



BOSNIA AND HERZEGOVINA

**ANSWERS TO
EUROPEAN COMMITTEE OF SOCIAL RIGHTS
(2011) CONCLUSIONS ON
THE FIRST REPORT OF BOSNIA AND HERZEGOVINA ON
IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER – REVISED,
GROUP IV (CHILDREN, FAMILIES, MIGRANTS)
Articles 7, 8, 16 and 17**

SARAJEVO, July 2012

ANSWERS TO EUROPEAN COMMITTEE OF SOCIAL RIGHTS (2011) CONCLUSIONS OF NON-CONFORMITY OF ARTICLE 7 (Paragraphs 4, 6 and 9), ARTICLE 8 (Paragraphs 1, 4 and 5), ARTICLE 16 AND ARTICLE 17 (Paragraphs 1 and 2)

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time for young persons under 18

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§4 of the Charter on the ground that the limit of 40 hours per week for young workers under the age of 16 is excessive.

ANSWER:

FEDERATION OF BIH

The Federation of Bosnia and Herzegovina (hereinafter: the Federation) is in the process of enactment of a new Labour Law. Namely, a Draft Labour Law, which was discussed and espoused as a good basis for drafting the Bill by both Houses of FBiH Parliament, was subject to public consultations which lasted 60 days, given the importance of this Law.

Drafting the Bill is in progress and it is expected to be passed in September 2012, having completed the alignment with European legislation and the relevant directives of the Council of Europe and with the provisions of the European Social Charter (revised) in areas where the current law is inconsistent.

De lege ferende provisions exclude minors, i.e. persons between 15 and 18 years of age, from the general rule of weekly working hours, providing for weekly working time of this category of employees of up to 35 hours. Under the new legal rules people younger than 15 years of age cannot conclude any contract of employment or be employed in any type of work with an employer. The provisions relating to the prohibition of overtime for juveniles remained unchanged.

REPUBLIKA SRPSKA

The Committee's Conclusion regarding Article 7 Paragraph 4 respecting working hours of persons under 18 was reached from the current legislative regulation of such work in the Republika Srpska (hereinafter: RS). Article 40 Paragraph 1 of the Labour Law provides that a full-time employee works 40 hours per week, including workers under 18. However, there is only one exception in Article 47 Paragraph 1 of the Labour Law which prohibits overtime for workers younger than 18 years of age.

BRČKO DISTRIKT

Working hours of persons under 18 are prescribed by Article 22 of the Labour Law of the Brcko District (hereinafter: BD) and amounts to 40 hours per week and no exception for persons younger than 18 years of age is provided. Article 22 of the Labour Law of Brcko District has not been amended to comply with Article 7 Paragraph 4 of the Charter. Alignment and implementation will be the subject of the first amendments to the Labour Law to come.

Paragraph 6 - Inclusion of time spent on vocational training in the normal working time

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§6 of the Charter on the ground that legislative framework does not provide for time spent at the training with the consent of employer, to be counted as a part of the working day.

ANSWER:

FBIH

The portion of the Labour Law of the Federation, which regulates the right of workers to education, training and professional development, applies to all workers without exception.

The Law provides that, in the event of changes or introduction of new technology, the employer's obligation is to enable a worker to be trained and professionally upgraded under circumstances and manner specified in collective agreement and employment rules.

Training and professional development of young workers can be subsumed under the concept of internship and internship period aimed at training for independent work and gaining work experience. The internship lasts for one year at the most and the actual length is determined by special law or employment rules of the employer.

According to the valid labour legislation an internship is different from employment under an employment contract for an unspecified period of time and an intern exercises only certain labour rights established by law. So, an intern is entitled to some remuneration, the right to rest during the working day, daily rest between two consecutive working days and weekly rest. The intern is also mandatory insured in case of injuries and occupational diseases at the expense of the employer, while health insurance and the entitlement to health care is exercised through the competent employment service in which he was registered as unemployed person.

