March 2022

EUROPEAN SOCIAL CHARTER (REVISED)

European Committee of Social Rights

Conclusions 2021

BOSNIA AND HERZEGOVINA

This text may be subject to editorial revision.

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

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

The following chapter concerns Bosnia and Herzegovina, which ratified the Revised European Social Charter on 7 October 2008. The deadline for submitting the 11th report was 31 December 2020 and Bosnia and Herzegovina submitted it on 16 June 2021.

The Committee recalls that Bosnia and Herzegovina was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

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

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

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

The reference period was from 1 January 2016 to 31 December 2019.

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

– one conclusion of conformity: Article 13§2;

– 9 conclusions of non-conformity: Articles 11§2, 11§3, 12§1, 12§2, 13§1, 13§3, 14§1, 14§2 and 23.

In respect of the situation related to Article 11§1, 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 Revised Charter.

The next report from Bosnia and Herzegovina will deal with the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);

- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);
- the right to information and consultation in collective redundancy procedures (Article 29).
  The deadline for submitting that report was 31 December 2021.

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

Article 11 - Right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

Previously the Committee deferred its conclusion (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the deferrals and to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

Measures to ensure the highest possible standard of health

The Committee notes that in it previously deferred its conclusion and asked the next report to provide updated information on the measures taken to combat the causes of mortality, on implementation of measures to reduce infant and maternal mortality and their impact in practice (Conclusions 2017).

The report states that a series of activities have been undertaken to reduce risk factors of main causes of death. For example, a detailed analysis of health of the population was conducted, risk factors were analysed, guidelines on the prevention of risk factors, guidelines for primary healthcare have been prepared. A project aimed at reducing health risk factors in Bosnia and Herzegovina was carried out and its activities were focused on social mobilisation, media campaigns, monitoring in two selected communities in Bosnia and Herzegovina (Zenica and Mostar). The main purpose of the project is to reduce leading risk factors related to health of the population by promoting the improvement of tobacco and alcohol control, by promoting healthy eating programmes and physical activity of selected persons is Zenica and Mostar.

The report provides information on infant mortality between 2016 (the rate was 7.7 according to the report) and 2018 (the rate was 8.3 according to the report). The Committee notes that according to World Bank data, the infant mortality rate decreased from 5.4 in 2015 to 5.1 in 2019 (infant mortality rate per ,000 live births was 3.4 in 2019 in the EU). The report states that maternal mortality was not registered during the reporting period. According to the World Bank data, maternal mortality was 10 per 100,000 live births in 2015 and it remained the same until 2017, which is the last year the data is given (maternal mortality rate per 100,000 live births was 6 in 2017 in the EU). The report states that in the Republika Srpska infant and maternal mortality rate is low (infant mortality was 1.9 in 2016 and 1.1 in 2018 and maternal mortality was 0.4 in 2016 and 2018) and in the Brčko District infant and mortality rate was 0 during the reference period.

The Committee notes that the rates of infant ant maternal mortality are high, and, while the rate of infant mortality is decreasing slightly, the rate of maternal mortality stays at the same high level. The Committee thus asks the next report to provide information on specific measures taken to reduce infant and maternal mortality and their implementation in practice.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§1 of the Charter on this point.

The report states that in the Federation of Bosnia and Herzegovina, its Ministry of Health has initiated and is establishing the Obstetric Surveillance and Response System. The purpose is to reduce or eliminate preventable maternal deaths. Special attention was paid to reporting postpartum haemorrhage and eclampsia. The Committee asks the next report to provide the results of the establishment of the Obstetric Surveillance and Response System.

In its targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

In reply to the Committee's targeted question on statistical data on life expectancy across the country and different population groups, the report provides statistical information on the average life expectancy in Bosnia and Herzegovina. The report states that it refers to the World Bank data and states that the life expectancy at birth is 77.66 years (average). The Committee notes that it is not clear from the report which year this data refers to. Thus, the Committee notes from the World Bank data that in 2019 life expectancy at birth was 77.4 (average) (for example, the EU-27 average of 81.3 in 2019), which is an increase in comparison with 2015, when it was 76.9. Also, according to World Bank data, life expectancy at birth in 2019 was 79.9 years for women (79.3 years in 2015) and 74.9 years for men (74.4 years in 2015). According to World Bank data, the death rate in Bosnia and Herzegovina increased slightly per 1,000 inhabitants from 10.3 in 2015 to 10.9 in 2019.

The report states that the main causes of death in Bosnia and Herzegovina are chronic diseases, such as acute myocardial infarction, stroke, cardiac arrest, malignant neoplasms of the bronchi and lungs, essential hypertension and chronic ischemic heart disease.

The report does not provide information on life expectancy across distinct ethnic groups and minorities, longer term homeless or unemployed, as well as information on prevalence of particular diseases among relevant groups, such as new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison, thus the Committee reiterates this request for information.

Access to healthcare

In its previous conclusion, the Committee noted that there were no steps taken in Bosnia and Herzegovina to reduce fragmentation of the entire health system and to harmonise reforms. It also asked for information on health situation of Roma community. The Committee also noted that internally displaced persons that return in the country continued to face obstacles in access to healthcare and asked the next report to provide information on this issue. The Committee asked for information on the availability of mental healthcare and treatment services, dental care services and treatments (Conclusions 2017).

The report states that there are three separate health systems in Bosnia and Herzegovina: the health system of the Federation of Bosnia and Herzegovina, of the Republika Srpska and of the Brčko District. Persons with health insurance in different entities and cantons have different rights and different access to healthcare, even if they pay same amounts of contributions. The Brčko District developed a cooperation in this field with the other two entities and cantons. The report states that decentralisation of public services is aimed at increasing accessibility and quality of public services.

The Committee notes that such extreme fragmentation of the health system significantly complicates not only the way healthcare services are provided, but also increases coordination costs and adversely affects the rationality of management of healthcare institutions. The Committee thus asks the next report to provide information on specific steps taken to reduce this fragmentation.

With regard to Roma community and internally displaced persons, the report states that a lot of Roma do not have health insurance because only a small amount of people from the community are employed. A project was carried out in Bosnia and Herzegovina which included the mapping of the health needs of Roma. Also, the Law on Health Care (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 46/10 and 75/13) prescribes priority healthcare measures that enable access to all levels of healthcare for vulnerable groups, such as Roma. The Committee asks the next report to provide information on whether and how access to healthcare is secured to all Roma. As regards internally displaced persons, the report states that financial resources on healthcare are planned by the respective ministries. The Committee asks the next report to provide information on how access to healthcare is ensured to all internally displaced persons.

With regard to mental health, the report states that in Bosnia and Herzegovina the Regional Centre for development of Mental Health in South-Eastern Europe made a significant contribution to advancing mental health reform in the region. The progress made includes deinstitutionalisation, support for community mental health centres, support for the association of users of mental health institutions, definition of standards for the protection of the human rights of person with mental illnesses. Mental health services are provided in all three levels of healthcare. The Committee asks the next report to provide more specific information on mental health services that are provided in each level of healthcare.

With regard to dental care, the report states that in the Federation of Bosnia and Herzegovina, dental care is provided in health centres within the primary level of healthcare and dental care is funded from compulsory health insurance fund within the basic package of health services. For example, partial acrylic dentures, acrylic prostheses, temporary prosthesis are 100 per cent financed by the State for insured persons. In the Republika Srpska dental care is fully or partially covered by the compulsory health insurance, for example, insured persons who are not exempt from personal participation in the costs of healthcare, pay a co-payment resulting in 50 per cent of the price of the service provided. The Committee notes that no information is provided on dental care in the Brčko District and asks the next report to provide this information.

As a targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood.

The report states that each hospital must have a maternity ward. Health insurance is provided for women during pregnancy and birth and puerperium and postnatal complications for up to six months after giving birth.

The Committee asks for information on the measures taken to ensure that women and girls have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The report provides no information on abortion. The Committee thus asks the next report to provide information on access to abortion, the costs of abortion and whether they are reimbursed by the State in total or in part.

The report provides no information on early motherhood, thus the Committee reiterates its request to provide statistical information about early (underage or minor) motherhood.

The Committee asks the next report to contain information on the public health expenditure as a share of GDP.

With regard to transgender persons, the report states that in the Federation of Bosnia and Herzegovina the gender reassignment surgery is not covered by health insurance. In the Republika Srpska, a request to a fund can be submitted and it usually sends a person abroad for treatment with an instruction that the costs of the surgery would be reimbursed by the fund. In the Brčko District, gender reassignment surgery is not covered by health insurance.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, op. cit., §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

In its targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). The report does not provide any information in this sense. The Committee asks that information be provided in the next report on the measures taken to ensure informed consent to health-related interventions or treatment.

