women Police Officers Network Association, the trade union of BD Police (about 150 employees of the Police are members of the trade union) and the IPA (International Police Association).

The Committee recalls that, under Article 5, States Parties are entitled to restrict or withdraw the right to organise in the case of members of the armed forces (see European Federation of Employees in Public Services v. France, Italy and Portugal, complaints nos. 2/1999, 4/1999 and 5/1999, decisions on the merits of 4 December 2000). The Committee nonetheless verifies that bodies defined by a State party's domestic law as belonging to the armed forces indeed perform military tasks (Conclusions XVIII-1, Poland).

In the case of the police, the Committee has stated that it is clear from the second sentence of Article 5 and the preparatory work concerning this provision that, while a State may be permitted to limit the freedom of organisation of members of the police, it is not justified in depriving them of all the guarantees provided for in the Article (Conclusions I (1969), Statement of Interpretation on Article 5). In other words, police officers must be free to exercise essential trade union prerogatives, namely the right to negotiate their conditions of service and remuneration and the right of assembly (European Council of Police Trade Unions, complaint no. 11/2001, decision on the merits of 22 May 2002). In addition, compulsory membership of organisations is incompatible with Article 5 (Conclusions I (1969), Statement of Interpretation on Article 5).

At a more general level, the Committee reiterates that all classes of employees and workers, including public servants, subject to the exceptions mentioned above, are fully entitled to the right to organise in accordance with the Charter (Conclusions I (1969), Statement of Interpretation on Article 5). The Committee also reiterates that, apart from the restrictions permissible in respect of police officers and members of the armed forces, any restriction of a right recognised in the Charter must respect the conditions laid down in Article G. That article provides that a restriction must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the achievement of that aim. In the case under consideration here, this means that there must be a reasonable relationship of proportionality between the restrictions imposed on freedom to organise and the legitimate aim of protecting the rights and

freedoms of others. The Committee wishes to know whether the right to form and join a trade union is also guaranteed for domestic workers, pensioners, the unemployed and more generally, any person enjoying rights obtained through work.

The Committee requests confirmation that the relevant legislation and practice of BiH, each of the entities and the BD, respects all these rules.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The Committee notes that under Article 6§1 the report provides information mostly on collective bargaining with a view to conclude collective agreements, aspects which will be analysed in the conclusion on Article 6§2**.**

With regard to joint consultation, the report merely provides information about the "social councils". In this sense, the report indicates that at the state level of Bosnia and Herzegovina (BiH), an Economic and Social Council has not been established yet due to the disagreement between the social partners and to failure to achieve representativeness of social partners to form the Council.

The report indicates that at the level of entities, Economic and Social Councils were formed as advisory bodies to the Governments of the Federation of Bosnia and Herzegovina (FBiH) and of Republica Srpska (RS), where the government, trade unions and employers have a tripartite dialogue in order to resolve all disputes and to avoid protests or strikes. The goal of the Economic and Social Council is to use the tripartite dialogue as a basis for social dialogue, to resolve and to decide on economic, social and development policy issues, the promotion and protection of economic and social rights and interests of workers and employers, and the development of the system of collective bargaining and collective agreement and application.

The report adds that in the FBiH, the Labour Law (Article 130) provides for the establishment of the Economic and Social Council of the Federation and Cantons. The Economic and Social Council of the Federation was formed on 27 August 2002 on the basis of the Agreement Establishing the Economic and Social Council ("Official Gazette of FBiH 47/02, 42/03, 8/08, 13/08, 51/08) and it started work in 2003. The Economic and Social Council encourages, *inter alia*, collective bargaining and the conclusion of collective agreements, provides opinions and suggestions on the content of collective agreements, monitors, reviews and comments on the regulations pertaining to labour and employment. The report points out that the Economic and Social Council has gained great importance over time, a fact evidenced by the opinions issued by the Council on various laws and other pieces of legislation which are discussed at meetings of the Council prior to be sent to the Parliament.

The report indicates that in RS, mutual consultations of employees and employers are not regulated by the Labour Law. The Committee notes from Eurofound (Bosnia and Herzegovina: Industrial Relations Profile) that the position and role of economic and social councils are regulated by the Law on Economic and Social Council. The Committee requests information on the structure, mandate and functioning of such economic and social councils in RS.

The Committee notes that no information as regards joint consultation in the Brčko District (BD) is provided in the report. The Committee asks whether joint consultation between workers and employers is conducted in the BD.

The Committee recalls that within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them (Conclusions I (1969), Statement of Interpretation on Article 6§1). Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing (Conclusions V (1977), Statement of Interpretation on Article 6§1). If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it (*Centrale générale*

des services publics (CGSP) v. Belgium, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41). The Committee asks whether bipartite consultation is implemented in Bosnia and Herzegovina at the state level and at the level of entities. Should this not be the case, it asks that the next report explain the reasons of this situation and provide information about the steps taken to encourage bipartite consultation at national, entities and local level.

The Committee points out that consultation must cover all matters of mutual interest (Conclusions I (1969), Statement of Interpretation on Article 6§1), particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training etc), economic problems and social mattters (social insurance, social welfare, etc.). The Committee notes from the report that consultation in BiH is usually conducted with the purpose of concluding collective agreements. It thus requests that the next report provide information on joint consultation between employees and employers outside the framework of consultation with a view of concluding collective agreements, on all the matters of mutual interest mentioned above. The Committee also asks whether issues of interpretation of collective agreements are dealt with in the framework of joint consultation or through other specific mechanisms

The Committee notes that consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service) (Conclusions III, Denmark, Germany, Norway, Sweden; *Centrale générale des services publics* (CGSP) v. Belgium, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41). The Committee asks for information on the levels covered by joint consultation. It also requests information on the joint consultation and the existence, structure and functioning of consultative bodies in the public sector.

The Committee recalls that consultation at the enterprise level is dealt with under Article 6§1 and Article 21 of the Charter (right to information and consultation). For states which have ratified both provisions, like Bosnia and Herzegovina, consultation at the enterprise level is examined under Article 21 (Conclusions 2004, Ireland).

