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EUROPEAN SOCIAL CHARTER

10th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF BOSNIA AND HERZEGOVINA

Article 1, 9 and 20

for the period 01/01/2015 - 31/12/2018

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**BOSNIA AND HERZEGOVINA
MINISTRY FOR HUMAN RIGHTS AND REFUGEES**

**TENTH REPORT OF BOSNIA AND HERZEGOVINA ON
IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER
/REVISED/**

**GROUP I: EMPLOYMENT, TRAINING AND EQUAL OPPORTUNITIES
„ARTICLES 1, 9 AND 20“**

**REPORTING PERIOD:
JANUARY 2015 – DECEMBER 2018**

SARAJEVO, DECEMBER 2019

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I. INTRODUCTION

Bosnia and Herzegovina ratified the European Social Charter (revised) on 07 October 2008 and is delivering its Tenth Report on the implementation of accepted provisions of the European Social Charter (revised) in accordance with Article 21 thereof.

This Report includes provisions of the European Social Charter (revised) from the first thematic group /employment, training and equal opportunities/ relating to Articles: 1, 9 and 20, for the reporting period January 2015 – December 2018.

The Report was prepared in accordance with the new reporting system, which was adopted by the Committee of Ministers of the Council of Europe on 31 October 2007, and in accordance with the form for reports to be submitted on the implementation of accepted provisions of the European Social Charter /revised/¹ and concentrates on all relevant information on adopted measures for the purpose of its implementation, on the following in particular:

- 1) the legal framework – any laws or regulations, collective agreements or other provisions that contribute to such application;
- 2) measures taken - administrative arrangements, programmes, action plans, projects etc., to implement the legal framework;
- 3) pertinent figures, statistics or any other relevant information enabling an evaluation of the extent to which these provisions are applied.

All instructions derived from the interpretation of Articles of the Charter given by the European Committee for Social Right and summed up as the Digest of the Case Law were taken into account so that the subject-matter of the provisions can be fully clear.

The Tenth Report of Bosnia and Herzegovina for the thematic group /employment, training and equal opportunities/ contains updated information on the legislative framework from the previous reports and relevant explanations or information on developments in practice during the reporting period.

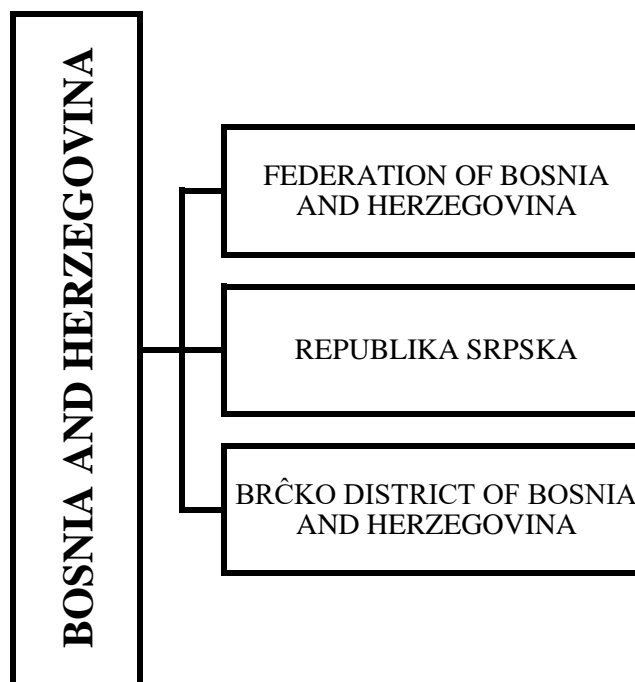
In accordance with Article 23 of the European Social Charter /revised/, copies of this Report will be transmitted to relevant employer' organizations and trade unions:

- The Confederation of Independent Trade Unions of Bosnia and Herzegovina,
- The Confederation of Trade Unions of the Republika Srpska
- The Trade Union of Brčko District of Bosnia and Herzegovina,
- The Association of Employers of Bosnia and Herzegovina,
- The Association of Employers of the Federation of Bosnia and Herzegovina,
- The Confederation of Association of Employers of Republika Srpska
- The Association of Employers of Brčko District of Bosnia and Herzegovina.

¹ Adopted by the Council of Europe Committee of Ministers on 26 March 2008.

II. ADMINISTRATIVE DIVISION OF BOSNIA AND HERZEGOVINA

NOTE: At the 136th session of the Council of Europe's Committee on Social Rights, the Committee representatives required from Bosnia and Herzegovina that all subsequent reports contain a scheme of administrative division of Bosnia and Herzegovina, in order to facilitate understanding of the application of ratified provisions of the European Social Charter /revised/ in Bosnia and Herzegovina.



The administrative division of Bosnia and Herzegovina was established by the Dayton Peace Agreement, and according to it, Bosnia and Herzegovina is administratively divided into two Entities: the Federation of Bosnia and Herzegovina (51% of the state territory), Republika Srpska (49% of the total territory of Bosnia and Herzegovina) and the Brčko District, which does not belong to either of the Entities, but represents a separate administrative unit over which the Institutions of Bosnia and Herzegovina have sovereignty.

The Federation of Bosnia and Herzegovina and Republika Srpska are the Entities that have their own constitutions, which must be in conformity with the Constitution of Bosnia and Herzegovina, as well as their governments, the legislature and the judiciary. The territory of Brčko, which was under arbitration, did not belong to either Entity, but was decided by the International Arbitration Commission for Brčko to be placed under the administration of the State of Bosnia and Herzegovina as a separate district on 08 March 2000. Brčko District has its own multi-ethnic government with an elected assembly, executive committee, judiciary and police forces.

The Federation of Bosnia and Herzegovina consists of 10 cantons², which are further administratively divided into municipalities, while Republika Srpska is administratively divided into regions³, and regions are further divided into municipalities.

The division of competences between the different levels of government in Bosnia and Herzegovina for all areas, including the area of labour legislation and social rights, is based on the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina, the Constitution of Republika Srpska, the Statute of the Brčko District of Bosnia and Herzegovina and the constitutions of the ten cantons.

In that sense, the legislative bodies of both Entities - the Federation of Bosnia and Herzegovina and Republika Srpska, as well as the Brčko District of Bosnia and Herzegovina and the cantons, are competent to pass laws and by-laws in the field of labour legislation. An exception are the laws governing the work of civil servants and employees of the Institutions of Bosnia and Herzegovina, enacted by the Parliamentary Assembly of Bosnia and Herzegovina.

III. GENERAL LEGAL FRAMEWORK

1. Bosnia and Herzegovina

- The Law on Prohibition of Discrimination in Bosnia and Herzegovina („Official Gazette of BiH“, 59/09 and 66/16);
- The Law on Gender Equality in BiH - revised text („Official Gazette of BiH“, 32/10);
- The Law on Civil Service in the Institutions of Bosnia and Herzegovina („Official Gazette of BiH“, 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10, 40/12 and 93/17);
- The Labour Law in the Institutions of BiH („Official Gazette of BiH“, 26/04, 7/05, 48/05, 60/10, 32/13 and 93/17);
- The Law on Service in the Armed Forces of Bosnia and Herzegovina („Official Gazette of BiH“, 88/05, 53/07, 59/09, 74/10, 42/12 and 41/16);
- The Law on Movement and Stay of Aliens and Asylum („Official Gazette of BiH“, 87/12);
- The Law on Aliens in Bosnia and Herzegovina („Official Gazette of BiH“, 88/15);
- The Framework Law on Primary and Secondary Education („Official Gazette of BiH“, 63/08);
- The Ordinance on the education and training of active duty military personnel („Official Gazette of BiH“, 33/19);
- The Ordinance on the training of cadets and military scholars („Official Gazette of BiH“, 34/19);
- The Principles and Standards in Education of Adults in Bosnia and Herzegovina („Official Gazette of BiH“, 39/14);
- The Strategic platform of development of adult education in the context of lifelong learning in BiH for the period 2014-2020 („Official Gazette of BiH“, 96/14);
- The Rules for reception and processing of requests, complaints and petitions of persons and groups of persons Bosnia and Herzegovina („Official Gazette of BiH“, 72/11).