Covid-19

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population, as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

The report provides no information, thus the Committee repeats this request for information.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to

ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

Conclusion

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

Article 11 - Right to protection of health

Paragraph 2 - Advisory and educational facilities

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee considered that the situation in Bosnia and Herzegovina was not in conformity with Article 11§2 of the Charter on the ground that screening policies were not systematically in place in the country (Conclusions 2017).

Education and awareness raising

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, and alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

In reply, the report indicates that in the Federation of Bosnia and Herzegovina, the cantonal institutes of public health and the Public Health Institute inform the general public through actions held at internationally important dates; on average about 20 different thematic areas are approached each year. The report further details how the information related to the thematic areas of addiction is disseminated to the public. The report refers to the training programme of family medicine teams and to the activities carried out in relation with prevention and smoke-free living.

Regarding the Republika Srpska, the report states that the Ministry of Health and Social Welfare, in cooperation with the World Health Organisation (WHO), implemented the project "Strengthening and Improving Modern and Sustainable Public Health Strategies, Capacities and Services to Improve Population Health". Within this project, guides and promotional material were developed; they deal with the prevention of obesity in children and adults and the promotion of physical activity. The report also mentions that campaigns are held in accordance with the health calendar.

Regarding the Brčko District, the report refers to the awareness-raising campaigns on adverse health effects launched on the Brčko District Government website.

The Committee recalls again that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as healthy eating, sexuality, and the environment (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43).

The Committee notes that the report does not contain information on sexual and reproductive health education and related prevention strategies addressing self-harm conducts, alcohol and drug use in the community and in schools. Therefore, the Committee reiterates its request. It points out that, should the necessary information not be provided in

the next report, nothing will enable the Committee to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§2 of the Charter in this respect.

In its previous conclusion, the Committee asked for updated information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2017). In response, the report states that preventive activities planned by the WHO framework documents are implemented at the level of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District. The report specifically refers to the preventive activities carried out in cooperation with institutions from the health sector and non-governmental organisations who actively seek and detect TB and HIV among particularly vulnerable groups (Roma, prisoners, displaced persons, persons who have limited access to health services and other specific groups).

Regarding the Federation of Bosnia and Herzegovina, the report informs about activities for the preservation and improvement of health which are carried out at the level of local communities, in accordance with their particularities and needs. However, the report does not contain any updated or specific information.

The report states that in the Republika Srpska, in the period from 2016 to 2019, within the framework of the implementation of the project “Health Promotion and Prevention of Health Risk Factors in Roma Communities in the Republika Srpska”, individual contacts were established with more than 500 Roma families who were educated on general hygiene measures, sexual and reproductive health, prevention of the transmission of infectious diseases such as HIV and tuberculosis, the importance of immunisations and risk factors for mass non-communicable diseases. According to the report, informational and educational material was developed, printed and distributed to Roma communities. The report adds that over 50 workshops were organised with the participation of more than 1,000 members of the Roma community, on the topic of hygienic and epidemiological waste management, the prevention of infectious diseases, and of cervical cancer and breast cancer in women. Furthermore, the report mentions a depression prevention programme, and the programme for the prevention and control of chronic non-communicable diseases is also being partially implemented.

The report also indicates that in the Brčko District, some activities are carried out in accordance with the health calendar adopted by the Public Health Subdivision.

The Committee asks that the next report provide updated and specific information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases, not only among particularly vulnerable groups, but also among the population at large.

In its previous conclusion, the Committee also asked whether providing health education at schools was a statutory obligation, how it was included in school curricula (as a separate subject or integrated into other subjects), and its content (Conclusions 2017). In response, the report indicates that health education is included in the curriculum of primary and secondary education through the subjects of Physical and Health Education and Sports Culture, and it is integrated into all other subjects to a greater or lesser degree. Since the report only partially anwers its questions, the Committee reiterates its request. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§2 of the Charter in this respect.

In its targeted questions, the Committee also asked for information about awareness and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. The report does not contain the information requested. Therefore, the Committee reiterates its request. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§2 of the Charter in this respect.

Counselling and screening

In its previous conclusion, the Committee considered that the situation in Bosnia and Herzegovina was not in conformity with Article 11§2 of the Charter on the ground that screening policies were not systematically in place in the country (Conclusions 2017). It also asked for information on the conditions of accessibility to cancer screening, the proportion of persons concerned and the frequency of such examinations.

In response, the report recalls the information provided previously regarding the Strategy for the prevention, treatment, and control of malignant neoplasms for 2012-2020 in the Federation of Bosnia and Herzegovina. It also contains information on the Action Plan for the implementation of the Strategy for the period 2013-2014 (outside the reference period). According to the report, no significant progress has been made in the Strategy implementation due to the lack of financial resources; screening programmes are sporadically implemented at the cantonal level and are related to the available funds. The report refers to the Breast and Cervical Cancer Prevention Project for Roma Women as one example of a successful and comprehensive screening programme. In addition, screening for hypothyroidism, phenylketonuria and adrenal hyperplasia is planned and will be available for all new-borns.

Regarding the Republika Srpska, measures for the early detection of certain malignant diseases such as cervical, breast, colon, rectal and prostate cancers are organised and implemented by the couselling services of the health Centre in cooperation with family medicine teams and specialist hospital services. These measures concern both the early detection of the disease and the detection and reduction of risk factors. The report further mentions that, from 2016 to 2019, within the project “Health Promotion and Prevention of Health Risk Factors in Roma Communities in the Republika Srpska”, a preventive examination for the early detection of cervical and breast cancer was organised for 150 Roma women, and a preventive examination for the early detection of prostate cancer and colon cancer for 20 Roma men.

The Committee recalls that where it has proved to be an effective means of prevention, screening must be used to the full (Conclusions XV-2 (2001), Belgium). In particular, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). In light of the foregoing, the Committee reiterates its previous conclusion of non-conformity on the ground that screening policies are not systematically implemented in the country.

In its previous conclusion, the Committee asked for information on free and regular consultations and screenings for pregnant women and children throughout the country, including information on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions 2017).

In reply, the report indicates that, with the aim of monitoring growth and development as well as the early detection and treatment of diseases and other developmental disorders, regular medical check-ups are performed in the second, fifth and eighth grades of the nine years of primary education, and in the first and third grades of secondary education. The report describes in detail the medical check-ups and the registration of chronic and allergic diseases alongside the control and implementation of vaccination and revaccination.

The report indicates that primary health care is provided to all children on the territory of the Federation of Bosnia and Herzegovina through paediatricians in the Health Centres. The Committee takes note of the detailed information on the frequency, scope and type of medical check-ups performed up to the age of 18. According to the report, the Law on Health Insurance stipulates that every child is insured on some grounds, and the sources of financing are determined. The report also provides figures for the medical check-ups performed in the period 2016-2018 in the Federation of Bosnia and Herzegovina. In the Republika Srpska, free health care is available to children up to 15 years of age and fully

provided at the expense of funds from the compulsory health insurance. The report adds that in the Brčko District the Law on Health Care prescribes that health care is provided to children up to 15 years of age, school children and students until the end of schooling, but no later than the age of 27. This category of the population is provided with health care that is not covered by compulsory health insurance from the District's budget.

The Committee ask again that the next report provide information on free, regular consultations and screenings for pregnant women. It points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§2 of the Charter in this respect.

The Committee takes note of the detailed information provided in the report on the conditions of accessibility to screening, the proportion of persons concerned and the frequency of examinations in the framework of the Programme for Rare Diseases in the Republika Srpska for 2014-2020.

Conclusion

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

Article 11 - Right to protection of health

Paragraph 3 - Prevention of diseases and accidents

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government's replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that measures have been taken to guarantee a healthy environment (Conclusions 2017).

Healthcare services in places of detention

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary etc.).

The Committee notes that the information requested is not provided. Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§3 of the Charter.

Community-based mental health services

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

In its previous Conclusions under Article 11§1 of the Charter, the Committee asked for information regarding the availability of mental health and treatment services, including information on the prevention of mental disorders and recovery measures (Conclusions 2017). Although the report does not answer the targeted question, it includes information with regard to the latter question.

The report notes that over the last ten years the two main entities of Bosnia and Herzegovina developed a network of 69 community-based mental health centres – 42 in the Federation of Bosnia and Herzegovina (FBiH) and 27 in Republika Srpska (RS) respectively. These centres have multi-disciplinary teams comprising psychiatrists, psychologists, social workers, occupational therapists and nurses, offering health and prevention services in a primary care setting, in close cooperation with public health institutions. The entities provide professional training and develop patient management strategies and quality standards. The report emphasises the involvement of user-led organisations in the process of developing and delivering services. Campaigns have been carried out to reduce stigma and discrimination of people with mental disorders. The report notes that 2300 people living with a mental disorder in FBiH were in receipt of services at the time of writing, significantly reducing the risk of institutionalisation. The mental healthcare centres in FBiH are supplemented with facilities providing secondary and tertiary care.