The Committee points out that it is open to States Parties to require trade unions to meet an obligation of representativeness subject to certain general conditions, as set out in the conclusion relating to Article 5 of the Charter. With respect to Article 6§1, the Committee notes that any requirement of representativeness must not excessively limit the possibility for trade unions to participate effectively in collective bargaining. In order to be in conformity with Article 6§1, the criteria of representativeness should be prescribed by law, be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal (Conclusions 2006, Albania). Therefore, the Committtee asks whether participation of trade unions in consultation procedures is subject to a requirement of representativeness in BiH and at the level of entities.

Should the next report not provide the requested information, there will be nothing to establish that the situation is in conformity with Article 6§1 of the Charter.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

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

The report provides information on the legal framework applicable to collective bargaining in Bosnia Herzegovina (BiH) at the state level, in each of the entities – Federation of Bosnia and Herzegovina (FBiH) and Republica Srpska (RS) – and the Brcko District (BD).

The report indicates that the Labour Law in the Institutions of BiH (Article 90) provides that a collective agreement may be concluded for a specific activity of one or more employers or associations of employers. During the negotiations, employees may be represented by one or more trade unions and employers may be represented by one or more employers or associations of employers (Article 90(1)). If collective bargaining and the conclusion of a collective agreement involve more than one trade union or more than one employer, the conclusion of the collective agreement may be negotiated by only those trade unions or employers that have the power of attorney from each individual trade union or employer, in accordance with their articles of incorporation. The report indicates that a collective agreement has not been signed at the State level and it is being drafted involving representatives of the Independent Trade Union of Civil Servants and Police Officers Employed in BiH Institutions, judicial authorities and public institutions of BiH.

Article 91 of the Law provides that a collective agreement governs the rights and obligations of the parties having concluded the agreement. The same Article provides that a collective agreement governs the rules of procedure of collective bargaining and that a collective agreement is binding on the parties which originally concluded the agreement or signed it subsequently. A collective agreement is to be submitted to the Council of Ministers and the Administrative Inspectorate.

The Committee notes from an ILO-CEACR direct request (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Bosnia and Herzegovina (Ratification: 1993)) that in several comments the ILO-CEACR requested that the Government indicate any measures taken or contemplated in order to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers' and workers' organisations, including at the level of the Republic as a whole. The Committee asks the Government to indicate any steps or measures taken in order to promote machinery for voluntary negotiations at the state level.

The report indicates that the Labour Law of the FBiH (Articles 108-121) provides the right of employees and employers to bargain collectively and conclude collective agreements. A collective agreement may be concluded at the Federation level, at the cantonal level, for an individual industry, for one or more employers. The FBiH Labour Law (Official Gazette of FBiH, No. 43/99, 32/00, 29/03) does not provide criteria of representativeness for trade unions and employers' associations. With regard to this, the report indicates that the draft of a new Labour Law of FBiH, which sets the criteria of representativeness for trade unions and employers' organisations as parties to the collective bargaining, is under deliberation in the Parliament. The Committee asks to be informed in the next report of any new developments as regards the new Labour Law.

The report further indicates that collective agreements are concluded in writing and for a definite or indefinite period. If the duration is not specified, the collective agreement is considered to be concluded for an indefinite period. The report adds that a collective agreement can be

terminated in a manner and under conditions specified in the collective agreement itself. All employees in the FBiH are covered by the general collective agreement, while employees in certain branches and activities are covered by branch-level collective agreements. There are also collective agreements concluded at the canton level in FBiH. The report indicates that there are very few collective agreements concluded at the company level. The report states that according to the published data in the Registry of FBiH Official Gazettes, in addition to the General collective agreement for the territory of FBiH (Official Gazette FBiH No. 54/05, 62/08), there are 21 collective agreements concluded in various areas of activity such as primary education, mining, electricity supply and telecomunications, including collective agreements in individual public enterprises.

As for RS, the report merely indicates that the Labour Law (Articles 158-169) contain references to the following aspects related to collective agreements: content of collective agreements; mandatory application of the collective agreements; territorial and personal validity of collective agreements; forms and duration of collective agreements; publication of collective agreements and resolution of disputes that arose in connection with conclusion and application of collective agreements.

The Committee takes note of the information provided by another direct request (Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Bosnia and Herzegovina (Ratification: 1993)), in which the ILO-CEACR observed that section 161 of the Labour Law of RS provides that if a collective agreement is negotiated at the level of the whole Republic, the Government will be a party to it along with the trade union and the employers' association. The ILO-CEACR also pointed out that it expects that the future Labour Law of RS will fully recognize the bipartite nature of collective bargaining, including at the national and sectoral levels, and will ensure that mediation of the labour authorities will only be possible at the request of the parties. The Committee invites the Government to comment on this statement and to provide information on any developments with regard to the amendment of the Labour Law.

The report illustrates some figures regarding the collective agreements concluded in RS: (i) a general collective agreement (RS Official Gazette No. 40/10), (ii) 16 branch collective agreements (in areas such as health, the energy industry, agriculture and the food industry) and (iii) 49 individual collective agreements which are not published in the RS Official Gazette. The report underlines that five out of 16 branch collective agreements were concluded in the public sector. Ten out of 49 individual collective agreements relate to the public sector.

The report indicates that there is no general agreement concluded for the territory of BD. The BD Labour Law (Articles 96-98) provides rules for collective agreements. The only restriction under Article 97 is that a collective agreement cannot contain a lower level of rights than those provided by the Labour Law. The report does not provide any data as regards the number of collective agreements concluded in BD. The Committee notes that the ILO-CEACR has noted that in the BD, action has been taken to promote the development and use of procedures for voluntary negotiation between employers' and workers' organisations and working groups were formed in this regard (Direct Request (CEACR)- adopted 2011, published 101st ILC session (2012), Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Bosnia and Herzegovina (Ratification: 1993)).