2. The Federation of Bosnia and Herzegovina

- The Labour Law of the Federation of BiH („Official Gazette of the FBiH“, 26/16 and 89/18);

² 1. Una-Sana; 2. Posavina; 3. Tuzla; 4. Zenica-Doboj; 5. Bosnian-Podrinje; 6. Central Bosnia; 7. Herzegovina-Neretva; 8. West-Herzegovina; 9. Sarajevo and 10. Livno Canton (Canton 10);

³ Banja Luka, Doboj, Bijeljina, Pale and Trebinje;

- The Law on Civil Service in the Federation of BiH („Official Gazette of the FBiH“, 29/03, 23/04, 39/04, 54/04, 67/05, 8/06, 77/06, 4/12, 99/15 and 9/17);
- The Law on Mediation in Employment and Social Security of Unemployed Persons („Official Gazette of the FBiH“, 55/00, 41/01, 22/05 and 9/08);
- The Law on Employment of Foreigners in the Federation of BiH („Official Gazette of the FBiH“, 111/12);
- The Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities („Official Gazette of the FBiH“, 9/10);
- The Law on Salaries and Remuneration in the Authorities of the Federation of BiH („Official Gazette of the FBiH“, 45/10 and 111/12);
- The Ordinance on employment records of the Federation of BiH („Official Gazette of the FBiH“, 24/06);
- The Regulation on Employment Promotion of the Federation of BiH („Official Gazette of the FBiH“, 95/15, 32/16 and 48/16);
- The Regulation on Private Agencies for Mediation in Employment of the Federation of BiH („Official Gazette of the FBiH“, 28/09, 43/11 and 36/18).

3. Republika Srpska

- The Labour Law of Republika Srpska – revised text („Official Gazette of the RS“, 55/07) and the Labour Law of Republika Srpska („Official Gazette of the RS“, 1/16 and 66/18);
- The Law on Employment Mediation and Unemployment Rights of Republika Srpska („Official Gazette of the RS“, 30/10 and 102/12);
- The Law on Employment of Foreign Citizens and Stateless Persons of Republika Srpska („Official Gazette of the RS“, 24/09 and 117/11);
- The Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities – revised text („Official Gazette of the RS“, 37/12 and 82/15);
- The Law on Civil Servants of Republika Srpska („Official Gazette of the RS“, 118/08);
- The Law on Adult Education of Republika Srpska („Official Gazette of the RS“, 59/09 and 1/12);
- The Law on Primary Education of Republika Srpska („Official Gazette of the RS“, 44/17);
- The Law on Secondary Education of Republika Srpska („Official Gazette of the RS“, 55/13, 101/17 and 27/18);
- The Employment Strategy of Republika Srpska 2016-2020 („Official Gazette of the RS“, 90/16);
- The Republika Srpska Education Development Strategy 2016-2021;
- The Ordinance on the conditions to be met by legal and natural persons engaged in employment („Official Gazette of the RS“, 93/10 and 16/13);
- The Ordinance on the plan of enrollment of students in the first grade of secondary schools („Official Gazette of the RS“, 29/19);
- The Ordinance on the method of education of students with employers („Official Gazette of the RS“, 65/19).

4. Brčko District of Bosnia and Herzegovina

- The Law on Labour of Brčko District of BiH („Official Gazette of the BD BiH“, 19/06, 19/07, 25/08, 20/13, 31/14 and 1/15);
- The Law on Civil Service in the Bodies of Public Administration of the Brčko District of Bosnia and Herzegovina („Official Gazette of the BD BiH“, 2/10);
- The Law on Employment and Rights during Unemployment of the Brčko District of BiH („Official Gazette of the BD BiH“, 33/04, 19/07 and 25/08);

- The Law on Employment of Aliens of Brčko District of BiH („Official Gazette of the BD BiH“, 15/09, 19/09 and 20/10);
- The Law on Education in Primary and Secondary Schools of Brčko District of BiH („Official Gazette of the BD BiH“, 10/08, 25/08, 04/13, 48/16 and 22/17);
- The Law on Preschool Education in the Brčko District of BiH („Official Gazette of the BD BiH“, 13/07, 19/07, 39/08, 21/10, 48/16 and 22/17);
- The Ordinance on Professional Development of Educators, Teachers, Professional Associates, Teaching Associates and Principals of Preschools, Primary and Secondary Schools of the Brčko District of BiH, No. 13-000356/12 of 06 March 2012;
- The Ordinance on Conditions and Manner of Exercising the Right to Payment of Contribution for Pension and Disability Insurance of Brčko District of BiH.

IV. APPLICATION OF THE RATIFIED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER /REVISED/ IN BOSNIA AND HERZEGOVINA

1. Article 1 –The right to work

Article 1 –The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

1.1. Article 1, paragraph 1 - Policy of full employment

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have not been adequate in combating unemployment and promoting job creation.

Compared to the previous reporting period, a Reform Agenda for 2015-2018 was adopted in Bosnia and Herzegovina, that sets out, among other things, a broad set of measures regarding employment policy and the fight against unemployment.

Bosnia and Herzegovina Reform Agenda 2015-2018 defines the main plans of the Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina, the Government of Republika Srpska, the Government of 10 cantons and the Government of the Brčko District of Bosnia and Herzegovina. It encompasses a broad set of medium-term priorities, including the labour market, which are further translated into concrete initial measures and ventures by each institution individually.

The main objectives for improving the employment policy agenda situation are to: significantly reduce social security contributions (especially for those with lower incomes) to reduce labour costs; reform the education system in the medium term with a view to increasing its integration with the labour market; actively seek to discourage work in the grey economy and introduce

managerial practices in employment services/bureaus to improve people's return to the labour market.

As a continuation of reform processes in this area, the governments of both Entities adopted the "Joint Socio-Economic Reforms for the period 2019-2022" in October 2019.

The Council of Ministers of Bosnia and Herzegovina reviews and adopts annually the Annual Plan on Guidelines for Labour Market Policies and Active Employment Measures in Bosnia and Herzegovina. The annual plan is drawn up on the basis of the provisions of the Law on the Labour and Employment Agency of Bosnia and Herzegovina. The Labour and Employment Agency of Bosnia and Herzegovina, in cooperation with the Federal Employment Service, the Republika Srpska Employment Bureau and the Employment Service of the Brčko District of BiH, prepares an annual plan on guidelines for labour market policies and active employment measures in Bosnia and Herzegovina. Its adoption creates preconditions for improving the quality and increasing the competitiveness of the labour market supply, stimulating the labour demand, which leads to the implementation of the established employment policies to increase the efficiency of the labour market.

According to a new Labour Force Survey of the Agency for Statistics of Bosnia and Herzegovina in 2019, the employment rate was 35.5%, while in 2018 it was 34.3%. The rate was significantly higher for men than for women. The employment rate for men was 44.6%, while for women it was 26.7%. The employment rate was highest in the 25-49 age group and was 60.7%.

In 2019, the unemployment rate was 15.7% (13.6% for men and 18.8% for women), while in the same period in 2018 it was 18.4% (17.2% for men and 20.3% for women). The unemployment rate was highest among young people aged 15 to 24 and was 33.8% (31.3% for men and 37.9% for women).

The educational structure of employed persons shows that 68.0% persons have completed secondary education, followed by 16.1% of the employees with primary education or lower education, and 16.0% of persons with completed academic education.

The educational structure of unemployed persons shows that 74.1% of them have completed secondary education, followed by 14.2% of the unemployed persons with elementary school or lower education, and 11.7% of the persons with completed academic education.

Among the inactive persons, according to the level of education, almost 51.4% are persons with completed primary education or lower, 43.2% are persons with secondary education and the remaining 5.4% are persons with completed academic education.

When it comes to employment status, the structure of employees shows that employees had the highest share of 75.1%. The share of self-employed persons was 21.9%, and that of unpaid assisting members was 3.0%.

The structure of employed persons by activity sector shows that the largest share in the services sector is 50.3%, followed by industry and construction sector with the share of 31.7% and agriculture, forestry and fishery sector with the share of 18.0%.

In the observed period, 9.5% of unemployed persons sought employment for less than 12 months, which is a consequence of the post-war situation and the transition of the economy in our country.

The share of unemployed persons with completed primary education or less was 14.1%, followed by 16.9% of those with secondary education, while the lowest participation share of 12.0% in unemployment was of the persons with completed secondary education. These data are also presented in Tables 1-19 (Annex 1).

In the Federation of Bosnia and Herzegovina, active labour market policies have the potential to improve employment opportunities for the unemployed and, to some extent, to create new jobs directly. Funds for active policies in the Federation are primarily provided by public employment

services/bureaus, but can be further secured from the cantonal budgets or from some donor support. Financial funds for active measures are the remainder of what is left after the payment of the passive benefits. Therefore, the financial funds spent on active labour market measures in the Federation of Bosnia and Herzegovina vary in the amounts for the period 2015-2018, as indicated in Table 22 on page 8 of the Annex 1.