The Committee refers to the 2020 European Commission Country Report for Bosnia and Herzegovina, which notes that institutional care for persons with disabilities is still prevalent. Services within the community that enable independent living are not adequately supported and there is no comprehensive strategy for deinstitutionalisation. In a letter sent in 2019, the Commissioner for Human Rights expressed concern in relation to reports of abuse in residential institutions for children with disabilities. The Commissioner noted that children with disabilities continue to be placed in institutions for social care throughout Bosnia and Herzegovina due to the lack of adequate family support.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The Committee notes that Article 15§3 of the Charter ordinarily provides an opportunity to examine the process of deinstitutionalisation of persons with disabilities. As Bosnia and Herzegovina has not ratified that provision, the issue in question falls to be assessed under Article 11§3 of the Charter.

The Committee therefore asks for information as follows:

- the number of fully and/or partially closed institutions, or the reduction in the number of beds in long-stay psychiatric hospitals; if a deinstitutionalisation strategy is in place, what the timeline is for the closure of all institutions;
- the alternatives that have been put in place: the type of community-based services, including access to personal assistance, housing options, and access to mainstream services, including employment and education;
- with regard to housing, to what extent people leaving institutions are able to choose where and with whom they would like to live, and whether they are obliged to access a particular living arrangement to access support;
- data on the number of people living in group housing (small group homes, family-type homes, etc.) after leaving institutions, disaggregated by age and impairment.;
- how services are funded, how disability-related costs are funded, and how individuals are assessed for access to different support services and allowances;
- how the quality of community-based services is monitored, and how persons with disabilities and their representative organisations are involved in the delivery, monitoring or evaluation of community-based services.

Drug abuse prevention and harm reduction

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the "available, accessible, acceptable and sufficient quality" criteria (WHO's 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

In its previous conclusions, the Committee asked for information regarding the impact on drug consumption of policies adopted during the previous reference period (Conclusions 2017).

The report only answers the latter question. It states that planning documents on drug consumption had been adopted at the national level (for the period 2018-2023) and in RS (for the period 2016-2021). However, it does not provide any information regarding trends in consumption under current or previous planning documents.

The 2020 European Commission country report on Bosnia and Herzegovina noted the absence of an action plan to implement the 2018-2023 strategy, that funds were needed for harm reduction programmes and the social reintegration of addicted persons, as well as certain data collection gaps.

The Committee notes that the information requested is not provided, namely with regard to drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings, and to an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment). Therefore, the Committee reiterates its request and considers that, if the requested information is not provided in the next report, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with Article 11§3 of the Charter.

Healthy environment

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

The Committee reiterates that in its previous conclusion the Committee found that the situation in Bosnia and Herzegovina was not in conformity with Article 11§3 of the Charter on the ground that it had not been established that measures were taken to guarantee a healthy environment (Conclusions 2017). Additionally, it asked for updated information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased.

Regarding water quality, the report notes that 60% of the population in FBiH, mostly urban, is covered by public water supply systems, with quality monitoring procedures in place. The report describes the uncertain status of local waterworks, many of which are at risk of contamination due to unregulated and illegal landfills, among other sources of pollution. A high percentage of drinking water samples taken from public fountains and school buildings were found to be sub-standard. A correlation has been found in places where water is drawn from unregulated sources, with higher levels of acute enterocolitis, which however have decreased over the recent years.

The report notes that air quality monitoring across the FBiH is uneven. The report additionally submits data on the presence of several pollutants, including sulphur dioxide, nitrogen dioxide, carbon monoxide and suspended particulate matter (PM2.5). Although pollution levels differ based on location, season and weather conditions, they are often below target values. The report also provides data on food poisoning, food safety and nutritional values for food offered for sale.

The report provides comparatively less precise environmental data regarding the situation in RS and the Brčko District (BD). Furthermore, the report does not provide any information on the issue of waste management.

The Committee notes that the 2020 European Commission Country report for Bosnia and Herzegovina found significant shortcomings in terms of the alignment of Bosnia and Herzegovina with European Union acquis in the area of environmental protection. For example, in relation to air quality, the report noted that a well-functioning countrywide air quality monitoring network still needed to be established together with the programme for air quality improvement. Air quality plans for areas where levels of pollutants exceeded limit values still needed to be adopted. According to the country report, air quality management needed to be addressed in a harmonised and consistent countrywide manner to efficiently combat air pollution and reduce as quickly as possible the levels of pollution in exceedance of the limit values in a number of cities. Progress was needed also in addressing national emissions of main pollutants and establishing national emission inventories and reporting.

On the basis of the information provided, the Committee considers that the situation is no longer in breach of the Charter on this ground. Nonetheless, the Committee asks for information on the measures taken to address the environmental problems identified in the present report: lack of access to safe drinking water in rural areas, insufficient air quality monitoring infrastructure, air pollution, waste management, as well as to address the health problems of the populations affected.

Immunisation and epidemiological monitoring

In its previous conclusions, the Committee asked for information regarding the immunisation coverage rate on a State level and for each entity, particularly in view of negative trends registered during the previous reference periods (Conclusions 2017). The Committee pointed out that, if this information was not provided in the next report, there would be nothing to establish that the situation was in conformity with the Charter on this point.

The report acknowledges that coverage rates remained generally unsatisfactory, signalling a decline in the quality of the population's collective immunity against certain diseases and the threat of their occurrence in epidemic form. Information is presented regarding coverage rates in FBiH and the BD, but not in RS. The Committee also takes note of the information provided in the report regarding the results of the national pandemic influenza plan and the strategy to respond to AIDS.

The Committee notes from different sources that a measles epidemic took place in Bosnia and Herzegovina in 2019, which was attributed to missed vaccination targets (Jurica Arapović, Željana Sulaver, Borko Rajič, Aida Pilav, The 2019 measles epidemic in Bosnia and Herzegovina: What is wrong with the mandatory vaccination program?,*Bosn J Basic*

Med Sci. 2019;19(3):210-212). The epidemics of 2019 followed epidemic waves that took place in 1997-1998 and 2004-2005, leading the WHO to categorise Bosnia and Herzegovina as a country with endemic transmission of measles. The authors of the study pointed out that although vaccination in Bosnia and Herzegovina was mandatory, and backed up by a sanction regime, enforcement was weak. This situation was attributed to lack of awareness regarding the merits of vaccination among healthcare workers and the campaigns spreading misinformation around vaccines.

The Committee asks for information in the next report on the measures taken to increase immunisation coverage, as reflected in updated coverage rates. Meanwhile, the Committee concludes that the situation is not in conformity with Article 11§3 of the Charter on the ground that efficient immunisation and epidemiological monitoring programmes are not in place.

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The Committee notes that the information requested is not provided.

Tobacco and alcohol

In its previous conclusions, the Committee asked for clarifications on figures indicating that workplaces in RS were not smoke-free and reserved its position on that point (Conclusions 2017). In addition, the Committee reiterated its request for smoking prevalence rates and legal frameworks on tobacco consumption.

The report acknowledges that smoking control legislation currently in place in the entities is not fully aligned with relevant European Union standards. New draft tobacco control legislation which rectified some of the existing gaps was being considered in the FBiH, at the time of submission. The procedure for the ratification of the Protocol on Removal/Elimination of Illicit Trade in Tobacco Products at State level was also underway. The 2020 European Commission Country Report for Bosnia and Herzegovina confirms that national legislation lacks a comprehensive ban on smoking in in public places, among other gaps. Furthermore, the WHO Framework Convention on tobacco control, that Bosnia and Herzegovina is a party to, is not being fully implemented due to a lack of systematic monitoring.

The report presents prevalence rates from 2012 in FBiH indicating that 44.1% of adults aged 18 to 65 were smokers, including 56.3% of men and 31.6% of women. More recent data indicates almost a quarter of school children aged 13 to 15 (24.4%) consumed some kind of tobacco product, and 1 in 10 smoked cigarettes, with most current smokers having been able to purchase cigarettes from stores or kiosks despite of their age. The report also presents data demonstrating high prevalence rates among health professionals (as of 2017, 35% were smokers). The report does not provide information regarding prevalence rates in RS or BD.

The Committee asks for information regarding legislative developments in the area of tobacco control at all administrative levels, as well as prevalence rates in all entities. Meanwhile, the Committee concludes that the situation is not in conformity with Article 11§3 of the Charter on the ground that the necessary measures were not taken to ban smoking in public places, in conjunction with persistently high prevalence rates and reporting gaps with respect to the situation in RS and the BD.