The new Labour Law amended provisions respecting interns in a way that an intern has the status of a full-time employee with the employer for a fixed period of time covering the length of internship and exercises all employment rights as other workers do.

RS

Counting the time spent in vocational training in working hours results from the valid general legislation in the RS, because this matter is not regulated at all in the field of labour and employment in the RS. The labour law regulations in the RS do not ensure the right of young workers to have the time spent in vocational training with the consent of the employer is counted in working day, unless they are trained to meet the job and employer's needs.

BD

As for the counting of time spent in vocational training in working hours, Article 18 of the BD Labour Law provides that an employer may provide employee with education, training and development. The employee is obliged to acquire education, training and/or training which the employer considers necessary, at the expense of the employer. This article shall apply to all employees. The Law on Secondary Education of BD does not govern this matter and it will be subject to amendments to the BD Labour Law.

Paragraph 9 - Regular medical examination

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§9 of the Charter on the ground that there is no requirement for regular medical check-ups for young workers.

ANSWER:

FBIH

The new Labour Law (Draft Law) will ensure the application of Article 7, paragraph 9 of the European Social Charter. Namely, the new provisions proposed in the Labour Law of the FBiH determines that a person between 15 and 18 years of age (minors)/ may conclude a labour contract with consent of legal representative and provided that an authorized medical institution or an authorized physician issues a medical certificate proving that the minor is fit for work.

Costs of the medical certificate shall be borne by the employer. Further, there is a suggestion that the employer must provide regular medical examinations of juveniles on a yearly basis.

The proposed provisions have been fully espoused at the early stage of consultations about the Labour Law, but at this point it is not possible to precisely specify the number of article that regulates these matters since the final text of the bill has not been prepared yet.

RS

A regular medical examination is provided for in the valid legislation respecting this field in the RS. Regulations on safety at work set forth an obligation of employers to provide all workers, without any exception when it comes to workers under 18, with statutory medical examinations on the basis of risk assessment and evaluation by occupational health services.

BD

In 2011 three juveniles were identified to have not met the requirements under Article 10, paragraph 2 of the Labour Law of BD, neither did they meet any requirements regarding the mandatory medical examination when they were recruited. In cases of employment of minors, which were very rare, the Labour Inspection found a violation of basic provisions in all parts of the recruitment of minors, even including the medical examinations.

The Law on Safety at Work of BD does not provide for employment of minors.

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are not adequate or not regulated in certain parts of the country.

The Committee has held that a benefit must be adequate and be equal to the salary or close to its value. It has considered that a benefit equal to 70% of the salary is adequate.

ANSWER:

BiH

In accordance with Article 36, paragraph 1 of the Law on Salaries in BiH Institutions (BiH Official Gazette 50/08), during pregnancy, childbirth and child care a women shall be entitled to maternity leave of twelve consecutive (12) months. Based on the findings of a certified doctor, a woman can start maternity leave 28 days before delivery. A woman can use a shorter maternity leave, but not less than 42 days after birth.

Based on the Decision of the Constitutional Court, at 136th session held on 2 November 2010 the Council of Ministers issued the Decision on the Manner and Procedure for Exercising the Right to Maternity Leave in the Institutions of Bosnia and Herzegovina (BiH Official Gazette 95/10). This decision determines that women employed in Bosnia and Herzegovina institution on maternity leave are entitled to a monthly benefit equal to the average net salary which was earned during the last three months prior to the commencement of maternity leave. The Decision makes the right to compensation of salary during maternity leave equal for all employees in Bosnia and Herzegovina institutions and came into effect as of 29 September 2010.

According to this Decision, all employees on maternity leave as of 29 September 2010 are paid as entitled under this Decision, which means they receive a monthly benefit in the amount of average net wages.

The Labour Law in BiH Institutions governs the protection of women and maternity leave in the civil service. Article 36 provides for the duration of maternity leave and the length of compulsory maternity leave in the civil service.

Article 42 of the Law provides that:

1. While on the maternity leave, the employee shall be entitled to maternity leave payment, in accordance with the current laws.
2. While working half time hours as outlined in Article 38 of this law, the employee shall be entitled to receive salary payment for fulltime hours, in accordance with the law.