The Law on Mediation in Employment and Social Security of Unemployed Persons, as a key legal document in the employment sector, stipulates that employees insure their material and social security during unemployment in accordance with this and other laws, primarily unemployment insurance. Material and social security implies pecuniary compensation in accordance with this Law, and payment of health and pension contributions in accordance with this and other laws. The Federal Employment Service, established by the aforementioned law, allocates to the cantonal employment services/bureaus the missing funds to provide material and social security for unemployed persons and to cover the administrative costs in the coming month. Other transfers relate to the Program of measures for the social welfare of employees who have lost or remain jobless in the process of bankruptcy, liquidation, restructuring and privatization of companies. The active policies implemented by the cantonal employment services focus on co-financing programs for employment, self-employment and training. Various target groups are included in employment programs, such as: women, Roma, young people, people with disabilities, returnees, people without professional qualifications.

For the fulfilment of the obligation arising from the Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities, which relates to the allocation of 10% of the planned funds for active employment policy to finance the Fund for Professional Rehabilitation and Employment of Persons with Disabilities, the funds are allocated by the Federal Employment Service. Table 20 presents a numerical summary of expenditures for passive labour market measures in the Federation of Bosnia and Herzegovina in the reference period, and Tables 21 and 22 present a numerical representation of other expenditures for labour market measures in the Federation of Bosnia and Herzegovina in the reference period (Annex 1)⁴. In addition to the aforementioned law, an important by-law in the Federation of Bosnia and Herzegovina is the Ordinance on employment records, which was adopted in accordance with the Law. This Ordinance establishes: employment records, methods and deadlines for reporting unemployed persons, means of employment records and other issues related to keeping basic records. The competence for the labour and employment segment in the Federation of Bosnia and Herzegovina is vested with the Federal Ministry of Labour and Social Policy. At the cantonal level, this competence is vested in the competent cantonal ministries.

Public employment services are primarily responsible for developing and implementing active employment policy measures/programs in the Federation of Bosnia and Herzegovina, as well as for announcing a public call for the participation of employers and unemployed persons in the implementation of these measures and programs, and they operate in cooperation with the competent institutions and other stakeholders.

In order to implement active employment policy measures, the following programs are implemented: Roma employment program; a program for co-financing employment and self-employment in the field of agriculture; the "Prilika za sve/Opportunity for all" program; recurrent/seasonal employment; a work voucher; program of preparation for work through training, vocational training and further training - Obukom do zaposlenja/Training for job.

The programs of work of the Federal Employment Service are harmonized with the Financial Plans of the Federal Employment Service every year, which shows the planned financial resources for the implementation of employment programs and the number of unemployed persons covered by these programs according to the established criteria, taking into account the differences and

⁴ Federal Employment Service

needs of the cantons. Active employment measures account for about 40% of the total expenditures and expenses (Federal Employment Service funds), and these measures cover about 17,000 people, of which 10,000 are employed.

Active employment policies in the Federation of Bosnia and Herzegovina are implemented in accordance with the Law on Mediation in Employment and Social Security of Unemployed Persons, the Strategy for Strengthening the Mediation Function in Public Employment Services in the Federation of Bosnia and Herzegovina, and the corresponding Work Program of the Federal Employment Service/cantonal employment services.

Support is provided to the target groups of the unemployed, who have been identified as more difficult to employ by the above strategic document, especially young people and women. Active employment policy measures are mainly focused on: promoting employment with a well-known employer; self-employment; training, vocational training and further development, up-skilling and retraining; preparing the unemployed for the labour market; creating equal access to the labour market for all.

The implementation of measures/programs of active employment policies seeks to achieve employment for as many unemployed persons as possible in the Federation of Bosnia and Herzegovina with special social and gender sensitivity, in order to strengthen their competitiveness in the labour market, prevent long-term unemployment and create conditions for gaining first work experience.

In Republika Srpska, in October 2016, the National Assembly adopted the Strategy of Employment of Republika Srpska 2016–2020. This is a key document that identifies and defines activities in the labour market. The employment strategy defines key strategic goals, namely: to increase employment and economic activity of the population in Republika Srpska; and maintain existing and create new jobs in the Republika Srpska economy.

The Employment Strategy defines two key strategic goals: 1. to increase the employability and economic activity of the population in Republika Srpska, and 2. to maintain existing and create new jobs in Republika Srpska. Based on the strategic goals set for the four-year period, operational tasks, that are in the function of achieving the strategic goals, are determined. The Government of Republika Srpska, on the basis of the key tasks defined by the Strategy, establishes the Employment Action Plan (for each year separately), while the Employment Service adopts the Employment Program in Republika Srpska (operational plan) that specifies concrete tasks pertaining to active policy measures, projects, resources amounts, basic goals and objectives, expected results and timeline of realization.

The Employment Bureau prepares employment projects that are implemented in a given year in accordance with the adopted Action Plan. On the basis of the prepared projects, a public call is announced, which is published in one of the daily newspapers, on the portal of the Employment Bureau, as well as on the bulletin boards of the Bureau and branch offices of the Bureau. The Employment Bureau undertakes certain measures and activities to inform employers and unemployed persons about the conditions and possibilities of participation in the programs, through regular work with the unemployed persons and through direct visits to employers, as well as by organizing other promotional activities.

The focus is on stimulating employment and implementing measures aimed at reducing the unemployment period and continuously improving competitiveness, improving the quality of work and increasing overall productivity.

The Employment Strategy specifically defines the promotion of employment of the most vulnerable groups of unemployed persons, as follows: young people, children of fallen soldiers, disabled war veterans and other persons with disabilities, demobilized veterans, national minorities, women and persons over 50 years of age, and the employment programs implemented by the Bureau are in the function of employment of these target groups. All projects are monitored

and the effects realized are regularly reported to the line ministries and the Government of Republika Srpska.

The Ministry of Labour, War Veterans and Disabled Persons' Protection shall supervise the implementation of the Law on Mediation in Employment and Rights during Unemployment and regulations adopted on the basis of the said Law. Activity, employment and unemployment rates in Republika Srpska for the reporting period are presented in Tables 23-25 (Annex 1).⁵

The Brčko District of Bosnia and Herzegovina adopted the development strategy of the Brčko District for the period 2008 - 2017 and the General Policy of the Brčko District of Bosnia and Herzegovina for the period 2013-2016.

The Employment Service of the Brčko District of BiH establishes the Employment Program of the Employment Service as an integral part of the Employment Service Financial Plan for each year, respecting the Development Strategy of Bosnia and Herzegovina with the Action Plan for Brčko District of Bosnia and Herzegovina, the strategic objective "Employment", on the implementation of: The Law on Employment and Rights during Unemployment of the Brčko District of BiH and the Law on Employment of Aliens of Brčko District of BiH, in accordance with the principles: compliance with the international labour conventions, the Statute of the Brčko District of Bosnia and Herzegovina, legality in work, transparency and openness to the public, equal treatment of all beneficiaries of the Employment Service and absence of discrimination on any basis in the realization of the rights of unemployed persons (gender, racial, national, religious, etc.), cooperation with all participants in the labour market in the Brčko District of Bosnia and Herzegovina, with the Labour and Employment Agency of Bosnia and Herzegovina, employment services in Republika Srpska and the Federation of Bosnia and Herzegovina, cantonal employment services, cooperation with international organizations and institutions, cooperation with national employment services and employment offices of the neighbouring countries, responsible attitude towards the resources and assets available to the Service.

In 2018, the Employment Service focused its activities on the implementation of overall measures that improve the conditions for employment, mediation in employment and other rights of unemployed persons during unemployment.

Considering the results from administrative sources and the Labour Force Survey, since there has been a significant increase in the number of employees and a decrease in the number of unemployed, and consequently an increase in the employment rate and a decrease in the unemployment rate, it can be concluded that in 2018, there have been some positive changes in the labour market.

According to data from the Labour Force Survey, it can be seen that 39.3% of the half of the working age population above 15 years of age in BiH is active. This activity rate is very low by the international standards. Tables 26 and 27 present numerical data on measures of population activity in Bosnia and Herzegovina and the Entities, as well as the number of unemployed and employed persons in the Brčko District of Bosnia and Herzegovina during the reference period (Annex 1).

Observing the data of the Agency for Statistics of BiH for the area of Brčko District of BiH, there is a significant increase in the number of employees, which indicates positive changes in the labour market, and observing the data on the number of unemployed persons, even with the increase in employment, there is a significant decrease in the number of employees.