In its previous conclusions, the Committee asked what legislation and policies are in force concerning alcohol consumption and, in particular, what the minimum legal age for the purchase of alcoholic drinks is and whether there are legally binding rules on alcohol advertising. It likewise asked for information on consumption trends (Conclusions 2017).

The report presents detailed information about State-, and entity-level, legislation on alcohol consumption, including with regard to the minimum legal age for the purchase of alcoholic drinks (uniformly 18 years old), and on alcohol advertising. The report acknowledges that alcohol consumption is a significant public health problem and presents information regarding consumption trends in FBiH from 2012.

The Committee asks for comprehensive and updated information about alcohol consumption trends and further measures taken with a view to reducing alcohol consumption across Bosnia and Herzegovina.

Accidents

In its previous conclusion, the Committee asked for information on domestic accidents, accidents at school and accidents during leisure time (Conclusions 2017).

The report presents information on traffic accidents in FbiH (demonstrating a downward trend across relevant indicators during the reference period) and on work accidents (covered under Article 3§3 of the Charter).

Covid-19

In a targeted question, the Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The Committee notes that the information requested is not provided.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place. (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 11§3 of the Charter on the grounds that:

- efficient immunisation and epidemiological monitoring programmes are not in place;
- the necessary measures were not taken to ban smoking in public places .

Article 12 - Right to social security

Paragraph 1 - Existence of a social security system

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

Risks covered, financing of benefits and personal coverage

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

In its previous conclusion (Conclusions 2017) the Committee considered that it had not been established that the personal coverage of social security risks was adequate.

As regards the personal coverage of healthcare, to the report, at the level of Bosnia and Herzegovina (BiH), the accessibility of the health care system is mainly conditioned by the geographical distribution of health care institutions and the organisation of health care in accordance with the administrative borders of the entities, cantons and Brčko District of BiH. The organisation, financing and provision of health services to the population are the responsibility of the entities, cantons and Brčko District of BiH.

The Committee notes that although according to the Law on Health Insurance the system of compulsory health insurance is based on the principles of reciprocity and solidarity, and the Law on Health Care guarantees equal rights to health care for all insured persons in the Federation of Bosnia and Herzegovina (FBiH), the rights of insured persons to health care and other rights arising from compulsory health insurance in cantons is uneven, which is largely the cause of unequal economic opportunities from canton to canton. Namely, the scope and type of health care rights are conditioned by the amount of funds realised by cantonal health insurance institutes, organisation and level of equipment of health institutions in the canton, established health care financing system, rationality in spending funds from compulsory health insurance, distribution of funds by health care levels, control of spending funds, quality control in the provision of health services, etc. The Committee refers to its conclusion under Article 11§1 and asks what measures are taken to address this problem.

As regards the personal coverage, the Committee notes that health insurance at the level of the FBiH in 2018 covered 88.9% of the population.

Access to healthcare in Republika Srpska is carried out according to the principles of equality, accessibility, comprehensiveness, continuity and coordination. Equality in healthcare means that citizens with the same health needs receive the same level of health care, and citizens with different health needs receive different levels of health care, in accordance with the provisions of this law and other regulations governing this area.

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed and that States Parties must ensure this right through the existence of a social security system established by law and functioning in practice. In particular, health insurance should extend beyond the employment relationship and must cover a significant percentage of the population. The Committee notes that the report provides some information concerning the healthcare coverage of unemployed persons. It notes that in the Brčko District around 58% of unemployed persons were covered in 2019. However, the Committee requests that the next report provide information about the percentage of population is covered by healthcare in BiH overall and in Republika Srpska and Brčko District of BiH.

As regards occupational diseases and disability, in reply to the Committee question in the previous conclusion, the report provides information about the applicable legislative framework in all entities. The Committee asks the next report to indicate the percentage of active population covered against these risks.

The Committee further recalls that the social security system should furthermore cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits. In its previous conclusion the Committee asked what was the personal coverage of these risks. The Committee notes that the report does not provide this information. The Committee considers therefore that it has not been established that the personal social security system is adequate.

Adequacy of the benefits

In its previous conclusion the Committee found that it had not been established that the minimum levels of social security benefits were adequate.

As regards unemployment benefit, the Committee refers to its previous conclusion for the description of the unemployment insurance system in all entities. The Committee has previously considered that the situation was not in conformity with Article 12§1 of the Charter on the ground that the duration of payment (3 months for a period of contributions of 5 years) was too short (Conclusions 2017). The Committee notes from the report that the duration of unemployment benefit remains at 3 months for a contribution period of up to 5 years. Therefore, the Committee reiterates its previous finding of non-conformity on this ground.

As regards sickness benefit, the Committee also refers to its previous conclusion for the description of the sickness insurance system. The Committee further notes from the report that as regards the level of sickness benefit, in FBiH it cannot be lower than the minimum wage. **I**n the Republika Srpska, according to Article 131 of the Labour Law, the salary compensation during temporary incapacity for work due to an injury at work or an occupational disease equals 100% of the average salary earned by the employee in the previous period, or the salary that the employee would earn if he/she would be at work.

In its previous conclusions (Conclusions 2013 and 2017), the Committee recalled that where the Eurostat at-risk-of-poverty indicator is not available, it uses the monetary value of the poverty line to assess the adequacy of benefits and considers that the situation is in conformity with the Charter if the minimum level of income-replacement benefits (old-age, sickness and unemployment) does not fall below the poverty line indicator.

The Committee notes from the report in this regard that in FBiH, pursuant to the General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina the amount of the minimum net salary was set at BAM 406.56. In the Republika Srpska, according to Article 127 of the Labour Law, the minimum wage is determined by the Government of the Republika Srpska at the proposal of the Economic and Social Council. The Government of the Republika Srpska adopted the Decision on the Minimum Salary for 2020which was set at BAM 520. In the Brčko District of Bosnia and Herzegovina in 2019, the average salary was BAM 870.00.

The Committee notes that the report provides incomplete information concerning the levels of minimum wage in different entities. It also fails to provide information concerning the minimum levels of social security benefits and the monetary value of the poverty line. In the absence of this information, the Committee considers that it has not been established that the minimum levels of social security benefits are adequate.

Conclusion

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

- it has not been established that the personal coverage of social security risks is adequate;
- it has not been established that the minimum levels of social security benefits are adequate;
- the duration of unemployment benefit, for the insurance period of up to 5 years is too short, in all entities.

Article 12 - Right to social security

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

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

The Committee recalls that Article 12§2 obliges States to maintain a social security system at a level at least equal to that necessary for ratifying the European Code of Social Security. The Code requires the acceptance of more parts than ILO Convention No. 102 on social security (minimum standards), i.e. at least six of Parts II to X (on the understanding that Part II, Medical care, counts as two parts and Part V, Old-age benefit, counts as three parts).

The Committee notes that Bosnia and Herzegovina has not ratified the European Code of Social Security. Therefore, the Committee cannot take into consideration the Committee of Ministers' resolutions on the application of the Code by States which are bound by it, and must make its own assessment.

The Committee notes that Bosnia and Herzegovina has ratified ILO Convention No. 102 and accepted Parts II to VI, VIII and X, which concern medical care (II), sickness benefit (III), unemployment benefit (IV), old-age benefit (V), employment injury benefit (VI), maternity benefit (VIII) and survivors' benefit (X). However, Part VI ceased to apply after Bosnia and Herzegovina ratified ILO Convention No. 121 on employment injury benefits.

The Committee recalls that to assess whether a social security system is maintained at a level at least equal to that which is necessary for ratifying the European Code of Social Security, it assesses the information relating to the branches covered (risks covered), to the personal scope and to the level of the benefits paid.

In this respect, the Committee refers to its previous conclusion on Article 12§1 (Conclusions 2017), in which it had noted that the social security system continued to cover all the traditional branches (medical care, sickness, unemployment, old age, work accidents and occupational diseases, family, maternity, invalidity and survivors).

Concerning the personal scope, the Committee refers to its conclusion in this evaluation cycle relating to Article 12§1, which indicates that it has not been established that the personal coverage of social security risks is adequate.

Lastly, the Committee points out that it concluded that it had not been established that the minimum levels of social security benefits and old-age pensions were adequate (Conclusions 2021 on Article 12§1 and Article 23 respectively). It further found that the length of time during which unemployment benefits were paid was too short for people who had paid contributions for up to five years, in all the entities (Conclusion 2021 on Article 12§1) and that maternity benefits were not adequate in certain parts of the country (Conclusion 2019 on Article 8§1).

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government's replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion considered that the situation in Bosnia and Herzegovina was not in conformity with Article 13§1 of the Charter on the grounds that it had not been established that appropriate medical assistance is provided to all persons in need in all Entities, as well as it had not been established that the level of social assistance paid to a single person without resources is adequate.