Overall, the Committee asks the Government to indicate what measures it has taken or planned in order to promote the machinery for voluntary negotiations at the level of state BiH, in the entities (FBiH and RS) and in the BD. The Committee recalls that if necessary and useful, in particular if the spontaneous development of collective bargaining is not sufficient, positive

measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary (Conclusions I (1969), Statement of Interpretation on Article 6§2**).**

The Committee invites the Government to provide up-to-date information in the next report on the number of collective agreements concluded at all levels (national/entity, branch/sectoral, company) and on the number of employees covered by the collective agreements. The Committee notes that, according to statistics from the European Industrial Relations Observatory (Eurofound, Bosnia and Herzegovina: Industrial Relations Profile), 100% of the workforce are covered by the general collective agreement and approximately 50% by branch collective agreements (in FBiH and RS).

The Committee recalls that, to the extent to which, if at all, ordinary collective bargaining applies to public officials, it may be subject to regulations determined by law. Nevertheless, such officials always retain the right to participate in any processes that are directly relevant to the determination of the procedures applicable to them (Conclusions III (1973), Germany, and European Confederation of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, decision on the merits of 21 May 2002, §58). Therefore, the Committee requests detailed and up-to-date information on the right to bargain collectively of all public servants and its implementation in practice.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 3 - Conciliation and arbitration

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

The report indicates that the Labour Law in the Institutions of Bosnia and Herzegovina (BiH) provides the possibility for parties to agree to refer a labour dispute to arbitration. The report indicates that special regulations govern the rules of procedure of arbitration, the composition of the panel of arbitrators, as well as other issues of importance to the formation and operation of the panel of arbitrators. The Committee asks that the next report provide details of the nature and conditions of arbitration procedures dealing with collective labour disputes.

The report indicates that in the Federation of Bosnia and Herzegovina (FBiH**)** conciliation and arbitration are provided as means of resolution of a collective labour dispute. According to the Labour Law of the FBiH, if the parties do not agree on the conflict, a conciliation procedure is carried out before a conciliation panel. A conciliation panel can be formed for the Federation territory or for a canton. The Conciliation Panel of the Federation is composed of three members: a representative of the employer, a representative of the trade union and a representative elected by the parties in dispute from the list determined by the Federation Minister of Labour. The Conciliation Panel adopts its proposal for the settlement of the dispute which the parties may accept or reject. If the parties accept the proposal of the conciliation panel, the proposal has legal force and effect of a collective agreement. If the conciliation panel cannot agree on the proposed resolution of the dispute or if the parties do not accept the proposal, the conciliation is deemed to have failed. The report indicates that in practice the social partners rarely resort to peaceful resolution of disputes.

The Committee notes from Eurofound (Bosnia and Herzegovina: Industrial Relations Profile) that the conciliation process is very rarely used in practice. The Committee recalls that under Article 6§3 of the Charter the State Parties undertake "to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes". In this context, the Committee asks for information on the measures and steps taken by the Government to promote the use of conciliation and arbitration proceedings.

The report indicates that collective labour disputes on the application, amendment or termination of a collective agreement or other similar disputes that could not be resolved through negotiations by signatories of the agreement, may be resolved before an arbitration panel. The report underlines that, unlike conciliation where the parties may accept or reject the proposal of the conciliation panel, in arbitration, if the parties agree to refer a collective labour dispute to arbitration, an arbitration award is final and binding. The Committee understands that recourse to arbitration is not compulsory and both parties need to agree to refer the dispute to arbitration. It asks the Government to confirm this understanding.

The report does not indicate any time frames as regards the dispute resolution proceedings. The Committtee asks for detailed information on the time frames, if any, of the conciliation and arbitration procedures.

As regards the resolution of collective disputes in the public sector, the report indicates that Articles 44 – 49 of the Collective Agreement for Employees of Public Administrative Bodies and Judicial Authorities of FBiH ("Official Gazette" 23/00, 50/00) provide that disputes that could not be settled through negotiations are settled before an arbitration panel. The report also mentions that Article 63 of the Law on Civil Service of FBiH ("Official Gazette" 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 4/12) requires an appointment of a mediator in the civil service who works with the

head of an institution when making a decision on rights and duties of civil servants and employees deriving from employment or related to employment. His/her task should be to contribute to objective decision-making and that each case is settled in a fair and lawful way.

The report indicates that the Law on Labour Disputes of Republica Srpska (RS) ("RS Official Gazette" 71/09, 100/11) regulates: the manner and the procedure of peaceful settlement of individual and collective labour disputes; the selection, the rights and duties of conciliators and arbitrators; the method of establishing a body for peaceful settlement of labour disputes; and other issues of importance for the peaceful settlement of labour disputes. A "collective labour dispute" is defined by this Law as a dispute relating to the conclusion, amendment, cancellation or application of a collective agreement, on the exercise of the right to organise, to strike and other collective rights. The Law provides for mediation and arbitration as means of solving collective labour disputes. The parties to a labour dispute select the conciliators and arbitrators from the List of Conciliators and Arbitrators nominated in order to achieve peaceful settlement of labour disputes. The report briefly mentions that the RS Government has established the Agency for Peaceful Settlement of Labour Disputes. The Committee asks that the next report provide detailed information on the nature, time frames and conditions of conciliation and arbitration procedures in RS as regulated by the Law on Labour Disputes of RS.

The report illustrates that the Agency for Peaceful Settlement of Labour Disputes of RS started work on 1 June 2010. In the period between 1 June 2010 and 31 December 2010, it received 74 cases of which 69 cases involved individual labour disputes and 5 cases involved collective labour disputes. From 1 January 2011 to 31 December 2011, the Agency received 202 cases of which 193 cases involved individual labour disputes and 9 cases involved collective labour disputes. The report indicates that the collective disputes that were resolved dealt with work stoppages and strikes. The Committee asks the Government to provide examples of cases dealing with collective labour disputes and their outcomes in the next report.

As regards Brčko District (BD), the report indicates that Articles 99 – 103 of the BD Labour Law ("Official Gazette of BD" 19/06, 19/07, 25/08/) provides for conciliation and arbitration. The report describes that for settling disputes, a conciliation panel is appointed, whose decision may be accepted by the parties and consequently be binding on both parties. If the parties do not accept the decision of the conciliation panel, the dispute will be brought before the competent court for adjudication (Articles 99-101 BD Labour Law). Moreover, a collective labour dispute can be solved through arbitration and a panel of arbitrators is appointed for this purpose(Articles 102-103 BD Labour Law). The report indicates that the arbitration procedure is regulated in a collective agreement, which has not been signed in BD.