Changes in the labour market in 2018 were also caused by numerous labour migrations, which led to a reduction in undeclared work and an increase in wage income, to prevent the quality workers flight, as well as by the reforms through the work of the Service, where in the work processes with the unemployed more work is being done on their competencies and on recognizing the skills and

⁵ The Republika Srpska Employment Bureau

capacities currently needed in the labour market, which certainly has a positive effect on the unemployed persons who are much more active in seeking suitable employment.

The Employment Service of Brčko District of BiH regularly supports young people, children of fallen soldiers and disabled persons, children of civilian victims of war and in 2019, through employment incentives for co-financing of employment, the Labour Plan adopted the support for young people without the first job experience.⁶

Information on additional questions from the Committee on the application of Article 1, paragraph 1 of the Charter in Bosnia and Herzegovina is given in Annex 2, under numbers 1 and 2.

1.2. Article 1, paragraph 2 - An occupation freely entered upon

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§2 of the Charter on the ground that the Federal laws do not prohibit discrimination in employment on the basis of age and disability.

We inform the Committee that the conclusion was met, because the Law on Amendments to the Law on Prohibition of Discrimination in Bosnia and Herzegovina of 2016, in addition to the existing grounds of discrimination, added age and disability.

The Law on Amendments to the Law on Prohibition of Discrimination aligned the basic law with the *Acquis Communautaire*. For the purposes of this Law, discrimination shall be considered to be any different treatment, including any exclusion, restriction or granting of advantage based on real or presumed grounds to any person or group of persons and to those related to them by family or in other type of relationship by virtue of their race, skin colour, language, religion, ethnicity, disability, age, national or social origin, connection with a national minority, political or other beliefs, property status, membership in a trade union or other association, education, social status and gender, sexual orientation, gender identity, sexual characteristics, and any other circumstance that has the purpose or effect of denying or endangering any person the recognition, enjoyment or exercise of equal rights and freedom in all areas of life.

The prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and private sectors, including employment. The Law on Prohibition of Discrimination defines exceptions to the principle of equal treatment. Legal measures and actions will not be considered discriminatory when reduced to discriminatory or different treatment if they are based on objective and reasonable justification. Measures will not be considered discriminatory when pursuing a legitimate aim and if there is a reasonable ratio between the means used and the aim pursued.

Discrimination can be direct or indirect. Direct discrimination means any act caused by any of the foregoing grounds of the article by which the worker, as well as the person seeking employment, is or has been disadvantaged in comparison with other persons in the same or similar situation. Indirect discrimination exists when a certain seemingly neutral provision, rule, criterion or practice disadvantages or would disadvantage workers, as well as a person seeking employment because of a particular trait, status, commitment, belief, or value system that forms the basis of non-discrimination against another worker as well as a person seeking employment. The current legislation prohibits discrimination in relation to: the conditions of employment and the selection of candidates for a particular job; working conditions and all rights in employment; education, training and further training; career advancement; and termination of employment contracts.

⁶ The Employment Service of the Brčko District of BiH;

Therefore, the Law on Prohibition of Discrimination in Bosnia and Herzegovina applies to the entire territory of the country, which means that all laws of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District are harmonized with this Law with regard to non-discrimination. The prohibition of discrimination is also prescribed by the Law on Aliens, as well as the Law on Gender Equality in Bosnia and Herzegovina (based on gender and sexual orientation).

In the Federation of Bosnia and Herzegovina there are explicit provisions on the prohibition of discrimination in the Law on Mediation in Employment and Social Security of Unemployed Persons of the Federation of Bosnia and Herzegovina. The said Law stipulates that no person may be disadvantaged by race, skin colour, gender, language, religion, political or other opinion, national or social origin, property status, birth or any other circumstance, membership or non-membership in political parties, or membership or non-membership in a union, or physical and mental disabilities.

The prohibition of discrimination is also prescribed by the Labour Law of the Federation of BiH for workers and persons seeking employment, with regard to gender, sexual orientation, marital status, family responsibilities, age, disability, pregnancy, language, religion, political and other opinions, nationality, social origin, property status, birth, race, skin colour, membership or non-membership in political parties and trade unions, health status, or other personal trait. Employers are free to decide which workers they want to hire, provided that the candidate meets the requirements laid down by law and the general act of the employer relating to education and work experience, and provided that the employer complies with the anti-discrimination provisions. In 2018, by the adoption of the Law on Amendments to the Labour Law of the Federation of Bosnia and Herzegovina (“The Official Gazette of the FBiH”, 89/18), Article 20a, it was stipulated that employment is based on the conclusion of a contract of employment, and after the procedure of admission to employment prescribed by the Rulebook on the work of the employer. In institutes/services/bureaus, agencies, directorates and administrative organizations under a different name, legal entities with public authority in the territory of the Federation of Bosnia and Herzegovina, as well as in public institutions and public companies founded by the Federation, canton, city or municipality, and in business organizations in which the Federation, canton, city or municipality participates with more than 50% of the total capital, admission to employment is conducted following the procedure of compulsory public announcement of admission to employment. The same Article stipulates that the Government of the Federation of Bosnia and Herzegovina shall, within 90 days from the day this Law enters into force, adopt a regulation prescribing the procedure for admission to employment in institutes/services/bureaus, agencies, directorates and administrative organizations, legal entities with public authorities. in the territory of the Federation, in public institutions and public companies founded by the Federation, and in companies in which the Federation participates with more than 50% of the total capital. The Cantonal Governments shall, within 90 days from the date of entry into force of this Law, adopt a regulation prescribing the procedure for admission to employment in institutes/services/bureaus, agencies, directorates and administrative organizations, legal entities with public authority in the territory of a canton, city or municipality, in public institutions and public companies founded by cantons, city or municipality, and in companies in which cantons, city or municipality contribute with more than 50% of the total capital. In this regard, the Government of the Federation of

Bosnia and Herzegovina in 2019 issued a Decree on the procedure for admission to employment in the public sector of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina”, 13/19) and it prescribes the procedure for admission to employment in federal institutes/services/bureaus, agencies, directorates and administrative organizations under another name, legal entities with public authorities delegated by federal regulations, as well as in public institutions and public companies founded by the Federation of Bosnia and Herzegovina, and in companies in which the Federation participates with more than 50% of the total capital, unless otherwise provided by a special regulation. This Regulation shall not apply to institutes/services/bureaus, agencies, directorates and administrative organizations under another name, where the procedure for admission to employment is governed by the regulations governing the legal status of civil servants and state employees in civil service bodies. Pursuant to this Regulation, employers, to whom this Regulation applies, shall be employed after the compulsory public announcement procedure and the recruitment procedure have been completed.”

In Republika Srpska, the Labour Law of Republika Srpska stipulates a prohibition of discrimination in such a way that a worker, as well as a person seeking employment, cannot be placed in an unequal position when exercising his/her right to work and the right to employment due to race, ethnic or national origin, skin colour, gender, language, religion, political or other opinion and belief, social origin, property status, membership or non-membership in a trade union or political organization, physical or mental health and other characteristics not directly related to the nature of the employment relationship.

The Law on Employment Mediation and Unemployment Rights stipulates that the employer independently decides on the choice of candidates for employment, among those offered by the Employment Service and other candidates who directly approached the employer for employment.

In the Brčko District of Bosnia and Herzegovina, according to the Labour Law of the Brčko District of Bosnia and Herzegovina, an employed person or a person seeking employment may not be discriminated against on the basis of race, skin colour, gender, language, religion, political affiliation, national and social origin, property status, sexual orientation, birth or other circumstances, membership or non-membership in a political party, membership or non-membership of a union, and physical or mental disabilities in relation to engagement, training, promotion, employment conditions, termination of employment contracts work or other issues arising from employment.

The Law on Employment and Unemployment Rights stipulates that the employer independently decides on the selection of candidates for employment, between those suggested by the Employment Service of Brčko District of Bosnia and Herzegovina or the Employment Agency, and other persons who directly addressed the employer for employment.

In practice, when it comes to employment discrimination cases before courts, including persons with disabilities, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina maintains statistics on the structure of complaints by gender of the complainant, given its authority to combat gender discrimination, as well as on the demands of different gender equality bodies and organizations. In the past year, men filed 93 and women filed 69 discrimination complaints.

When talking about mobbing as the most common form of discrimination in the structure of complaints received in the previous year, men filed 30 complaints and women 22 mobbing complaints. When looking at the total number of cases in the previous year, a total of 938 women

appealed to the Institution of Human Rights Ombudsman, compared to 1830 men, while in 498 cases the gender of the complainant was not specified, which is a consequence of *ex officio* opening of cases on anonymous complaints, association complaints, or situations where the complainant requests anonymity in the proceedings.⁷

The Committee's additional questions regarding the implementation of Article 1, paragraph 2 of the Charter in Bosnia and Herzegovina are set out in Annex 2 to this Report, questions 3 to 18.