General legal framework, types of benefits and eligibility criteria

The Committee notes from the report several elements of information.

As regards *the conditions of the means test for eligibility for permanent social assistance allowance*, there is no harmonisation in legislation. In the **Federation of Bosnia and Herzegovina (FBiH)**, the Law defines the insured persons. According to the Health Insurance Act, there are several groups of insured persons. The law also determines the payers of health insurance contributions for each of the listed categories of insured persons. If a person is not insured, emergency medical care is provided. The report further states that permanent financial and other material assistance is granted under the following conditions: 1. that they are incapable of work, i.e. prevented from exercising the right to work; 2. that they do not have sufficient income for support and 3. that they do not have family members who are legally obliged to support them or if they have them, that these persons are not able to perform the obligation to support. Permanent financial assistance is determined in a monthly amount equal to the difference between all incomes of household members and the amount of the lowest household income that is considered sufficient for support. The cantonal regulation determines the amounts of permanent financial assistance and financial compensation for assistance and care, as well as the revenues that are taken into account when determining the amount of such assistance and compensation..

The report includes quite detailed information on cantons. The Committee notes from this information that access to social assistance and level of allowance vary depending on the canton and is not the same for all beneficiaries.

In the **Republika Srpska**, social protection is provided to persons when they are in a state of social need and taking the necessary measures to prevent the occurrence and elimination of the consequences of such a situation. It is financed from public revenues provided in the budget of the Republika Srpska and local self-government units. Social assistance may be

claimed by an individual who is unfit for work, has no income of his/her own or whose total support income is below the financial assistance level defined by relevant law, who has no excess living space, has no other property to generate funds for support, who has no persons obliged to provide maintenance allowance under the Family Law of the Republika Srpska or if such persons are in not capacity to provide maintenance allowance due to their disability status or an objective unfitness to work or provide such allowance.

The **Brčko District of BIH** provides all persons in a state of social need with appropriate medical (health) assistance and provides them with annual budget funds for the payment of contributions to basic health insurance. A right to the permanent financial assistance can be claimed by an insured person under the following conditions: a) to hold residence within the District area for at least two consecutive years until the date of the request filing; b) to be unfit to work; c) to have no source of income; d) have no relatives legally required to provide maintenance allowance or if having such relatives, that they are not in capacity to provide such allowance; e) is not in possession of land greater than 2,000 m2, and f) that is not in possession of more than one residential unit.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. Under Article 13 social assistance should be provided as a subjective right of any person without resources. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person.

The Committee notes from the report that social assistance is not provided in all Entities as a subjective right of any single person, but that it is often related to whether or not capable of working or other conditions and not on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means. It considers therefore the situation not to be in conformity with the Charter in this respect.

As regards access to *medical care*, in the **Federation of Bosnia and Herzegovina**, according to the Law on Health Care, every person is entitled to a health care. The Law on Health Insurance determines that the right to Compulsory Health Insurance can be claimed by employed persons and other persons performing certain activities or having certain status defined under this law. In exceptional cases, there is also health care package for uninsured persons who are citizens of Bosnia and Herzegovina residing on the territory of the FBiH. At the cantonal level, even greater extent of the basic health care package can be granted. In the **Brčko District** of Bosnia and Herzegovina, a right to health care is guaranteed to all citizens in line with the Law on Health Care and the Law on Health Insurance. The same stands for the rights of foreign citizens and persons without citizenship related to health care as per effective regulations.

There is no relevant response from Republika Srpska as regards whether citizens from one BiH entity seeking health care services in another BiH entity are entitled to health care at the same level as the citizens of that entity or they are entitled solely to emergency medical treatment free of charge. In the Federation of Bosnia and Herzegovina, the Law on Health Care enshrines the principle of equity of health care that prohibits discrimination in rendering of health care services subject to race, gender, nationality, social background, etc. In the Brčko District of Bosnia and Herzegovina, the Law on Health Care (i.e. its Article 8) provides for emergency medical care free of charge to all citizens, including those coming from other state entities. An access to health care at the country level is being provided in accordance with the Agreement on manner and procedure of health care use on the territory of Bosnia and Herzegovina and outside state entities.

In its previous conclusion the Committee had considered that there was no evidence that medical assistance was provided to all persons without resources in all Entities on the same

level as their own residents, or whether they could only obtain emergency care free of charge. Therefore, the Committee considered that the situation was not in conformity with the Charter.

In the light of the information submitted, the Committee notes that it is not established that all Entities guarantee medical assistance to all persons without resources, and therefore it reiterates its conclusion of non-conformity on the ground that it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.

Levels of benefits

The Committee takes notes of the detailed information regarding expenditure on social protection, including the number of beneficiaries as well as funding allocated by local Governments. To assess the level of social assistance during the reference period, the Committee takes note of the following information:

- Basic and additional benefits: the report provides information regarding the amount of beneficiaries between 2016 to 2019 in the Federation of Bosnia Herzegovina (9,217 in 2019). The report does not establish the average amount received per beneficiary, but refers to the amounts received in each canton by a single beneficiary, which vary from 81 to 149.5 BAM (€41,38 to €76.38). In Republika Srpska, there were 48,921 beneficiaries in 2018. The average amount of social assistance received by a single person was 135.9 BAM (€69) and the average salary was of 906 BAM (€463). No information was provided in this respect from the Brčko District. The Committee requests that the next report provides updated information on monetary values of all social assistance benefits and for all Entities.
- Poverty threshold: the Committee recalls that to assess the situation under this provision it needs information regarding the poverty threshold, defined as 50% of the median equivalised income. The report states that Bosnia and Herzegovina has no official poverty line or a systemic process of analysis of this segment. In its Survey of Household Consumption, the BIH Statistics Agency publishes a basic set of poverty indicators aligned with EU standards. This survey was published in 2004, 2007 and extended survey in 2011. However, there is still no systemic approach to monitoring all key indicators of poverty and social exclusion as per Eurostat requirements. In the absence of this indicator, the Committee asks the next report to provide this information.

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

Right of appeal and legal aid

The Committee asked in its previous conclusion information regarding the right of appeal against decisions of social care institutions. The Committee asked whether the review bodies are empowered to judge the case on its merits and not only on points of law. According to the report, in FBiH the Social Welfare Centres are the first instance bodies deciding on social assistance entitlements. The second instance bodies are cantonal courts. According to Articles 230-245 of the Law on Administrative Procedure, in addition to procedural issues, the second instance body also decides on merits. As regards the Republika Srpska, every decision by the social care institutions can be subject to a complaint to the second-instance body, which is the Ministry of Health and Social Welfare. Complaint against the decision by the first instance body shall be decided upon by the Minister and in some cases, it shall also decide on the merits. As regards the Brčko District, a complaint may be filed by an insured person against decisions of the first instance body. Such a complaint may be filed with the Appellate Commission of the Brčko District of BIH or

with the second instance commission with the Brčko District Health Insurance Fund, depending on the case subject. These bodies can decide on merits and on procedural issues.

The Committee requests the next report to provide updated information on cases relating to social and medical assistance and particularly on whether there is a remedy before a court against the Minister decision in the Republika Srpska.

Personal scope

The specific questions asked in relation to Article 13§1 this year do not include an assessment of assistance to nationals of States parties lawfully resident in the territory. Therefore, this particular issue will only be assessed if there was a request of information or a non-conformity in previous cycle.

Foreign nationals lawfully resident in the territory

In its previous conclusion the Committee asked whether the country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family.

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

The report does not provide any information on this point and the Committee reiterates its question. It points out that if this information is not provided, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter in this respect.

Foreign nationals unlawfully present in the territory

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

In its previous conclusion the Committee asked whether the country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his/her family.

The report does not provide any information on this point and the Committee reiterates its question. It points out that if this information is not provided, there will be nothing to establish that the situation in Bosnia and Herzegovina is in conformity with the Charter in this respect.

Medical and social assistance during the Covid-19 pandemic

The report does not provide any information on this point. The Committee asks the next report to provide specific information about measures taken to guarantee access to medical and social assistance during the Covid-19 pandemic.

Conclusion

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

- social assistance is not provided in all Entities to any single person on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means;
- it has not been established that appropriate medical assistance is provided to all persons in need in all Entities.;
- it has not been established that the level of social assistance paid to a single person without resources is adequate.

Article 13 - Right to social and medical assistance

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

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

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”). However, no targeted questions were posed in respect of Article 13§2 of the Charter.

The Committee recalls that Article 13§2 of the Charter concerns the prohibition of discrimination of recipients of social or medical assistance in the enjoyment of their political and social rights. In its previous conclusions on Bosnia and Herzegovina in 2017, the Committee asked whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance in all entities..