The Committee reiterates that under Article 6§3, conciliation, mediation and/or arbitration procedures must be introduced to facilitate the settlement of collective labour disputes. They may be established by legislation, collective agreements or industrial practice (Conclusions I (1969), Statement of Interpretation on Article 6§3). Such procedures must also exist to settle disputes likely to arise between the public administration and its officials (Conclusions III (1973), Denmark, Germany, Norway, Sweden, Article 6§1). Article 6§3 applies to conflicts of interests, which are generally disputes concerning the conclusion of a collective agreement or the amendment of the provisions of a collective agreement. It confers no rights in respect of legal disputes (generally disputes concerning the application or interpretation of a collective agreement) or those of a political nature (Conclusions V (1977), Statement of Interpretation on Article 6§3, and Conclusions V (1977), Italy). All systems of arbitration must be independent and the outcome of arbitration must not be predetermined by legislative criteria (Conclusions XIV-1 (1998), Iceland). Any form of compulsory recourse to arbitration constitutes a violation of Article 6§3, when domestic law allows one of the parties to defer the dispute to arbitration without the

consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both (Conclusions 2006, Portugal).

The Committee asks for detailed information in the next report on the implementation of the principles outlined above.

Conclusion

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

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

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

The report indicates that the right to strike is guaranteed by the constitutions, laws and collective agreements in Bosnia and Herzegovina (BiH), in the two entities – the Federation of Bosnia and Herzegovina (FBiH) and Republica Srpska (RS) – and in Brčko District (BD). The report mentions that at the state level, a Law on Strike is being drafted with the involvement of the Independent Trade Union of Civil Servants and Police Officers Employed in BiH Institutions, judicial authorities and public institutions of BiH. The Committee asks to be informed on the developments with regard to this draft law.

Collective action: definition and permitted objectives

The report indicates that in BiH a trade union has the right to call a strike and organise a strike action for the protection and exercise of economic and social rights and interests of its members. The workers freely decide on their participation in the strike.

In the FBiH, the right to strike is guaranteed by Article 128 of the Labour Law of the FBiH, which provides that a trade union is entitled to call a strike and conduct it with the purpose of protecting and promoting economic and social rights and interests of its members. The report indicates that the strike may be organized in accordance with the Law on Strike, the rules on strike of the trade union and the collective agreement.

The report states that in RS, a strike is defined by the Law on Strike as an "organised work stoppage in which workers can obtain protection of professional, economic and social rights". The strike may be organised in an industry branch/activity or as a general strike for the RS territory. The Law provides that the workers are free to decide on their participation in a strike and employers cannot prevent workers from calling or participating in a strike.

In BD, the right to strike of employees in enterprises or public administrative bodies of BD is regulated by the Law on Strike (BD Official Gazette, no. 3/06). The Law provides the right of employees to exercise their constitutional right to strike, with a view to protect their economic and social rights. The report illustrates that in the period 2008-2012, the Labour Inspectors carried out one inspection on the enforcement of the Law on Strike and on the organisation of a strike by a trade union.

Entitlement to call a collective action

The report indicates that at the state level of BiH, the Labour Law in the Institutions of BiH (Article 95) provides that every representative trade union has the right to call a strike if the following conditions are fulfilled:

- the disputed issue has been notified to the employer;
- the 15 day deadline, starting from the day the issue was addressed to the employer, has expired;
- until that day there has been no resolution of the disputed issue;
- the employer has been given a written notice on the start of the strike, at least 48 hours in advance.

Article 96 of the same Law provides that an employee may not participate in a strike if:

- an agreement has been signed with the employee to resolve the dispute through arbitration;
- the employee is working in core services or maintenance services.

In this context, the Committee notes that only the representative trade unions have the right to call a strike. The Committee recalls that the right to call a strike may be reserved to trade unions exclusively but only under the condition that forming a trade union is not subject to excessive formalities (Conclusions 2004, Sweden). On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions XV-1 (2000), France). The Committee asks that the next report indicate what criteria of representativeness are applicable and how these are implemented in practice when calling a strike.

The report indicates that the employer identifies his core services and maintenance services after consultation with the representative union. The Committee asks for detailed information on how this is implemented into practice, in particular on the extent to which the trade union is involved in determining the core and maintenance services of an employer.

The Committee notes that in the FBiH, the Labour Law provides the following requirements for a strike to be lawful:

- The trade union that calls the strike must announce the strike to the employer in writing at least ten days before the commencement of the strike, indicating the reasons, the place, date and time of the strike. If the trade union does not announce a strike to the employer or fails to announce it ten days before the commencement of the strike, the employer may, in accordance with Article 10 of the Law on Strike ("Official Gazette" 14/00), seek a ruling from the competent court to ban the strike as unlawful.
- The conciliation proceedings must have been completed.

In this context, the Committee recalls that the requirement to notify the duration of the strike to the employer prior to strike action is contrary to Article 6§4 of the Charter, even for essential public services (Conclusions 2006, Italy). The Committee asks if in practice strike announcements to employers include the requirement concerning the duration of the strike.

Moreover, the Committee concluded that the exhaustion of conciliation/mediation procedures requirement before a strike is in conformity with Article 6§4 – taking into account Article 6§3 – as long as such procedures are not so slow that the deterrent effect of a strike is affected (Conclusions XVII-1 (2004), Czech Republic). The Committee refers to its conclusion on Article 6§3, where it has sought information about the time frames of the conciliation procedures. Pending receipt of this information it reserves its position on this point.

Specific restrictions to the right to strike and procedural requirements

The report indicates that in the FBiH, the Law on Strike (Article 5) provides that the trade union and the employer have to reach an agreement on which activities cannot be interrupted during the strike. The agreement contains stipulations on jobs and the number of employees required to work during the strike in order to ensure minimum services. Any strike commenced without prior agreement on the jobs that cannot be interrupted would be inadmissible. The Committee asks which activities cannot be interrupted during the strike in the FBiH.