1.3. Article 1, paragraph 3 - Free employment services

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the assessment of the status in Bosnia and Herzegovina in accordance with Article 1, paragraph 3 of the Charter is pending until the receipt of the additional information requested.

In Bosnia and Herzegovina, the employment services/bureaus at the level of both Entities and the Brčko District are organized at the level of both Entities, and the cantonal employment services are organized at the canton level. Employment services are established as public and free institutions of general interest, with legal personality, with rights, obligations and responsibilities defined by laws.

In the Federation of Bosnia and Herzegovina, there is a Federal Employment Service and 10 cantonal employment services, and they have the status of public institutions. The Federal Ministry of Labour and Social Policy shall supervise the legality of the work of the Employment Service and private agencies, with respect to the application of this Law and international treaties, and the legality of the work of the Federal Employment Service.

The Federal Employment Service is competent to:

1. Follow and propose measures to improve employment and social security of unemployed persons;
2. Monitor and ensure the implementation of established policies and measures in the field of labour and employment in the territory of the Federation and inform the competent bodies of the Federation thereof;
3. Manage the means of ensuring material security during unemployment in accordance with this Law;
4. Monitor, harmonize and coordinate the work of employment services in the implementation of established policies and measures in the field of employment and social security of unemployed persons within the jurisdiction of the Federation;
5. Monitor and propose measures to promote the employment of persons with disabilities and their professional rehabilitation and ensure that the conditions for their employment are fulfilled in cooperation with the employment services;
6. Provide assistance in the implementation of vocational guidance, training and retraining programs for unemployed persons and their re-employment in appropriate jobs;
7. Compile and maintain aggregate records in the area of work and employment of interest to the Federation and propose measures and necessary resources for the development and functioning of a single information system in this field;
8. Monitor the implementation of international agreements and treaties in the field of labour and employment pertaining to the Federation;
9. Represent employment services in relations with the authorities and services of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska;

⁷ The Agency for Gender Equality of Bosnia and Herzegovina;

10. Approve employment of foreign nationals and stateless persons at the proposal of an employment service, in accordance with the Law on employment of foreigners;
11. Monitor and undertake measures to create conditions for the return of the Federation citizens from temporary work abroad and their employment;
12. Perform other tasks specified by law, statute and acts of the Federal Employment Service and conventions and recommendations of the ILO pertaining to the field of labour, employment and social policy;
13. Submit to the Parliament of the Federation of Bosnia and Herzegovina an annual report on its work;
14. Submit the consolidated annual financial plans of the Federal Employment Service and the Employment Services to the Federal ministry responsible for labour affairs, in accordance with the Law on Budgets in the Federation of Bosnia and Herzegovina.

The cantonal employment services are responsible for: employment mediation; collecting and submitting data on unemployed persons to the Federal Employment Service; informing on employment opportunities; cooperation with educational institutions to align educational programs with the staffing needs of employers; the implementation of vocational guidance, training and retraining programs for unemployed persons and their re-employment in appropriate jobs; establishing the rights of persons in the event of unemployment; issuing work permits to foreign nationals and stateless persons; adopting and implementing programs of measures for faster employment of certain categories of unemployed persons whose employment is difficult; other tasks stipulated by this and other laws.

The employment services organize the collection, exchange and publication of information on employed persons seeking a change of employment, as well as other information that may be relevant for the pursuit of the basic activity of the employment service.

The employment services periodically evaluate the labour market according to the instructions of the Federal Employment Service in order to obtain data and provide information on the trends in the labour market.

In Republika Srpska, according to the Law on Employment Mediation and Unemployment Rights, public authorizations, as well as organizational, professional and other tasks in the field of employment are performed by the Republika Srpska Employment Bureau.

The Republika Srpska Employment Bureau is a public institution with legal personality, with rights, obligations and responsibilities established by the Law on Employment Mediation and Unemployment Rights and performs the tasks of employment, securing insurance in the event of unemployment, exercising the rights to insurance in the event of unemployment and other rights in accordance with the law, keeps records in the field of employment and perform other professional tasks.

The Bureau is organized at the central, regional and local levels and consists of: the Employment Bureau Central Office (headquarters in Pale), seven branches (Trebinje, Istočno Sarajevo, Bijeljina, Zvornik, Doboje, Banja Luka i Prijedor) and 59 employment bureau offices. The network of the Bureau organizational units covers the entire territory of Republika Srpska.

Employment mediation tasks are: mediation in employment, public announcement of employment opportunities and conditions, counseling on the choice of occupation (vocational guidance), vocational/professional training and preparation for employment, implementation of programs and measures of active employment policy, organizational, professional, administrative and other tasks related to exercising the right of unemployed persons to financial benefits, vocational/professional training, health care and other rights in accordance with the Law on Employment Mediation and Unemployment Rights.

The said Law stipulates that employment services related to employment mediation, counseling for the selection of occupations and training and preparation for employment, in addition to the Employment Bureau, may be performed by legal entities as companies and natural persons as entrepreneurs who fulfill the conditions for carrying out these tasks.

In the Brčko District of Bosnia and Herzegovina, according to the Law on Employment Mediation and Unemployment Rights, public authorizations, as well as organizational, professional and other tasks in the field of employment are performed by the Employment Service of Brčko District of Bosnia and Herzegovina. The Service is a legal entity with the status of a public service of general interest to the District, with rights, obligations and responsibilities established by the Law and the Statute of the Service. The Employment Service performs the tasks of employment, securing insurance in the event of unemployment, exercising the rights to insurance in the event of unemployment and other rights, keeping records in the field of employment, as well as professional, organizational, administrative, economic, financial and other general employment and insurance in the field of employment related tasks.

The Service is organized at the central level and consists of three sectors and a professional service of the director. The Inspectorate of the Brčko District of Bosnia and Herzegovina supervises the implementation of the Law on Employment and Unemployment Rights and the regulations adopted pursuant to this Law.

Employment services perform the tasks of employment related to employment mediation, announcement of employment opportunities and conditions, vocational guidance and counseling on the choice of occupation, organization of vocational/professional training, training and preparation for employment in addition to the Employment Service.

All additional questions from the Committee regarding the application of Article 1, paragraph 3 of the Charter in Bosnia and Herzegovina are answered in Annex 2, questions 19 to 25.

1.4. Article 1, paragraph 4 - Vocational guidance, training and rehabilitation

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the situation in Bosnia and Herzegovina is not in accordance with the Charter, on the grounds that it has not been established that the right to vocational guidance within the education system and the labour market is guaranteed (equal for all categories: employed and unemployed; men and women; foreign nationals; persons with disability, etc.).

The Constitution of Bosnia and Herzegovina prescribes the enjoyment of rights and freedoms, including the right to education that is guaranteed to all persons in Bosnia and Herzegovina without discrimination on any grounds, including disability. Moreover, the framework laws on education in Bosnia and Herzegovina⁸ incorporate provisions stipulating the right of access and equal opportunity to participate in appropriate upbringing, education and guidance without discrimination on any grounds regardless of gender, race, nationality, social and cultural background and status, family status, religion, psychophysical, and other personal traits.

The competent ministries of education at the level of Republika Srpska, ten cantons in the Federation of Bosnia and Herzegovina and the Department of Education of the Government of the Brčko District of BiH have their laws at all levels of education, which should be harmonized with

⁸ These are: 1. Framework law on pre-school education in BiH; 2. Framework Law on Primary and Secondary Education in BiH; 3. Framework Law on Secondary Vocational Education and Training in BiH; and 4. Framework Law on Higher Education in BiH;

the framework laws at the level of Bosnia and Herzegovina, which, along with education, lay down provisions on vocational guidance and training.

In Bosnia and Herzegovina, inclusive education is understood as a pedagogical-humanistic and reform movement. It is conceptualized by the introduction of new approaches to the education system based on the experiences of countries in the surrounding area and examples of good practice in Europe. Inclusive education in Bosnia and Herzegovina seeks to remove and is permanently removing barriers to lifelong equal learning opportunities and guidance and participation of all individuals in the education system, which means that there are no rejected, segregated, stigmatized or handicapped, but all exercise the right to full-time and other forms of education.

Great efforts are still being made to harmonize the education system throughout Bosnia and Herzegovina. Overcoming the fragmentation of the education system has been partially addressed by the formation of educational agencies and institutions at the state level, as well as by the adoption of framework laws. It also creates preconditions for the implementation of the inclusion process through adequate education and support for educators, teachers, and professors in the form of assistance from experts (doctors, psychologists, defectologists, speech therapists, etc.) in the development of individualized curricula. They are also assisted in practical work, including the implementation of rehabilitation programs and the provision of medical examinations and assistance by the above professionals, and the assistance from assistants/volunteers, as well as the provision of additional teaching aids tailored to work with students with disabilities and gifted students.