The report states that there are no restrictions in practice for social aid beneficiaries in accessing their social and political rights. In the Federation of Bosnia and Herzegovina (FBiH), the Law on Fundamentals of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the FBiH (Official Gazette of the FBiH, 36/99, 54/04, 39/06 14/09, 45/16 and 40/18) stipulates that social protection institutions in the FBiH, when performing their activities, may not establish any restrictions regarding the territorial, national, religious, political and any other affiliation of the beneficiaries of these institutions (race, skin color, gender, language, social origin, etc.) Therefore, when it comes to social protection, any kind of discrimination is prohibited. In the Republika Srpska, there are no restrictions in practice for the social aid beneficiaries and discrimination is prohibited. Every beneficiary exercises the rights from social protection under the same conditions and the same criteria apply to everyone. As for the Brčko District of Bosnia and Herzegovina, the Law on Social Protection of the Brčko District of Bosnia and Herzegovina regulates principles of protection of the elderly, the weak and other persons in a state of social need, the minimum scope of rights to certain forms of social protection and the conditions for their realisation. For the purposes of this law, social protection is an organised activity aimed at combating and eliminating the causes and consequences of the state of social need in all areas of social life, work and providing assistance to citizens and their families when they find themselves in such circumstances.

The report further states that discrimination is prohibited. Social protection rights may be exercised by a person under the conditions of having residence in the area of the local self-government unit in which he or she seeks the exercise of rights, except for persons who have found themselves in special circumstances, and by foreign nationals legally residing in the entities, who do not exercise the said right in other systems of social security or those who have found themselves in the state of social need due to material, social or psychosocial condition.

In the FBiH , one of the basic principles of the Law on Health Care is the principle of fairness of health care. Health regulations have regulated the procedure for complaints from health service beneficiaries in cases where they believe that there is a violation of any of the guaranteed rights, or there is discrimination on any ground. As a rule, this ministry is a second-level body in the appeal procedure, and resolves only those cases that are in the second-level procedure, in other words, when health beneficiaries are not satisfied with the

first-level decisions. There is however no database to provide an answer on its effectiveness.

In the Republika Srpska, the report states the same information and that there are no restrictions in practice for social assistance beneficiaries and discrimination is prohibited.

There is no information as regards voting rights and there is no specific information about criteria applied in practice to guarantee that the exercise of political or social rights are interpreted in such a way as to prevent discrimination on the basis of receipt of social or medical assistance in all entities and in all circumstances. The Committee asks that the next report provides concrete information on this issue. In the meantime, it considers the situation to be in conformity with the Charter.

Conclusion

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

Article 13 - Right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

The Committee recalls that Article 13§3 concerns services offering free advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want. It further recalls that, for the purposes of the current report, States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group "Health, social security and social protection"). However, no targeted questions were posed in respect of Article 13§3 of the 1961 Charter.

The Committee has previously recalled that, when assessing national situations in the light of this provision, it specifically examines whether there are mechanisms in place to ensure that persons in need receive help and personal counselling services free of charge and whether the relevant services and institutions are sufficiently well distributed on a geographical basis. In the absence of information concerning social services specifically offering counselling and assistance to persons in need in all the bodies concerned, the Committee has previously considered (Conclusions 2017) that the existence of such services was not established.

The report states in response that, in the Federation of Bosnia and Herzegovina, the services that fall within the scope of social welfare institutions, in particular the competent social work centres and municipal services operating in all local authorities / cities in the country, include the provision of free counselling and professional assistance to individuals, families and citizens' groups. These services are also provided by the non-governmental sector or social welfare associations. According to the report, the number of beneficiaries in the reference period increased (217,772 in 2018). The Committee would like to find out the average and maximum distance that a potential beneficiary needs to travel to reach the relevant institution when in need of advice or help, and whether the geographical coverage has been extended in line with the increase of beneficiaries.

In the Republika Srpska, counselling can be conducted by the social work centre, a social welfare institution, a non-governmental organisation or an independent social welfare professional, provided that they have a dedicated premises and the necessary professional qualifications. There are 50 social work centres and 13 social protection services. The Committee calls for the next report to provide more comprehensive information, as requested above, on the geographical coverage.

No information has been provided as regards the situation in the Brčko District.

The Committee recalls that it requires comprehensive information to assess whether mechanisms are in place to ensure that those in need may receive help and personal advice services free of charge. The information provided is incomplete and thus does not provide a full picture of the situation. The Committee therefore reiterates its requests and, in the meantime, upholds its conclusion of non-conformity.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 13§3 of the Charter on the grounds that it has not been established that:

- there are mechanisms in place to ensure that persons in need can benefit from free counselling and personal advice services;
- the competent services and institutions are adequately distributed on a geographical basis.

Article 14 - Right to benefit from social welfare services

Paragraph 1 - Promotion or provision of social services

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

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The Committee deferred its previous conclusion (Conclusions 2017). It established, in particular, that the information provided did not allow the assessment of the geographical distribution of social services and recalled that the right to social services must be guaranteed in law and in practice and that effective and equal access to social services implies also that social services coverage on the territory shall be sufficiently wide. The Committee again requested the information, stipulating that if it is not provided, conformity with Article 14§1 the Charter could not be ascertained.

The Committee notes from the report that situation differs at state level and the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srprska (RS) and the Brčko District (BD). The report provides that in 2016 and 2017 there were 59 social protection Centres in the Federation of Bosnia and Herzegovina, 46 in the Republika Srpska and 1 in the Brčko District (amounting to a total of 106 social protection Centres in Bosnia and Herzegovina). In 2018, the number of social protection Centres in the Federation of Bosnia and Herzegovina increased to 66 and in the Republika Srpska to 50, with 1 social protection Centre in the Brčko District (total of 117 social protection Centres). In order to obtain a better picture of the situation, the Committee asks the next report to provide data on the number of beneficiaries covered by each Centre in the respective regions and whether all citizens could assess social protection services within a reasonable distance. It notes in this regards the recommendation by the UN High Commissioner for Human Rights to address disparities in Bosnia and Herzegovina existing between its various entities in the level of enjoyment of social protection and social services and asks the next report for the Government’s relevant comments (see "The state of application of the provisions for social security of the international treaties on social rights", ILO Technical Note: Bosnia and Herzegovina / International Labour Office. – Geneva: ILO, 2016). The report further states that in the Republika Srpska there are 50 social work centres and 13 social protection services. The Committee asks the next report to specify what are the differences between social protection centres, social work centres and social protection services. Meanwhile, it reserves its position on this point.

In its previous conclusion (Conclusions 2017), the Committee has also repeated its request for information on the number and qualification of staff and the ratio of staff to users. It also asked to know the mechanisms for supervising the adequacy of services (quality control)

provided by public as well as private institutions and whether there was any legislation on personal data protection (people's right to privacy), again under the reservation that in case of the lack of the information requested, there would be nothing to establish that the situation is in conformity with Article 14§1.

The report provides that in the Republika Srpska a social work centre may start its activities if it employs at least three professional workers: a graduate social worker, a law graduate and one of the other professional workers. Furthermore, the minimum criteria for employees in social work centres are: one graduate social worker for every 7,000 inhabitants, one graduate lawyer for every 15,000 inhabitants, one graduate psychologist for every 20,000 inhabitants, one graduate defectologist for every 30,000 inhabitants, one graduate pedagogue for every 30,000 inhabitants, one graduate sociologist per 150,000 inhabitants. Currently, the overall number of graduate social workers is 373. In Brčko District there are 14 social workers, 2 pedagogues, 1 psychologist, 2 lawyers, 7 administrative workers and 2 technical staff workers. The Committee asks the next report to clarify whether same rules apply to social protection centres, shall they differ from social work centres (see the question above). There are 4,254 beneficiaries of social services in Brčko District. No information has been provided on the situation in FBiH. The Committee asks the next report to provide explanations as regards the evaluation as to whether this number of staff is considered adequate and with sufficient qualifications to meet the users needs and whether any relevant measures are being taken or envisaged. In this respect, it notes the concerns raised by the Western Balkans Regional Initiative in its 2018 Country Brief: Social protection system in Bosnia and Herzegovina, about the lack of organisational, substantive and human resources in the social services, as well as the need to strengthen the professional competences of service providers. It further notes the observation made by the UN High Commissioner for Human Rights (see the ILO technical note quoted above) about the disparities in the level of social services between the entities. as well as between cantons within the Federation and its recommendation to ensure that social welfare centres are adequately staffed in order to ensure effective functioning. Finally, the Committee refers to policy paper of the IRIS Network "Development of social services at the local level in Bosnia and Herzegovina", which concludes that capacities of centres for social work in BIH are very weak, with insufficient number of skilled and professional workers and with limited resources, while facing increased number of beneficiaries. It asks the next report to comment on these observations.The Committee recalls that social services must have resources matching their responsibilities and the changing needs of users, which entails, inter alia, that staff shall be qualified and in sufficient numbers (Conclusions 2005, France). For the comprehensive assessment of the situation, figures are needed on staff and their qualifications, on expenditure and on the number of beneficiaries broken down by type of service (staff-to-user ratio) in all entities in BiH. In the absence of this information the Committee considers that it has not been established that the quality of social welfare services meets users' needs.