In RS, the Law on Strike (Article 11) provides that in the activities of general interest or activities where the stoppage of work could endanger human life or health or inflict large-scale damage due to the nature of work, the right of workers to strike can be exercised if special requirements

are fulfilled. The Law lists the following activities: electricity and water supply; rail transport; air traffic and air traffic control; public radio and television services; postal services; utilities; fire protection; health and veterinary care and (child) social care. The report also indicates that activities of general interest under this Law are the activities related to the functioning of public administration and security of the RS in accordance with the law, as well as activities necessary for the fulfilment of obligations arising from international agreements in the services listed above. The Committee notes that workers performing tasks in the abovementioned services may go on strike, provided that the minimum service is performed to ensure the safety of people and property and this also applies when they are indispensable for the life and work of citizens

The Committee notes that in a Direct Request, the ILO-CEACR noted that that the 2008 Act on Strikes of the RS authorises the employer, after having requested the views of the trade union, to determine the extent and the modalities of the minimum service, taking into account the nature of the activity, the risk for the life and health of persons, and other important circumstances affecting the needs of citizens and enterprises. (section 12(2) and (3)). The ILO – CEACR noted the Government's comments stipulating that: (i) the new law provides for the participation of trade unions in the process of determining the minimum service in a limited number of activities; and (ii) dispute resolution is provided for in section 14 of the Act on Strikes and in the 2009 Act on the Peaceful Settlement of Labour Disputes. The Committee observed that, while section 12(4) provides that the strike committee and the employer jointly assign the workers who have to work during the strike to their posts to ensure the minimum service, the extent and the modalities of the minimum services are determined prior to that stage by the employer who only has to request the union's views. The ILO-Committee recalled that: (i) organisations of workers should be able, if they so wish, to participate along with the employers and the public authorities in defining the minimum service; (ii) in case of disagreement among the interested parties, the minimum service should be defined by a joint or independent body; and (iii) the minimum service must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear (General Survey on the fundamental Conventions, 2012, paragraphs 137–139), (Direct Request (CEACR)- adopted 2013, published 103rd ILC session (2014)). The Committee asks the Government to comment on this statement.

The Committee recalls that establishing a "minimum service" in essential sectors may be considered to be in conformity with Article 6§4 of the Charter (Conclusions XVII-1 (2004), Czech Republic). However, in order to follow correct procedures, it is essential that, even if the final decision is based on objective criteria prescribed by law (such as the nature of the activity, the extent to which people's lives and health are endangered, and other circumstances such as the time of year, the tourist season or the academic year), workers or their representative bodies are regularly involved in determining on an equal footing with employers, the nature of "minimum service".

The Committee recalls that the right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G. This Article provides that restrictions on the rights guaranteed by the Charter need to be prescribed by law, serve a legitimate purpose and be 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 (Conclusions X-1 (1987), Norway regarding Article 31 of the Charter). The expression "prescribed by law" means, not only statutory law, but also case law of domestic courts, if it is stable and foreseeable. Moreover this expression includes the respect of fair procedures (European Trade Union Confederation (ETUC)/ *Centrale Générale des Syndicats Libéraux de Belgique*

(CGSLB)/*Confédération des Syndicats Chrétiens de Belgique* (CSC)/ *Fédération Générale du Travail de Belgique* (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §43-44). Consequently, the Committee asks the Government to state, in relation to every service that is subject to restrictions with regard to the right to strike, if and to what extent work stoppages may undermine respect for the rights and freedoms of others or threaten the public interest, national security, public health, or morals. In this context, it also asks whether such restrictions are in all cases proportionate in a democratic society to achieve the aim of ensuring respect for the rights and freedoms of others, and preventing threats to the public interest, national security, public health, or morals. Pending receipt of the requested information, it reserves its position on this point.

More particularly, the Committee recalls that "restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions are directly affecting the rights of others, given their nature or level of responsibility, national security or public interest may serve a legitimate purpose in the meaning of Article G (Conclusions I, Statement of Interpretation, pp. 38-39). However, it considers that there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such restriction can therefore not be considered as being necessary in a democratic society in the meaning of Article G" (Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §§44-46). In this respect, the Committee recalls that "the right to strike of certain categories of public servants may be restricted, in particular members of the police and armed forces, judges and senior civil servants. However, the denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter" (Conclusions I (1969), Statement of Interpretation on Article 6§4). The Committee underlines that in the case of civil servants who are not exercising public authority, only a restriction can be justified, not an absolute ban (Conclusions XVII-1 (2005) Germany). According to these principles, all public servants who do not exercise authority in the name of the State should have recourse to strike action in defence of their professional interests. The Committee invites the Government to provide detailed information on any restrictions imposed on the right to strike of civil servants or public officials in BiH, the two entities FBiH and RS, and BD.

The Committee notes from the Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bosnia and Herzegovina (Ratification:1993), that the ILO-CEACR noted that the law on civil service in the FBiH did not govern strikes, that the Government indicated that separate laws governing the issue would be prepared, and that the collective agreement for employees of administrative bodies and judicial authorities in the FBiH contains provisions on the matter. The Committee asks to be informed of any developments with regard to the new draft laws.

The Committee asks that the next report provides detailed information on courts' decisions declaring strikes illegal. In this respect, the Committee recalls that its task is to verify whether the courts rule in a reasonable manner and in particular whether their intervention does not reduce the substance of the right to strike so as to render it ineffective (Conclusions I (1969), Statement of Interpretation on Article 6§4).

Consequences of a strike

As regards the consequences of a strike, the report indicates that in BiH, by participating in a strike, an employee does not breach his/her official duty and he/she may not be put into a less favourable position compared to other employees for organizing or participating in a strike. An employee may not be in any way forced to take part in a strike (Article 97 of the Labour Law in the Institutions of BiH). On the contrary, an employee who participates in a strike although an agreement has been signed with him/her to resolve the dispute through arbitration or an employee who is employed in core services or maintenance services, and who causes damage to the employer intentionally or through negligence, will be found to be in severe breach of official duty. Based on that his/her contract may be terminated, without observing the notice period as prescribed by Law, and he/she will be obliged to compensate the employer for the full amount of damages.