FBIH

The report states that funding of the rights of families with children from cantonal budgets is linked to serious problems and that some cantons are not able to provide necessary funds for this purpose in their budgets, which is why these benefits are not paid in all cantons or are paid in small and varying amounts. Posavina Canton and Herzegovina-Neretva Canton did not pass legislation to regulate this area.

Starting from the fact that the protection of families with children is an area of special interest, which aims at securing approximately equal conditions for healthy and orderly development of children, as well as assisting in the implementation of reproductive functions of the family, it is necessary to take action to improve the situation in this area.

In this regard, in the context of shared responsibilities and activities of the Federation and the cantons in the area of social welfare, the Federation Ministry of Labour and Social Policy plans with the line cantonal ministries to create a new law on social welfare and families with children. In drafting the new

law, provisions of the European Social Charter and the conclusions of the Committee, as well as other international documents relating to maternity benefits, will be taken into account in order to ensure availability and consistency of these rights throughout the territory of FBiH, regardless of the canton in which a beneficiary resides, in accordance with the financial capabilities of the Federation of Bosnia and Herzegovina.

BD

Article 45, paragraph 1 of the Labour Law of BD provides that during pregnancy, birth-giving and child-care, a woman shall be entitled to maternity leave in the duration of twelve (12) months without interruption. During the maternity leave employees shall receive compensation of salary at the expense of BD Budget provided that contributions were paid in pension and health care schemes.

The compensation of salary shall be calculated to be equal to 100% of the base salary.

The gross compensation of salary shall be calculated in the period of 12 months, which is provided for in the BD Law on Salaries.

Paragraph 2 of the article provides that a woman may start maternity leave twenty-eight (28) days prior to the expected date of the birth of the child based on the findings of a certified medical physician. A woman must start her maternity leave no later than seven (7) days prior to the expected date of the birth of the child based on the findings of a certified medical physician

Paragraph 3 of the article provides that a woman may take shorter maternity leave, but no earlier than forty-two (42) days after her giving birth.

Pursuant to Articles 8 and 9 of the Law on Child Protection of BD – consolidated text, the following are the rights under the children's protection scheme:

1. compensation of salary paid during maternity leave or extended maternity leave and leave of absence of a working parent or adoptive parent to take care of a child;
2. maternity allowance;
3. layette;
4. child allowance;
5. specific psychosocial treatment of spouses who want children and pregnant women.

Compensation of salary shall be paid to a working woman (mother) or father, adoptive parent or guardian of a child during her absence from work due to pregnancy, childbirth and child care in accordance with the regulations on labour relations applicable in the District.

During pregnancy, childbirth and child care, a woman is entitled to uninterrupted twelve (12) months' leave of absence.

According to Article 2, 3, 4 and 5 of the Decision on Conditions and Manner of Payment of Compensation to Employees During Maternity Leave, issued on the basis of Article 45 of the BD Labour Law and BD Child Care Law (consolidated text), an employee (mother or adoptive parent or other person whom the competent authority entrusted with care of the child) is entitled to compensation during maternity leave, for a period as determined in the Labour Law.

In the process of determining this entitlement, the employer shall issue a decision establishing the right to maternity leave, the duration and amount of compensation for salary to be paid to the employee.

During maternity leave an employee receives an amount of compensation for salary equal to the average

net salary which was earned during the last three months prior to the commencement of maternity leave. The calculation of wages, payment of contributions and payment of compensation are done by the employer.

Compensation for salary during maternity leave or extended maternity leave and paid leave of working parent or adoptive parent for child care			2007	2008	2009
Beneficiaries			151	241	331

Table 1 – Source: BD Sub-Department for Social Welfare

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the ground that night work of pregnant women, women having recently given birth and women who are breastfeeding is not adequately regulated in the District of Brčko.

ANSWER:

BIH

Protection of women employed in the public sector is the same as in the private sector when it comes to night work.