As regards the monitoring of the adequacy of services, the report provides that quality control of services is performed through professional and inspection supervision both in local social protection services and in public and private institutions / associations. It further states that the FBiH Ministry supervises the implementation of FBiH law and regulations adopted on the basis of FBiH law, as well as the professional work of institutions established by the FBiH and supervises and controls the use of funds intended for social welfare institutions. The Committee considers that this general information does not give a full picture of arrangements for guaranteeing the quality of the social services provided by government departments, municipalities and private service providers. It needs data on the monitoring activities undertaken, their follow-up and consequences for non-compliance with the established standards. In this context, the Committee cannot appreciate the situation in Bosnia and Herzegovina with regard to Article 14§1 of the Charter. At the same time it notes that the European Centre for Social Welfare Policy and Research concluded in its 2021/3 Policy Brief "Monitoring the progress of the Western Balkan countries regarding the European Pillar of Social Rights" that monitoring practices both at the national and local

levels need to be strengthened in the region. The Committee also recalls that users must have means of making complaints and referring urgent cases of discrimination and infringements of human dignity to an independent body (Conclusions XX-2 (2013), Luxembourg). Since the report does not provide any information on available legal remedies, the Committee calls for this information be included in the next report. In the light of the information provided, the Committee considers that it has not been established that there exist an effective mechanisms for supervising the adequacy of services in BiH.

In its previous conclusion the Committee wished to know whether there was legislation on personal data protection in Bosnia and Herzegovina. The report confirms that the protection of personal data is assured in accordance with the Bosnia and Herzegovina's Law on Personal Data Protection.

No information was provided in response to the targeted questions concerning the COVID-19 crisis.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that:

- the quality of social welfare services meets users' needs;
- the monitoring arrangements for guaranteeing the quality of the social services provided by the various providers are adequate and effective.

Article 14 - Right to benefit from social welfare services

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

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

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services ("co-production"), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

The Committee deferred its previous conclusions (Conclusions 2017), reserving its position on several points, considering that it needed following information in order to be able to fully assess the situation:

- statistical data on subsidies paid by the central government and local authorities to voluntary organisations which provide social services. and description of types of support that may exist for voluntary organisations, such as, for example, tax incentives;
- what kind of supervisory machinery in charge of monitoring the quality of services exists both for public and private institutions and in different entities;
- how the dialogue with civil society in respect of social welfare services is ensured.

The Committee premonished that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 14§2. The Committee notes from the report that situation differs at state level and the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina (FBiH), the Republika Srprska (RS) and the Brčko District (BD).

The report provides information on subsidies for 7 out of 10 cantons in FBiH, ranging in the reference period, depending on the canton from 10,000 BAM (5,000 EUR) to 195,200 BAM (99,600 EUR). NGOs with the support from the canton budget develop and provide non-institutional social protection services which are not provided by public institutions, such as: shelter for female victims of violence, day care Centres for children and youth with disabilities, day care Centre for the elderly, accommodation services for people with disabilities, home help and care, employment, advocacy for the rights of marginalized groups, counselling services, rehabilitation, psychosocial assistance and education. No information has been provided about other entities of the Federation. Further, the report still does not stipulate what other types for support exist for voluntary organisations, as for example tax incentives. The Committee notes, in this regard, the observation made by the IRIS Network in its 2015 policy paper on Development of social services at the local level in Bosnia and Herzegovina that cooperation with partners (NGOs, private sector) in provision of social services is sporadic and based on the formal distribution of tasks, which

conditioned by the need to cover the lack of resources of the public system. Neither does the report specify whether user involvement in social services is promoted and in which form. The Committee notes that the IRIS Network observed in its policy paper (see above) that centres for Social Work do not have sufficient capacity to conduct research on user needs. It asks the next report to explain whether these observations are still relevant. The Committee renews its request for comprehensive information, while considering that it has not been established that the situation is in conformity with Article 14§2 of the Charter on these points.

In reply to the Committee's question about supervisory mechanisms, the report states that in the FBiH control and monitoring of the quality of services provided by public and private institutions is performed through the prescribed professional and inspection supervision. The Committee considers that this general information does not give a full picture of arrangements for guaranteeing the quality of the social services provided by non-governmental institutions and private service providers. It needs data on the monitoring activities undertaken, their follow-up and consequences for non-compliance with the established standards, such as any sanctions imposed. It also recalls that this information should be provided for all entities of Bosnia and Herzegovina. It considers that it has not been established that the situation is in conformity with Article 14§2 of the Charter on this point.

As regards the dialogue with the civil society, the report states that it is ensured through the implementation of various coordination bodies made up of representatives of the governmental and non-governmental sectors. The report highlights the cooperation with the Association of Social Workers of the Federation of Bosnia and Herzegovina in activities important for the improvement and reform of social protection, as well as with unions / associations of persons with disabilities, which together with this ministry are members of the Coordination body for monitoring, implementation and reporting on the activities of the Strategy for Improving the Rights and Position of Persons with Disabilities in the Federation of Bosnia and Herzegovina. Again, the Committee considers that the information provided is general and limited and does not give a full picture of the situation. It also notes concerns raised by the Western Balkans Regional Initiative in its 2018 Country Brief: Social protection system in Bosnia and Herzegovina that the partnership with the non-government and government sectors for social services in local communities exists *de jure* but not so much *de facto.* The Committee renews its request that information be provided in the next report and considers that it has not been established that the situation is in conformity with Article 14§2, as regards the dialogue with the civil society in the field of provision of social services.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 14§2 of the Charter on the grounds that it has not been established that:

- user involvement in social services is ensured and promoted in legislation, in budget allocations and decision-making at all levels and in the design and delivery of services in practice;
- a mechanism is in place to monitor the quality of services provided by public and private institutions in the different entities;
- dialogue with civil society is ensured with regard to social services.

Article 23 - Right of the elderly to social protection

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government's replies to the targeted questions, namely about measures taken to ensure that the social and economic rights of older persons are respected and Covid-19 and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 that relates to developments outside the reference period (namely, after 31 December 2019) for information purposes only. In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion was deferred (Conclusions 2017).

Autonomy, inclusion and active citizenship

Legislative framework

The Committee recalls that Article 23 of the Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression "full members of society" used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society's various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, "… ageism has serious and far-reaching consequences for people's health, well-being and human rights"(WHO report on Ageism, 2021, p. XVI).

The COVID-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives in all the areas addressed by the Charter.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism. The Committee considers that States

Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

Article 23 further requires that States Parties provide for a procedure of assisted decision making.

The Committee previously noted that while Article 2 of the Law on the Prohibition of Discrimination of 23 July 2009 does not expressly refer to age among the prohibited grounds of discrimination, its wording is such that this ground can be included. Therefore, it asked whether there is case law on age discrimination outside employment which could protect older persons against such discrimination (Conclusions 2017).

The report provides no information on this point. The Committee repeats its request for this information it point out that should this information not be provided in the next report there will be nothing to establish that the situation is in conformity with the Charter.

With regard to assisted decision-making for older persons, the Committee previously asked whether there were safeguards to prevent the arbitrary deprivation of autonomous decision-making (Conclusions 2017).

According to the report in the Republika Srpska legislation provides for the complete or partial deprivation of legal capacity, only a court can make a decision on deprivation of capacity.

The Family Law of the Brčko District of Bosnia and Herzegovina 2007 contains provisions related to assisted decision making and protective measures to prevent arbitrary deprivation of legal capacity.

No information is provided on the situation in the Federation of Bosnia and Herzegovina .

The Committee recalls that there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability. Older persons may need support when exercising their legal capacity. Therefore, there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. This means that older persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability.

States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person’s autonomy, will and preferences. These may be formal or informal.

Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

The Committee asks the next report to provide information on assisted decision-making procedures in all Entities.

Prevention of abuse of older persons

The Committee previously asked for information on what was done to evaluate the extent of the problem and to raise awareness about the need to eradicate abuse and neglect of older persons. It also asked if any legislative or administrative measures were envisaged in this area. The Committee pointed out that if no information was provided in the next report, there would be nothing to show that the situation is in conformity with the Charter on this point (Conclusions 2017).

According to the report information is only available from the Brčko District. The Law on Protection from Domestic Violence states that special assistance is to be provided, inter alia, to older persons.