In the FBiH, Article 9 of the Law on Strike provides that the remuneration of an employee who participated in a strike can be reduced with the proportion of his/her wage that would be attributable to the duration of his/her strike participation, in accordance with the collective agreement and the employees' work rules.

The report indicates that the Law on Strike in RS provides that organising or participating in a strike, under the conditions provided in the Law, does not constitute a violation of work discipline and cannot be the ground for initiating disciplinary proceedings or the ground for removal of workers from work. It also cannot result in the termination of the employment contract.

The Committee recalls that workers participating in a strike who are not members of the trade union having called the strike are entitled to the same protection as trade union members (Conclusions XVIII-1 (2006), Denmark). The Committee asks whether this principle is respected in BiH, the two entities (FBiH and RS) and BD.

Conclusion

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

Article 21 - Right of workers to be informed and consulted

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

The Committee recalls that consultation at the enterprise level is dealt with under Article 6§1 and Article 21. For the States which have ratified both provisions, consultation at enterprise level is examined under Article 21 (Conclusions 2004, Ireland).

Legal framework

The report indicates that at the level of the Federation of Bosnia and Herzegovina (FBiH), the right to information and consultation is ensured through the Employees' Council. The Law on Employees' Council provides that the employer, at least every six months, informs the employees about matters that affect their employment-related interest, including in particular the business situation and achievements; development plans and their impact on economic and social position of employees; trends and changes in wages, safety at work and measures to improve working conditions; and other matters relevant to employment-related rights and interests of employees.

Also, the same Law stipulates that the employer is obliged to consult with the Employees' Council before taking a decision with regard to: the Employees' Work Rules; the employer's intention to terminate employment contracts of more than 10% of employees but not less than five employees due to economic, technical or organisational reasons; an employment plan, transfers and dismissals; measures of safety at work; significant changes in or an introduction of new technologies, annual leave, working time arrangements, night work, remuneration for inventions and technical improvements; and other decisions for which mandatory consultations with the Employees' Council are required by the collective agreement. The employer is obliged to provide the Employees' Council with the information and facts relevant to the decision at least 30 days before making a decision. The deadline for giving the position of the Employees' Council on the proposed decision is seven days of receipt of data relevant to the decision. The decision issued by the employer in contravention with the obligation to consult with the Employees' Council is null and void.

The report indicates that a fine in the amount of BAM 1 000 – BAM 7 000 is imposed on an employer who fails to inform and consult with the Employees' Council in accordance with the Law on Employees' Council.

The report indicates that in Republica Srpska (RS), the Labour Law does not provide for an obligation of the employer to inform and consult with workers. The Law on Workers' Council (Article 21) stipulates that the employer must inform the Workers' Council about the situation of health and safety at work and working conditions, trends in wages and other issues of importance to the economic and social welfare of workers.

The report further indicates that Article 55 of the General Collective Agreement (Official Gazette of RS No. 40/10) establishes the obligation of the employer to inform the workers or their representatives on the following matters: wages, working conditions, how to protect the rights of workers, the general situation and perspective of the employer and the particular activity, plans for the future development, prospects of employment, working conditions and safety at work. However, the trade union has the right to request from the employer other information important to workers' rights except for information which is a business secret of the employer.

The report indicates that Article 92(1) and 92(4) of the Brčko District (BD) Labour Law provides for the obligation of an employer who employs more than 15 employees to adopt and post on

the employer's notice board a rulebook regulating wages, work organisation and other issues relevant to the relationship between the employee and the employer, in accordance with the law and the collective agreement, which enters into force on the eighth day of publication. Also, the BD Labour Law provides for an obligation of the employer to consult the trade union (in the event of a union representative dismissal), employees' council (in case of dismissal of employees for economic, technical or organisational reasons) and an obligation to establish the employees' council that will represent them in the relationship with the employer to protect their rights and interests. The Committee wishes to know whether the employees' council would also be consulted concerning the Rule Book.

Personal scope

The Committee wishes to know whether the legal framework applies to all undertakings, both in the private and public sector. It recalls that according to the Appendix, for the purpose of the application of Article 21, "the term 'undertaking' is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy".

States may exclude from the scope of Article 21 those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. For example, the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002: undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state are in conformity with this provision (Conclusions XIX-3 (2010), Croatia). The Committee wishes to be informed of the existence of any thresholds, established by the national legislation or practice, which may exclude undertakings which employ less than a certain number of workers.

In this context, the Committee points out that all categories of workers (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (see judgments of the Court of Justice and the European Union, *Confédération générale du travail* and Others, Case No. C-385/05 of 18 January 2007, and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014).

Pending receipt of the requested information, the Committee reserves its position on this point.

Material scope

The report does not provide details on the material scope of the abovementioned provisions. The Committee recalls that workers and/or their representatives must be informed on all matters relevant to their working environment (Conclusions 2010, Belgium), except where the conduct of the business requires that some confidential information not be disclosed. Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on their employment status.

The Committee asks whether these principles are implemented in practice. It asks that the next report provide detailed information on the matters which are subject to information and consultation, and the decisions which are subject to consultation of workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils, etc.) within the undertaking.

Pending receipt of the requested information, the Committee reserves its position on this point.

Remedies

The Committee recalls that the right to information and consultation must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected (Conclusions 2003, Romania). There must also be sanctions for employers who fail to fulfil their obligations under this Article (Conclusions 2005, Lithuania).

The Committee asks that the next report contain detailed information on the administrative and/or judicial procedures available to employees, or their representatives, who consider that their right to information and consultation within the undertaking has not been respected. In this framework, the Committee wishes to be informed concerning the penalties which can be imposed on employers if they fail to meet their obligations and whether employees, or their representatives, are entitled to damages. The next report should also contain updated information on decisions taken by competent judicial bodies with respect to the implementation of the right to information and consultation.

Pending receipt of the requested information, the Committee reserves its position on this point.