The education system organizes additional training for the teaching staff for the development of individualized curricula and the realization of teaching in heterogeneous groups and departments, and the competent educational authorities strive to provide ways of financing additional education of educators, teachers and professors, who will participate in teaching processes, as well as in vocational guidance activities.

The intention is to involve all age groups in the educational process. However, the groups that are considered most vulnerable due to various forms of exclusion from education are: children with special needs (physical and mental disabilities); Roma children; children of other national minorities; children returnees; socially disadvantaged children; children from rural areas; children and young drug addicts; children with learning and behavioural problems; children and young people in conflict with the law; and especially talented and gifted children.

In the Federation of Bosnia and Herzegovina, under the Law on Vocational Rehabilitation, Training and Employment of Persons with Disabilities, vocational rehabilitation encompasses the following activities: determination of residual work and general skills; professional information, counselling and assessment of professional opportunities; analysis of the labour market, employment opportunities and opportunities of involvement in work; assessment of the possibilities of implementation, development and improvement of vocational training programs, vocational training, further qualification, retraining, maintenance and improvement of working abilities until employment; drawing up a plan of the necessary equipment and means of work; informing and advising on modern technology in learning and work; individual and joint programs for the inclusion of persons with disabilities in the community; proposals for the application of different technologies and techniques in learning and work, with an assessment of the possibilities of application; development of motivation and training of persons with disabilities to use selected technology, information and support in sources of financing; preparation and professional assistance in training and education, technical assistance, support, monitoring and evaluation of

results in the implementation of these measures and activities; preparing people with disabilities in the workplace upon recruitment and other measures and activities relevant to the professional rehabilitation of persons with disabilities.

Vocational rehabilitation is organized and conducted by a vocational rehabilitation institution, a secondary school, a company for employment of persons with disabilities or other legal entity, which fulfils the conditions for training in accordance with the Law. No vocational rehabilitation institutions have been established in the Federation of Bosnia and Herzegovina, which is a key segment in the transition period from education to employment.

According to the Law, a vocational rehabilitation institution may be established by the Federation of Bosnia and Herzegovina, the canton, a local government unit, the Federal Employment Service, an association of persons with disabilities, a humanitarian organization, a religious community and other legal and natural persons.

In Republika Srpska, planned activities in the field of inclusion and lifelong learning are defined through measures in the Republika Srpska Education Development Strategy 2016-2021. In the area of inclusion, these measures pertain to the continuous analysis and improvement of the content, scope and quality of services for children with developmental disabilities. A particular strategic goal in secondary education is to support inclusion. Creating conditions for inclusion of students with developmental disabilities in mainstream teaching in secondary schools, increasing the competences of teaching staff through initial education and continuing vocational/professional training, creating an environment that will enable children with developmental disabilities to integrate more easily into society after secondary school, are just some of the measures to achieve this goal. Lifelong learning is a pervasive strategic objective in the Strategy. Developing lifelong learning competences of students through learning, encouraging adults for lifelong learning are some of the measures to achieve this goal. The aim is also to establish a qualification framework for Republika Srpska for vocational secondary education, which would, *inter alia*, ensure recognition of previously acquired knowledge and facilitate lifelong learning.

In Republika Srpska, there are no specific publicly-valid programs aimed at adapting and integrating persons with disabilities into the labour market, since the social partners have not so far expressed the interest for such programs.

The Brčko District of Bosnia and Herzegovina has not yet adopted a strategic document for this area. Vocational/professional training is provided through the programs of: the Employment Service or the employer that is providing for the retraining or further training of the unemployed persons; an employer who anticipates the retraining or further training of an employee for whose work the need ceased; The Service or employer that is providing for the retraining or further training of an employee seeking a change of employment: The Service or employer that gives the unemployed or an employee the opportunity to acquire additional knowledge and skills to perform a job within their profession under a special program; The Service or employer that offers the unemployed or an employee the opportunity to acquire, according to a special program, the necessary knowledge and skills to work at the same or lower level of education; training of unemployed persons through courses, seminars, workshops and other forms of training.

The Committee's additional questions regarding the implementation of Article 1, paragraph 4 of the Charter in Bosnia and Herzegovina are set out in Annex 2, numbers 26 to 30.

2. Article 9 – The right to vocational guidance

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the situation in Bosnia and Herzegovina is not in accordance with the Charter, on the grounds that it has not been established that the right to vocational guidance within the education system and the labour market is guaranteed.

In Bosnia and Herzegovina, training, professional development and guidance activities have been entrusted to the cantonal employment services and the Federal Employment Service, which provides assistance in the implementation of the program, at the level of the Federation of Bosnia and Herzegovina. In Republika Srpska and the Brčko District of Bosnia and Herzegovina, these activities have been entrusted to the employment services/bureaus. Within their annual plans and activities, the aforementioned bureaus and cantonal employment services plan and implement active employment policy measures aimed at training, vocational employment and training, further training and retraining, preparation of the unemployed for the labour market and creating equal opportunities for all in accessing the labour market. Support has been provided to the target groups of the unemployed who have been identified as difficult to employ by strategic documents, in particular young people and women.

Training of civil servants is carried out through the Civil Service Agencies at the state and entity levels, which they can organize independently, as well as in cooperation with other institutions.

In terms of the vocational guidance and training of military personnel, the same is regulated by the Law on Service in the Armed Forces of Bosnia and Herzegovina, as well as the Ordinance on the education and training of active duty military personnel and the Ordinance on the training of cadets and military scholars.⁹

In the Federation of Bosnia and Herzegovina, the Law on Mediation in Employment and Social Security of Unemployed Persons stipulates that the vocational orientation of the unemployed and other persons in their choice of occupation, the vocational/professional training of the unemployed and the retraining of employees for whose work the need ceased, the promotion of job creation and other incentive measures, is the activity of the employment service and is regulated by the cantonal regulation.

The Federal Employment Service assists in the implementation of vocational guidance, training and retraining programs for unemployed persons and their re-employment in appropriate jobs.

The Law also stipulates that an unemployed person is considered to be actively seeking work if, among other things, he or she adheres to a vocational guidance, training and retraining program.

In addition to the aforementioned, the Ordinance on employment records also regulates the keeping of special records in the field of employment, which include, among other things, information on the persons undergoing vocational training without employment, persons who are in retraining, vocational orientation, training and preparation for work.

The aforementioned Ordinance elaborates the institute of active job search. In this connection, it is stipulated that an unemployed person is obliged to comply with the conditions for active job

⁹ Ministry of Defence of Bosnia and Herzegovina

search, and that active job search and availability for work, in addition to the conditions prescribed by the Law, imply all actions of an unemployed person and employment services aimed at finding employment that is suitable for the professional, work and personal abilities and skills of the unemployed person.

The Ordinance stipulates that active job search includes, *inter alia*: participation in group information; participation in individual counselling sessions in order to determine the professional, work and personal abilities and skills of the unemployed person; participation in individual consultations; participation in identifying activities to prepare for employment; participation in determining the activities and objectives of the individual employment plan and the deadlines for implementation; participation in the implementation of the activities set out in the individual employment plan.¹⁰

In Republika Srpska, this area is regulated by the Law on Mediation in the Employment and Social Security of Unemployed Persons of Republika Srpska. The Republika Srpska Employment Bureau implements measures and tasks in the field of career orientation, information on occupational choice and career planning. The above measures and activities are mainly aimed at students of the final grades of primary and secondary schools in Republika Srpska, with the primary objective of raising awareness of the importance of the proper choice of professions and career planning. The Employment Bureau also, within the regular work of the Employment Bureau, conducts counselling work aimed at assessing the employability of unemployed persons, with the aim of providing professional assistance to their training in order for them to get involved in the work process faster and more efficiently. In doing so, the counselling process adapts to the profile, that is, the needs of each unemployed person individually and a training and guidance package for everyone is defined accordingly. In addition, the Bureau conducts professional student information activities, which is described in detail in response to the Committee's additional question under No. 40 (Annex 2).

In the Brčko District of Bosnia and Herzegovina, the Law on Mediation in the Employment and Social Security of Unemployed Persons regulates vocational guidance and counselling on the choice of occupation under which it considers counselling and information to assist the unemployed in their choice of occupation and employment, as well as to assist young people, the unemployed and employees in their choice or a change in occupation, or job, in education, training, and vocational rehabilitation. The Law places these tasks within the competence of the Employment Service of the Brčko District of BiH. As a rule, vocational training is provided for a well-known employer, and it can also be organized for the needs of the labour market when it is provided to persons of the occupations for which there is an increased demand, aiming at employing the aforementioned persons.