The Committee considers that the information provided is insufficient and therefore concludes that it has not been established that adequate measures have been taken to combat abuse of older persons.

The Committee asks for the next report to provide updated information on measures taken to combat abuse of older persons including measures to raise awareness of the need to eradicate abuse and neglect of older persons (beyond the institutional care context), and any legislative or other measures. It also asks whether data has been collected which would indicate the prevalence of older abuse.

Independent living and long-term care

The Committee asks whether steps have been taken to move way from the institutionalisation of older persons and adopt a long term care and support in the community model. The Committee recalls that Article 23 provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires states to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

The Committee asks the next report to provide updated information on the progress made in providing care in the community, it asks in particular how many older persons reside in institutions -residential care and trends in the area.

Services and facilities

The Committee previously asked whether the supply of home help services for older persons matches the demand, secondly, as concerns Republika Srpska, how their quality was monitored and if there is the possibility for older persons to complain about services, thirdly, if there are any services for those suffering from dementia or Alzheimer's disease and, fourthly, if there are cultural, leisure and educational facilities available to older persons.

With regard to measures to inform people about the existence of services and facilities, the Committee requested that the next report provide information on this issue (Conclusions 2017).

The report states that in the Federation of Bosnia and Herzegovina home care and home services are underdeveloped. The Project "Support to Social Service Providers and Improving Monitoring Capacities in Bosnia and Herzegovina" (SOCEM) IPA 2011 was implemented in the period from July 2015 to July 2017. The project, among other things, was aimed at supporting the development of Social work centres in Bosnia and Herzegovina, with a focus on improving the protection of older persons. Two pilot mobile teams for home help for older persons were established and vehicles and IT equipment were procured for 12 social work Centres in both entities. Certain cantons also provide home care services. In Federation of Bosnia and Herzegovina there are also day care centres for healthy ageing but the report states that these are not part of the social protection system. The Committee asks for further information on the nature of these centres.

In Republika Srpska the Law on Social Protection provides for the right to home help subject to certain conditions. Likewise, in Brčko District home care and assistance are available to older persons, in particular providing meals.

The Committee asks the next report to provide updated information on the range of services and facilities available to older persons, including long term care, in particular those enabling them to remain active members of their community and to remain in their home. It notes that in particular in Federation of Bosnia and Herzegovina it seems that home care services are underdeveloped, so it requests information on measures taken to further develop such services.

It further asks for information on the costs of such services, whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

As regards complaints mechanisms for complaining about services, the report states that in Brčko District there is a possibility to complain. However no further information is provided on about complaints mechanisms in the entities. The Committee repeats its request for this information. The Committee considers that if this information is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter on this point.

The report states that in the Federation of Bosnia and Herzegovina family members caring for older relatives are entitled to certain social benefits and financial support subject to a means test in the Republika Srpska no financial assistance is granted.

The Committee asks what support is available for informal carers in the Brčko District and whether in Republika Srpska assistance other than financial assistance is available such as respite care.

As regards information about services and facilities the report states that in Federation of Bosnia and Herzegovina information can be found on the Internet of providers, through the media, bulletins of local community centres and through NGOs.

The Committee notes that many services (and information about services) are increasingly accessible online. Digitalisation provides opportunities for older persons. However older persons may have more limited access to the internet than other groups and may lack the necessary skill to use it. Therefore, the Committee asks what measures have been taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons, and ensure non-digital services are maintained.

Housing

The Committee previously asked (Conclusion 2013 and 2017) whether the needs of older persons were taken into account in national or local housing policies, whether adequate sheltered/supported housing was provided, and whether the supply of such housing was sufficient.

It also asked to be kept informed of any public policies providing financial assistance for the adaptation of housing and asked, in this regard, what proportion of older persons respectively live with their families, still live at home or have been placed in host families (Conclusions 2017).

The report provides very little information in response. The Committee asks the next report to provide information on how the needs of older persons are taken into account in national or local housing policies and strategies as well as information on the supply of sheltered/supported housing and the range of accommodation options for older persons. It also reiterates its request for information on assistance for the adaptation of housing.The Committee considers that if information on assistance for adapted housing is not provided in the next report there will be nothing to establish that the situation is in conformity with the Charter on this point.

Health care

As regards Federation of Bosnia and Herzegovina the Committee previously requested that the next report provide details on the programmes and health care which are specific to older persons and on their financial contribution to the health care and medication included in the health package (Conclusions 2017).

The Committee asked for further information on the initiative of the Assembly of the Brčko District to provide all persons over 65 with free health care. It pointed out that if no information was provided in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point (Conclusions 2017).

The Committee also asked for information on mental health programmes for any psychological problems for older persons, adequate palliative care services and special training for individuals caring for older persons (Conclusions 2017).

According to the report in Federation of Bosnia and Herzegovina persons not in receipt of a pension and therefore not insured for health care on this basis receive health cover from their cantonal administration. Older persons on low income maybe exempt from any co-payment. In Republika Srspka pensioners and those over 65 are provided with free health care. In Brčko District health care required by those over 65 years, not covered by health insurance is covered by the District budget.

The report states that in Federation of Bosnia and Herzegovina the mental health care system is being reformed with the emphasis on care in the community. Palliative care services also exist, and they are to be expanded.

The Committee asks that the next report provide more complete information on healthcare programmes specifically designed for older persons.

The Committee notes that the pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for triage policies.

The Committee asks whether decisions around the allocation of medical resources may be made solely on the basis of age and asks whether triage protocols have been developed

and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

Institutional care

The Committee refers to its statement above on the importance of moving away from institutional care and towards care in the community.

The Committee previously asked how residential facilities were licensed and inspected, and whether procedures existed for complaining about the standard of care and services or about ill treatment in this type of institution. The Committee also asked which authority or body was responsible for the inspection of homes and residential facilities (both public and private) (Conclusions 2017).

The Committee takes note of the information provided on the number of residential institutions in Federation of Bosnia and Herzegovina. It also notes that according to the report and contrary to previous reports there are no institutional facilities in Brčko District.

As regards licensing and inspection of institutions the report states that in the Federation of Bosnia and Herzegovina at federal level it is the competent Ministry that determines whether the institution meets the conditions set out in the regulations prior to accepting clients. For cantonal institutions it is the relevant bodies at the cantonal level. The report states that inspections are carried out by inspection bodies of the canton. The Committee asks who inspects institutions at the federal level and whether the inspection bodies can be considered as independent. The report states that in Republika Srpska institutions must be licensed and that inspections are carried out by a commission appointed by the Minister. In Brčko District institutions are licensed and inspected by the Department of Health. The Committee asks whether inspections at the federal and entity level can be considered as independent.

The Committee considers that the overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons, results in a pressing need to re-invest in community-based supports as an alternative to institutions. Where during the period of transition towards deinstitutionalisation, institutionalisation is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

Adequate resources

When assessing the adequacy of the resources of older persons under Article 23, the Committee takes into account all social protection measures guaranteed to older persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to older persons. These resources are then compared with median equivalised income. The Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

According to the report new legislation on the reform of the pension system entered into force in 2018 in the Federation of Bosnia and Herzegovina. The report states that the

minimum pension in 2019 was 348.06 BAM (€177.02). It also states that the average pension was 416.45 BAM (€211.81) and the average salary 958.00 BAM (€487.24). According to the MISSCEO database, in 2019, the amount of the minimum pension in Republika Srpska was 160.00 BAM per month (approximately €81.38) (identical to the amount in 2015).

The Committee previously requested information on the median equivalised income and on the poverty threshold in Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District). The Committee pointed out that if no information was provided in the next report, there would be nothing to show that the situation is in conformity with the Charter on this point (Conclusions 2017).

No information is provided on these issues in the report. The Committee repeats its request for this information, and It considers in the meantime that it has not been established that the levels of the minimum pensions are adequate. Therefore the situation is not in conformity on this point.

As regards assistance payable to those nos in receipt of an old age pension the Committee requested the next report indicate the amount of the allowances, benefits and subsidies mentioned (Conclusions 2017).

As regards Federation of Bosnia and Herzegovina the Committee notes that the amount differs between cantons, but no precise amounts can be given. It further notes the information provided in respect of BD. No information is provided on Republika Srpska.

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

Covid -19

The Committee asked a targeted question on measures taken to protect the health and well-being of older persons in the context of a pandemic crisis such as Covid-19.

No information is provided in this respect.

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 2021) (and to sections cited above). It recalls Article 23 requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 23 of the Charter on the grounds that it has not been established that:

- adequate measures have been taken to combat the abuse of older persons;
- the levels of the minimum pensions are adequate;
- the level of social assistance available to older persons not in receipt of a pension is adequate.