Supervision

The report does not contain information on this point. The Committee asks that the next report contain information on the administrative body responsible for monitoring the respect of the right of workers to be informed and consulted within the undertaking. In particular, it wishes to know what the powers and operational means of this body are, as well as to receive updated information on its decisions.

Conclusion

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

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

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

As regard the scope of Article 22 of the Charter, the Committee underlines that workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate and contribute in the decision-making process and the supervision of the observance of local regulations within the undertaking. It also recalls that Article 22 applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice (Conclusions 2005, Estonia) and tendency undertakings.

The Committee wishes to receive confirmation that Article 22 is applied to both private and public undertakings. It also wishes to be informed of the existence of any thresholds established by the national legislation or practice, in order to exclude undertakings which employ less than a certain number of workers.

Working conditions, work organisation and working environment

The report indicates that in Bosnia and Herzegovina (BiH) the employees are able to participate in the determination and improvement of the working conditions and working environment through consultations conducted by the employer with the trade union in the process of adoption the regulations governing the organisation of work and other issues of importance for the employees. The report illustrates that the employees of the Ministry of Security exercise this right in direct consultations with the supervisor, by initiating amendments to the Rulebook on the Internal Structure of the Ministry of Security. The Committee recalls that workers and/or their representatives (trade unions, workers' delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in Article 22, such as the determination and improvement of the working conditions, work organisation and working environment. The Committee asks whether the abovementioned form of participation is in line with its case law.

In Republica Srpska (RS), Article 26 of the Law on Workers' Council provides that "the Workers' Council is entitled to give opinions and suggestions to the employer with a view to: improve working conditions for workers; health and safety at work; provide daily meals to workers; organise transport of workers to job and from job; provide financial assistance to workers in need, as well as upon termination of employment contracts to elderly and disabled workers; properly introduce of overtime, night work, shift work; eliminate of undeclared employment and other issues that the Workers' Council considers important for protecting rights of workers. The Council monitors the fulfilment of statutory obligations by the employer in respect of the registration of workers in the health and pension and disability funds and regular payment of contributions. If the Council notices that an employer does not fulfil these obligations, it may take necessary measures to protect the rights of workers (reporting it to the relevant labour inspector, etc). The Workers' Council may consider individual requests and suggestions of workers regarding the exercise of their rights, of which it will give its opinion to the employer and inform applicants."

The Committee notes that the report does not provide specific information on the implementation of Article 22(a). From Eurofound (Bosnia and Herzegovina: Industrial Relations Profile), the Committee notes that employee involvement in improving working conditions and in enterprise decisions that affect their working conditions is limited. The Committee asks that the next report provide specific information on the measures adopted or encouraged by the competent authorities in order to enable workers, or their representatives, to contribute to the determination and improvement of the working conditions, work organisation and working environment within the undertaking at state level of Bosnia and Herzegovina and at the level of entities.

Protection of health and safety

In the Federation of Bosnia and Herzegovina (FBiH), Article 21 of the Collective Agreement for Employees of Public Administrative Bodies and Judicial Authorities in the FBiH ("Official Gazette" 23/00, 50/00) stipulates an obligation of the head of the administrative authority to provide necessary conditions to ensure the health and safety of employees at work. At the employees' request, the head of administrative authority will take necessary measures to protect the employees, including their training in safe operation and prevention of health risks.

The report indicates that the Collective Agreement for Employees of Public Administrative Bodies and Judicial Authorities in the FBiH ("Official Gazette" 23/00, 50/00) stipulates that a union representative has the right and duty to: (i) participate in the planning of measures for the improvement of working conditions; (ii) be informed of important changes in working conditions; (iii) be informed of changes relevant to safety and health of employees; (iv) be trained and educated to perform tasks related to safety at work; (v) call inspectors of safety at work for good reasons; (vi) urge the employees to follow safety measures (Article 68). The Committee wishes the next report to indicate how the protection of health and safety is ensured in the private sector.

The report indicates that at the level of the FBiH a new draft law on Safety and Health at Work, which is under deliberation in the Parliament, will ensure adequate participation of workers and their representatives in the determination of working conditions, safety and health at work. The Committee asks to be informed of any new developments with regard to the new draft legislation.

In RS**,** the report indicates that according to Article 56 of the Law on Safety and Health at Work, the employers, trade unions, insurance companies, organisations in charge of health, pension and disability insurance are obliged to cooperate in reaching common positions on issues of improving safety and health at work. The RS Law on Safety and Health at Work does not provide for any sanctions for non-compliance.

As regards the Brčko District (BD), the report gives examples of health and safety regulations for workplaces. However, the report does not provide information on the right of workers to participate in the decision-making process as regards the protection of health and safety within the undertaking. The Committee therefore asks to be provided with information in this respect. The Committee recalls that according to the Appendix, Article 22 affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application, and that the right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Charter. For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22.

Organisation of social and socio-cultural services and facilities

The report does not provide specific information on the implementation of Article 22(c). The Committee asks that the next report provide specific information on the measures adopted or encouraged by the competent authorities in order to enable workers, or their representatives, to contribute to the organisation of social and socio-cultural services within the undertakings concerned.

The Committee points out that the right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established (Conclusions 2007, Italy and Conclusions 2007, Armenia).

Enforcement

As regards enforcement, the report refers to the Committee on Safety and Health at Work of Republica Srpska which consist of three representatives of social partners and monitors the health and safety at work, identifies, recommends, leads and periodically reviews the health and safety policy and encourages the harmonisation of legislation in order to promote measures to protect health and safety. The Committee asks that the next report provide a description of the monitoring activities carried out by the above-mentioned Committee in practice. It also wishes to know if these activities, further to health and safety issues, also refer to other matters linked to the implementation of Article 22. The Committee understands that the RS Law on Safety and Health at Work does not provide for any sanctions for non-compliance. It therefore asks for further information in this respect for RS, for the FBiH and for the BD.

The Committee recalls that workers must have legal remedies when these rights are not respected (Conclusions 2003, Bulgaria). There must also be sanctions for employers which fail to fulfil their obligations under this Article (Conclusions 2003, Slovenia).