Article 45 of the Law on Civil Service of BiH (BiH Official Gazette 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10) refers to the Labour Law in BiH Institutions and other laws respecting employment-related rights and duties.

Although there is no ban on night work for pregnant women and breastfeeding mothers, Article 35 of the Labour Law of Bosnia and Herzegovina institutions provides:

1. During pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her health condition as established by the certified doctor.
2. If an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work.
3. The temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman's salary.
4. The employer may transfer the woman from Paragraph 1 of this Article to another place of work only with her written consent.

FBiH

Article 47 of the Law on Civil Service of FBiH (FBiH Official Gazette 29/03, 23/04, 39/04, 54/04, 67/05, 8/06) refers to the Labour Law and other laws and collective agreements governing employment-related rights and duties.

RS

Article 9 of the RS Law on Civil Servants (RS Official Gazette 118/08) determines that general rules of labour law shall be applied. In case of night work the provisions of Labour Law (RS Official Gazette 38/00) shall be therefore applied.

Article 52 of the RS Labour Law bans night work by pregnant women and mothers with a child up to one year of age.

For women employed in the public sector, applicable provisions of the Labour Law which prohibits night work for pregnant women and women who have a child under one year of age. Furthermore, some branch agreements increase this minimum of protection, so Article 12 of the specific collective agreement for employees in the internal affairs of the RS (RS Official Gazette 72/06) defines night work as work between 10 p.m. and 6 a.m. next day, while Article 13 bans night work by workers under 18 years of age, pregnant women and mothers with children under three years of age.

BD

Night work by pregnant women, women who have given birth and women breast-feeding their children is not regulated by the Labour Law of BD.

The Committee's Conclusions (2011) respecting night work of pregnant women, women having recently given birth and women who are breastfeeding in BD will be the subject of the next amendments to the Labour Law of BD.

With regard to the part of the Charter respecting night work, the Committee asks about the protection of women in the public sector. To ensure safety at work and special safety measures to workers/employees, provisions of the Labour Law and other laws governing this area are applied, if not otherwise provided by law.

Article 134 of the Law on Public Servants in the BD Administration (BD Official Gazette 28/06, 29/06, 19/07) determines that, in order to ensure safety at work and special safety measures to workers/employees (including night work), the Labour Law and other laws governing this area are applied.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§5 of the Charter on the ground that there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth and who are breastfeeding their child.

ANSWER:

BiH

Although there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth and who are breastfeeding their child, Article 35 of the Law on Employment in BiH Institutions provides that:

1. During pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her health condition as established by the certified doctor.
2. If an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work.
3. The temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman's salary.
4. The employer may transfer the woman from Paragraph 1 of this Article to another place of work only with her written consent.

FBIH

In order to enhance protection of motherhood and to further harmonize provisions of the Labour Law of the Federation with the European Social Charter, the proposed new legislative solutions determine that the employer shall (the valid law determines that the employer can) place a woman during pregnancy or breastfeeding in another job if it is in the interest of her health condition as determined by a certified physician. Other provisions respecting pay and the right to absence from work with compensation for salary in the event that the employer is unable to ensure placement in another job are unchanged.

In our opinion, bearing in mind that the Labour Law is a general law, this new solution and the proposed ban on night work for pregnant women starting from the sixth month of pregnancy and mothers with children under one year provide adequate protection for women's health.

However, a special law, i.e. the Law on Safety and Health at Work, which has also been prepared and whose passage is planned together with the Labour Law, will ensure a greater degree of protection against risks to health and safety of women at work, in the part that regulates special protection of certain categories of employees.

RS

The Conclusion of the Committee about Article 8, paragraph 5 respecting prohibition of dangerous, unhealthy or arduous work does not apply to the RS where the matter is regulated in accordance with the article above, so, for an answer, we reiterate the following provisions:

„Article 76 of the RS Labour Law provides that a woman (whether she is pregnant or not) may not be employed on underground work in mines, unless the woman is employed in a position of management not requiring manual work or in health and welfare services.