Vocational training is carried out in educational, scientific and other institutions that have been verified for carrying out these activities, that is, in cooperation with companies engaged in the field of education in the Brčko District territory.

The Service finances training programs through courses, seminars, workshops and other forms of training in the amount of actual costs, organizes them independently or through other authorized legal or natural persons by conducting a public procurement procedure. The amount of funds earmarked for financing the aforementioned programs will be determined depending on the programs, the identified target group and the available funds of the Service.

All measures implemented by the Service in the field of retraining and further training, i.e. preparation for the labour market, are available to all persons on the Service active record, i.e. the records of active employment seekers.¹¹

¹⁰ Federal Ministry of Labour and Social Policy;

¹¹ The Employment Service of the Brčko District of BiH;

More detailed information on the vocational guidance of specific categories (aliens and stateless persons; persons with disabilities; pupils, students and trainees; military personnel and unemployed persons) is provided in answers 31 to 42 to the additional questions of the Committee (Annex 2).

3. Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of gender

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of gender

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a. access to employment, protection against dismissal and occupational reintegration;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.

The European Committee on Social Rights (ECSR) in its conclusions (2016) concludes that the situation in Bosnia and Herzegovina is not in accordance with the Charter on the following grounds:

- women are not allowed to work in all occupations, which constitutes gender discrimination;
- the right to equal opportunities in employment and without discrimination on grounds of gender is not guaranteed in practice.

With regard to the first ground of non-compliance with the European Social Charter, we inform the Council of Europe Committee of Social Rights that until 2017, in Bosnia and Herzegovina, the International Labour Organization Underground Work (Women) Convention, 1935 (No. 45) was in force. However, in order to ensure equal opportunities and equal treatment in employment, without discrimination based on gender, in April 2017, the Council of Ministers of Bosnia and Herzegovina adopted the Proposal of a Decision to cancel the said Convention. The Ministry of Civil Affairs of Bosnia and Herzegovina referred the Proposal of Decision to the further cancellation procedure, after which the Presidency of Bosnia and Herzegovina, at its 37th regular session held on 25 July 2017, issued a Decision cancelling the Underground Work (Women) Convention, 1935 (No. 45) (“Official Gazette of BiH - International Treaties”, 9/17). In this regard, the said Convention ceased to have effect in Bosnia and Herzegovina on 26 March 2018. Other ILO conventions ratified by Bosnia and Herzegovina relating to employment treat men and women equally, i.e. women are allowed to perform the same work as men. Generally, labour market inequalities are also manifested through segregation in the occupations and economic sectors in which men and women are employed. Women are more likely than men to be employed as professionals, technicians and servants, workers in services or sales, while men are more likely than women to be employed as skilled manual workers and artisans, in the military and in managerial positions.

According to data from the Agency for Statistics of BiH from 2016 on the participation of women in teaching and teaching staff, women are more represented at all levels of education, percentage-wise, with the exception of higher education institutions. The participation of men as lecturers increases in the higher education institutions; hence, women make up 92.54% of the total number of employees in pre-school institutions, 71.22% of employees in primary schools, 59.85% of

teaching staff in secondary schools and 43.58% out of the total number of teaching staff in the higher education institutions.¹²

With regard to the second ground of non-compliance with the European Social Charter, the existing legal framework for gender equality in the area of work and employment is primarily the Constitution of Bosnia and Herzegovina and the entity constitutions which contain a general prohibition of discrimination, including a prohibition of discrimination on grounds of gender. The Constitution of Bosnia and Herzegovina explicitly incorporates certain conventions concerning gender equality into the legal system of Bosnia and Herzegovina.

The Law on Gender Equality of Bosnia and Herzegovina, as the most important instrument for raising awareness on gender equality issues and introducing gender equality principle in public policies and regulations, prohibits gender discrimination in work, employment and access to resources. The Law follows, in all respects, the provisions of the UN Convention on the Elimination of All Forms of Discrimination and provides a comprehensive list of practices that are considered discriminatory on the basis of gender in work and employment. Moreover, the Law provides equal wages and benefits for work of equal value, equal conditions for advancement at work, education, training and professional development, the same status regardless of gender or marital status when organizing work, sharing tasks or otherwise determining working conditions. and termination of employment. Furthermore, it prohibits different treatment in case of pregnancy, childbirth or maternity leave, different treatment of men and women regarding the decision to use maternity leave, and any adverse treatment of parents or guardians in reconciling work and family life responsibilities.¹³

General and specific collective agreements should be harmonized with the provisions of this Law and provide equal opportunities regardless of gender.

Trade unions and employers' associations will have a special role in ensuring equal protection of the right to work and conditions of employment and ensuring that there is no gender discrimination between members, whether direct or indirect.

All have equal rights of access to economic business, regardless of gender, which implies equal treatment in access to all economic resources, privatization, access to and use of loans and other forms of financial assistance, business licenses and registrations, and the conditions for obtaining them. Equal treatment and equal opportunities, as well as the elimination of discrimination, will be provided for women in the countryside, in order to facilitate their economic and family survival.¹⁴

Also, the implementation of the Law on Prohibition of Discrimination in Bosnia and Herzegovina and the entity Labour Laws, as well as reporting violations of their provisions, which indicate some form of discrimination, fully guarantee equal opportunities and equal treatment in employment, without discrimination based on gender.¹⁵

In the Federation of Bosnia and Herzegovina, the Labour Law is fully aligned with the relevant provisions of the Law on Gender Equality in Bosnia and Herzegovina, and in particular with regard to the area of work and employment. The Labour Law of the Federation of Bosnia and Herzegovina contains a general prohibition of discrimination against persons seeking employment or employees per an “open” list of prohibited grounds involving gender.¹⁶ Direct and indirect discrimination are defined. The grounds and types of discrimination at work and in employment

¹² Agency for Gender Equality in Bosnia and Herzegovina;

¹³ Gender Centre of the Federation of Bosnia and Herzegovina;

¹⁴ Centre for Gender Equality and Equality of Republika Srpska;

¹⁵ Agency for Gender Equality of Bosnia and Herzegovina;

¹⁶ It is forbidden to discriminate against workers and persons seeking employment with regard to gender, sexual orientation, marital status, family responsibilities, age, disability, pregnancy, language, religion, political and other opinion, nationality, social origin, financial status, birth, race, skin colour, membership or non-membership in political parties and trade unions, health status, or other personal treat;

were determined, among other things, on the basis of marital status, family responsibilities and pregnancy, and protection in the case of discrimination. Thus, the new Law, for the purpose of harmonization with the Law on Gender Equality in BiH, on the basis of submitted proposals of the Gender Centre of the Federation of BiH, among other things, treats sexual harassment and gender-based violence for the first time¹⁷, as well as mobbing, and establishes legal protection for these cases. For the cases of sexual harassment and gender-based violence, as well as the forms of discrimination prescribed by the Labour Law (Article 12 of the Labour Law, "Official Gazette of the FBiH", 26/16 and 89/18), it is established that the employee has the right to seek the protection of the rights with the employer, and if the employer does not comply with his request, he can file a lawsuit with the competent court. In that case, it is up to the employer to prove that there was no discrimination. Therefore, in the court proceedings, the victim of discrimination does not prove discrimination, only presents facts to the court, submits documents that will make the court believe that victim was discriminated against, while it is up to the employer to prove that there was no discrimination. In practice, women are often victims of mobbing, but because of the fear of losing their jobs, very few mobbing cases are transferred to court.

A novelty of the current Labour Law is also Article "Prohibition of unequal treatment", which stipulates that the employer cannot refuse to hire a woman because of pregnancy nor during pregnancy, during maternity leave, part-time work after the end of maternity leave, part-time work up to three years following the birth and absence for breastfeeding, nor can the employer terminate the contract to the woman, i.e. the employee exercising some of these rights.

It also expressly provides for the prohibition that the employer requests any information on pregnancy unless the employee requires a specific right provided by Law or other regulation pertaining to protection of pregnant women.

Overtime work is not allowed for a minor worker, a pregnant woman, a mother or adoptive parent of a child up to three years of age, as well as a single parent, single adoptive parent and a person entrusted with custody and upbringing, by the decision of the competent authority, of the child of up to six years of age. A woman may not be employed performing underground jobs (in mines), unless she is an employee at a managerial position that does not require physical work or is an employee in health and social care services, or unless the woman has to undergo underground training or temporarily enter the underground part of the mine for the purpose of performing the job related tasks that do not involve physical labour.