Conclusion

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

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

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

Protection granted to workers' representatives

The report indicates that the legislation of Federation of Bosnia and Herzegovina (FBiH) ensures special protection to trade unions representatives (under the information provided for Article 5). Article 93 of the Labour Law provides that an employer may terminate the employment contract of a trade union representative in the course of performing of his/her duty and six months after the end of his/her office only with the prior approval of the FBiH Ministry of Labour. A fine of BAM 1 000 to BAM 7 000 may be imposed on the employer for failure to comply with this obligation.

The report further indicates that the Law on Employees' Council gurantees some rights and facilities to members of the Employees' Council. Article 26 of the Law on Employees' Council ensures the protection of members of the Employees' Council from dismissal, as the employer may take such a decision only with the prior consent of the Employees' Council. The Employees' Council is required to respond within 10 days of its notification. If the Employees' Council refuses to approve the termination, the dispute is referred to arbitration. Also, the president and a council member who have full-time jobs in the Employees' Council are entitled to return upon termination of their office to the jobs they had prior to their membership in the Employees' Council.

The report mentions that the term "workers' representative" is not defined in the FBiH Labour Law. The new Law on Safety and Health at Work, which is under deliberation, defines the concept of a representative for safety and health at work as a person elected or appointed to represent the employees in the areas of safety and health at work in the relationship with the employer. In this sense, the Committee emphasises that according to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore establish different types of workers' representatives either trade union representatives or other types of representatives or both. Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board (Conclusions 2003, Bulgaria).

As regards Republica Srpska (RS), the report indicates that the right of workers' representative to protection in the undertaking and allocation of funds are guranteed by the RS Labour Law, the Law on Safety and Health at Work and the General Collective Agreement. Concerning trade union representatives, the Labour Law guarantees protection from dismissal while in office. Further, Article 52 of the General Collective Agreement guarantees protection against dismissal for trade union representative during its term of office and for one year after the end of office. Article 2 of the Law on Safety and Health at Work defines a workers' representative as person elected to represent workers in the field of health and safety at work with the employer. Article 131(2) of the RS Labour Law defines the term "workers' representative" which includes elected workers' representatives, namely: the chairperson of the workers' council, the president of the trade union of the majority trade union organized with the employer, and the elected workers' representative sitting on bodies of the majority trade union organized at a higher level. The Committee asks if protection against dismissal and protection against detriment in employment other than dismissal is granted to all types of workers' representatives.

The report indicates that Article 78 of the Labour Law of Brčko District (BD) provides legal protection against acts that are detrimental to a trade union representative, including dismissal. An employer may terminate the employment contract of a trade union representative during his/her term of office and within six months after the expiration of the term of office only after having consulted the trade union. Article 111 of the amended Labour Law of BD (Official Gazetteof BD No. 20/13) provides that for failure to comply with the above mentioned obligation, the employer has to pay a fine of BAM 1 000 to 7 000. The Committee asks for detailed information on the protection granted against detriment in employment other than dismissal.

The report indicates that the legislative framework of BD does not define the term "workers' representatives", but the BD Labour Law provides that the Employees' Council (Article 93) or a union representative (Article 92(4)) may represent employees in employment-related matters instead. The Committee asks if the members of the Employees' Council are granted protection against dismissal and against detriment in employment other than dismissal.

Overall, the report does not provide information on the implementation of the above-mentioned provisions in practice. In this respect, the Committee recalls that as stated in its decision relative to Complaint No. 1/1998 (International Commission of Jurist v. Portugal, §32) "the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter".

The Committee recalls that Article 28 of the Charter guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, *inter alia*, a similar right in respect of trade union representatives (Conclusions 2003, Bulgaria). Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal. The protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.

It also recalls that remedies must be available to worker representatives to allow them to contest their dismissal(Conclusions 2010, Norway). Where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement (Conclusions 2007, Bulgaria)

The Committee asks whether these principles are fulfilled by the applicable legislation and in practice in all entities of Bosnia and Herzegovina. Pending receipt of the requested information, the Committee reserves its position on this point.

Facilities granted to workers' representatives

The report indicates that in the FBiH, an employer is obliged to provide the Employees' Council with offices required and administrative and technical conditions for work. The Employees' Council works and holds meetings during working hours. Each member is entitled to compensation for salary for six hours a week for the work in the Employees' Council. This entitlement is transferable among members of the Employees' Council. If the sum of transferred hours allows it, the jobs of president and a council member can become full-time employment.

The report also informs that Article 74 of the Collective Agreement for Employees of the Ministry of the Interior of Zenica-Doboj Canton provides that the Minister grants a leave of absence to any union representative to perform trade union activities and be present at union meetings,

congresses, conferences, seminars, trade union schools and other forms of training at home and abroad. The same Collective Agreement stipulates that the Minister is obliged to provide to the trade union, free of charge, according to the capabilities, the following conditions: (i) adequate offices and conference room for meetings, if available; (ii) the use of telephone, fax, communications equipment and other available technical aids and (iii) the use of vehicles.

In this framework, the Committee recalls that the facilities may include those mentioned in the R143 Recommendation concerning Protection and Facilities to be Afforded to Workers Representatives in the Undertaking, adopted by the ILO General Conference of 23 June 1971. These include: support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers representatives or other elected representatives to all premises, where necessary; the access without any delay to the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorisation to post bills or notices in one or several places to be determined with the management board; and the authorisation to distribute information sheets, factsheets and other documents on general trade unions' activities. Other facilities may also be included, such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council (Conclusions 2010, Statement of Interpretation on Article 28 and Conclusions 2003, Slovenia). The Committee also recalls that the participation in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives (Conclusions 2010, Statement of Interpretation on Article 28).

The Committee asks that the next report provide detailed information on the facilities granted to workers ' representatives in all entities of Bosnia and Herzegovina. It also wishes to be informed on any measures taken by the Government (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework concerning the facilities to be accorded to workers's representatives. The Committee underlines that should the next report not provide the requested information, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 28 of the Charter.

Pending receipt of the requested information, the Committee reserves its position on this point.

Conclusion

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