Article 78, paragraph 1 of the RS Labour Law provides that, during pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her or her child's health condition as established by the certified doctor.

Article 78, paragraph 2 of the RS Labour Law provides that, if an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to

paid absence from work. The compensation for salary shall not be less than the salary the woman would have earned if she had been working.

Article 1, paragraph 3 of the Law on Safety at Work (RS Official Gazette 1/08) determines that special protection shall be provided for to safeguard psychophysical development of underage workers, to protect women against risks that could jeopardize their future motherhood, to protect workers with disabilities or occupational diseases from further damage and impairment of their ability to work and to preserve the working ability of elderly workers within the limits appropriate to their age.

Article 30, paragraph 3 of the Law on Safety at Work provides that an employer shall ensure that, in addition to training for safe and healthy work, a working pregnant woman, a worker under 18 years of age and workers with reduced working capacity be informed in writing of the results of risk assessment of workplace and measures to eliminate the risks with a view to improving safety and health at work. This provision enshrines special protection for workers under 18 years of age.“

BD

Protecting employees, including minors and women, and protection of women on maternity leave is regulated in Chapter VI of the Labour BD (" Official Gazette" of the Brcko District of BiH 19/06, 19/07, 25/08).

Article 39 of the Law provides that employers shall be required

- ~ to ensure that, so far as is reasonably practicable and in accordance with technical regulations, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
- ~ to ensure that, so far as is reasonably practicable and in accordance with technical regulations, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- ~ to provide employees, where necessary, with adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.
- ~ to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.
- ~ to allow an employee the opportunity to familiarize himself with the labour regulations and work protection regulations within thirty (30) days from the day of the employee's start of employment.

Article 42 of the Law provides that a woman may not be employed in underground work in any mine unless the woman is employed in a position of management that does not require manual work, in a health and welfare service position, or unless the woman must spend a period of training underground in a mine or must occasionally enter the underground part of a mine for the purpose of a non-manual occupation.

Article 43 of the Law provides that an employer may not refuse to employ a woman because of her pregnancy, and may not cancel her employment contract because of her pregnancy or maternity leave.

Article 43 of the Labour Law regulates recruitment and dismissal of pregnant women and women who gave birth and Article 42 regulates who can work in mines. More detailed provisions about employment of pregnant women and mothers, who work in mines and in harsh conditions, is not regulated by this Law. Article 44, paragraph 1 provides that during pregnancy or breast-feeding of a child, a woman must be assigned to other jobs if this is in the interest of her health condition as established by a certified medical physician.

Paragraph 2 of this article provides that, if an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work, in accordance with a collective agreement or a Book of Rules.

Paragraphs 3 and 4 determine that the temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman's salary and that a woman who has been reassigned to another job in accordance with Paragraph 1 of this Article may be transferred to another position that accommodates her medical condition only with her written consent.

Article 25 of the Law on Safety at Work of BD (BD Official Gazette 31/05, 35/05) provides for an obligation of the employer to identify particularly heavy or unhealthy jobs, so-called jobs under specific conditions.

The jobs under specific working conditions are defined in accordance with the Law on Safety at Work of BD.

Article 33, paragraph 1 of the Law on Safety at Work of BD provides that night work by a worker under 18 years of age and a working pregnant woman or a woman with a child of up to two years of age and workers with disabilities shall not be ordered.

We emphasize that the protection of pregnant women and mothers is provided in the sense that they must be assigned to appropriate jobs for health reasons, if so established by a certified doctor. However, protection of pregnant women and mothers is regulated only by the articles above while dangerous, unhealthy and arduous work is specifically and precisely defined only in Article 42 and it is work of women in underground mines, while other jobs are not specified clearly and specifically as arduous, dangerous and unhealthy or not.

The Labour Law of BD does not specify other jobs that are dangerous, unhealthy and arduous for pregnant and breast-feeding mothers. The Committee underlines that dangerous activities such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by work.