The Federal or cantonal labour inspector shall oversee the implementation of this Law and the regulations adopted thereunder. The Federal inspectors for labour perform direct inspection supervisions in companies and institutions of interest to the Federation, while the cantonal inspectors for labour perform direct inspection supervisions at employers, with the exception of the inspection supervisions determined by this or other law to be performed by Federal inspectors for labour.

The criminal provisions stipulate that the employer-legal entity will be punished for an offense by a single fine from BAM 500.00 to BAM 2,000.00, for each employee with whom he/she does not conclude a contract of employment and fails to apply for compulsory insurance, and in repeated offense by a fine from BAM 5,000.00 to BAM 10,000.00. A person at work without a contract of employment shall be also fined for a misdemeanour with a fine from BAM 100.00 to BAM 300.00, while in other criminal provisions for other offenses it is provided that the employer - legal entity will be punished for an offense by a fine from BAM 1,000.00 to BAM 3,000.00, and in repeated offense by a fine from BAM 5,000.00 to BAM 10,000.00; the employer - natural person will be punished for an offense by a fine from BAM 2,000.00 to BAM 5,000.00;

¹⁷ Article 9 of the Labour Law of the Federation of BiH, prohibits the employer and other persons employed by the employer from harassing or sexually harassing, gender-based violence, as well as systematic harassment at work or in connection with the work (mobbing) of workers and persons seeking employment with the employer;

responsible person with the employer who is a legal entity, will be punished for an offense by a fine from KM 2,000.00 to KM 5,000.00.

The Law on Mediation in the Employment and Social Security of Unemployed Persons of the Federation of Bosnia and Herzegovina also contains a provision that no person may be disadvantaged by virtue of this Law because of: race, skin colour, gender, language, religion, political or other opinion, national or social origin, financial status, birth or any other circumstance, membership or non-membership in a political party, or membership or non-membership in a trade union, or physical and mental disabilities. Also, the same law stipulates fines for offenses for legal entities as well as for the legal persons responsible persons acting contrary to the Law on the Prohibition of Discrimination, and any person who believes that discrimination has been committed against them can claim compensation through the competent court.¹⁸

In Republika Srpska, equal opportunity and equal treatment in employment based on gender is regulated by the Labour Law of Republika Srpska, which pays special attention to this issue, and a special chapter regulates the prohibition of discrimination. Discrimination is prohibited on several grounds, including on the grounds of gender.

An employee, as well as a person seeking employment, cannot be placed in an unequal position when exercising his/her right to work and the right to employment on the basis of race, ethnic or national origin, skin colour, gender, language, religion, political or other opinion and belief, social origin, property status, membership or non-membership in a union or political organization, physical and mental health and other traits not directly related to the nature of the employment. The Law also defines the equality of all persons in the employment process, regardless of gender. In addition, the prohibition of discrimination based on gender during the employment and in the procedure of termination of employment contract is prescribed.

From the above legal provisions, it is evident that the Labour Law clearly defines the right to equal opportunity and equal treatment in employment regardless of the gender of the person. In the event that a person believes that, in the particular case, the provisions of the Labour Law, which explicitly prohibits discrimination on grounds of gender, have been violated, the same person may file a lawsuit with the competent court and seek compensation for damages from the employer through court proceedings. It is important to note that the Law stipulates that, in the event of a dispute, the employer should prove that there was no discrimination, which further implies that the burden of proof lies with the employer. Thus, the gender of the person can in no case be an impediment or eliminatory circumstance in the exercise of any employment rights.¹⁹

In the Brčko District of Bosnia and Herzegovina, the Labour Law of the Brčko District of Bosnia and Herzegovina stipulates a prohibition of discrimination on the grounds of gender against the person seeking employment as well as against the person who is employed. If there is a violation of these legal provisions, the person whose rights have been violated may file a lawsuit with a competent court.²⁰

All additional questions from the Committee regarding the implementation of Article 20 of the Charter in Bosnia and Herzegovina are answered in Annex 2, Nos. 43 to 50.

V. ABBREVIATIONS

¹⁸ Federal Ministry of Labour and Social Policy;

¹⁹ The Ministry of Labour, War Veterans and Disabled Persons' Protection of Republika Srpska;

²⁰ The Government of the Brčko District of Bosnia and Herzegovina.

BIH - Bosnia and Herzegovina
FBIH - Federation of Bosnia and Herzegovina
RS - Republika Srpska
BD BiH - Brčko District of Bosnia and Herzegovina
ESP/R/ (ESC/R) - European Social Charter /revised/
EKSP (ECSR) – European Committee for Social Rights
MOR (ILO) – International Labour Organisation
KM (BAM) – Convertible Mark
JU (PI) – Public Institution

VI. CONCLUSION

Proposal of the text of the Tenth Report on the Implementation of the European Social Charter /Revised/ for BiH for Group I /Employment, Training and Equal Opportunities/ and Articles 1, 9 and 20, was prepared by the Inter-ministerial/Interdepartmental Working Group composed of nominated expert representatives from the following institutions, and according to the Decision of the Ministry for Human Rights and Refugees of BiH on the establishment of the Inter-ministerial/Interdepartmental Working Group for the preparation of the aforementioned Report, No. 01-37-1-0122-1/19 of 22 April 2019, as follows:

1. Amela Hasić, Coordinator of the Inter-ministerial/Interdepartmental Working Group, the Ministry for Human Rights and Refugees of BiH;
2. Ajla Nanić, member, the Ministry for Human Rights and Refugees of BiH;
3. Branislava Crnčević Čulić, member, the Gender Equality Agency of BiH;
4. Mersa Tinjak, member, the Ministry of Civil Affairs of BiH;
5. Sibela Slišković, member, the Ministry of Defence of BiH;
6. Sanela Zeljković, Member, the Labour and Employment Agency of BiH;
7. Tijana Popić, member, the Agency for Statistics of BiH;
8. Šefika Hasanagić, member, the Federal Ministry of Labour and Social Policy;
9. Goran Jurčić, member, the Federal Ministry of Education and Science;
10. Viktorija Bešević Čomić, member, the Federal Employment Service;
11. Riad Kremic, member, the Fund for Professional Rehabilitation and Employment of Persons with Disabilities of FBiH;
12. Belma Ramic, member, the Gender Centre of FBiH;
13. Rajko Klickovic, member, the Ministry of Labour, War Veterans and Disabled Persons' Protection of RS;
14. Branka Sladojević, member, the Ministry of Health and Social Welfare of RS;
15. Branka Malešević, member, the Ministry of Family, Youth and Sports of RS;
16. Bosiljka Bošnjak, member, the Ministry of Family, Youth and Sports of RS;
17. Zorica Garača, Member, the Ministry of Education and Culture of RS;
18. Snezana Borovcanin, member, the Republika Srpska Employment Bureau;
19. Miloš Marjanović, member, the Public Institution Fund for Professional Rehabilitation and Employment of Disabled Persons;
20. Mirjana Lukač, member, the Centre for Gender Equity and Equality of Republika Srpska;
21. Edisa Bajraktarević, member, the Department of Health and Other Services of the Government of the Brčko District of BiH;
22. Senka Petković, member, the Department of Health and Other Services of the Government of the Brčko District of BiH;

23. Marijana Petrovic Pekez, member, the Employment Service of the Brčko District of BiH.

The Ministry for Human Rights and Refugees of Bosnia and Herzegovina, in order to fulfil the obligation of Bosnia and Herzegovina as an international entity submitting a report on the implementation of the European Social Charter /revised/, proposes that the Council of Ministers of Bosnia and Herzegovina, following consideration of the proposal of the said Report, adopts the following:

CONCLUSIONS

1. The Tenth Report of Bosnia and Herzegovina on the implementation of the European Social Charter /revised/ pertaining to the first thematic group /Employment, Training and Equal Opportunities/ is adopted - "Articles 1, 9 and 20", for the reference period January 2015-December 2018;
2. It is the responsibility of the Ministry for Human Rights and Refugees to submit the Tenth Report of Bosnia and Herzegovina on the implementation of the European Social Charter /revised/ pertaining to the first thematic group /employment, training and equal opportunities/ - "Articles 1, 9 and 20", for the reference period January 2015 - December 2018, through the Ministry of Foreign Affairs of BiH, to the Committee of Social Rights of the Council of Europe in Strasbourg and to the Associations of Employers and Trade Unions of Bosnia and Herzegovina, pursuant to Articles 21 and 23 of the European Social Charter, after its adoption by the Council of Ministers of Bosnia and Herzegovina.