However, Labour Law of BD does not ensure the protection of women in such a way, nor does it define these jobs as jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers, which may come into play in occupations such as in healthcare, in jobs associated with viral agents, such as for example, microbiological, radiology, radiation and X-ray laboratories etc., so these jobs are not specifically regulated and identified as jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers. From all this we can conclude that the BD does not define precisely and clearly jobs that can be considered jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers.

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

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the ground that it has not been established that the living conditions of Roma families and other vulnerable families in housing are adequate.

Social protection of the family

ANSWER:

BiH

Roma housing

Bearing in mind that BiH is a country in transition and faces even a large number of unsolved housing problems of internally displaced people accommodated in collective centres, Bosnia and Herzegovina has made considerable progress in solving the housing problems of Roma, and thus improving the overall socio-economic situation of the Roma population.

The Law on the Protection of National Minorities ("BiH Official Gazette" 12/03, 76/05) guarantees rights of national minorities, in accordance with the highest international standards of human rights and fundamental freedoms.

Entity laws, i.e. the Law on the Protection of Members of National Minorities (BiH Official Gazette 56/08) and the Law on Protection of Rights of Members of National Minorities (Republika Srpska Official Gazette 2/05), have aligned and confirm obligations in the protection of national minorities.

Bosnia and Herzegovina ratified the Council of Europe Framework Convention for the Protection of National Minorities on 24 February 2000 and the European Charter for Regional or Minority Languages on 25 August 2010, which are an integral part of the legal system in BiH

In order to enforce the legislation and improve living conditions of Roma people, BiH adopted the following documents:

- BiH Strategy for Resolving the Problems of Roma (Roma Strategy, 2005),
- Roma Action Plan of Bosnia and Herzegovina in Housing, Employment, Health Care (2008)
- Declaration on Joining the Decade of Roma Inclusion 2005-2015, signed in September 2008.

The adopted documents were the basis for resolution of housing problems of Roma people in a quicker fashion.

After joining the Decade of Roma Inclusion in September 2008, the biggest progress was made in planning the budget for the Roma on a yearly basis and in establishing a methodology and a system to solve primarily housing problems of Roma.

Based on the established system, the best results were achieved in the last three years.

In these documents, which are enforced throughout the country, the authorities have committed themselves to improve overall socio-economic situation of the Roma national minority, including housing of Roma.

Taking into account that about 50% of Roma families in BiH have difficulties in providing housing and in order to provide adequate exercise of the right to housing to one of the most numerous national minorities in BiH, i.e. Roma, a great progress has been made and following activities were undertaken especially in 2009:

BiH has included more than 100 experts and representatives of Roma in the preparation of Action Plan and 2009 was the first year of implementation of this plan.

In the first year of implementation of Action Plan, the Council of Ministers earmarked in the budget BAM 3 million for the Roma, of which BAM 2,175,800.00, including funds provided by the Federation, were spent for housing.

The Project Selection Committee in the field of Roma housing in BiH determined the basis of selection and evaluated project proposals received. A total of 34 project proposals were submitted in 2009 and the Project Selection Committee decided to fund 9 housing projects from 11 municipalities.

Funds for housing construction and reconstruction of facilities and infrastructure amounted in this way to about BAM 4 million in 2009. The implementation of projects is underway.

All these positive developments in addressing Roma housing generally occurred in the last two years and 2009 was a key year in the construction and reconstruction of housing for Roma.

Construction and reconstruction of Roma housing involved international organizations present in BiH (Swedish organization - SIDA, Hilfswerk, Swiss CARITAS and others). In 2009, SIDA Sweden built 33 Roma houses in Sarajevo, in cooperation with local authorities.

The Ministry of Human Rights and Refugees has no data on the number of constructed housing units, because there was no system of data collection in a single database. Therefore, the MHRR introduced a single national database to collect data as of 2009 and all constructed and reconstructed Roma housing units will be entered into the database. In this way, reliable statistics will be obtained and double dipping into donations will be avoided.

Although 2009 was the first year when the Action Plan for Housing was implemented, a great progress was made in developing the methodology for spending the funds by taking the following actions:

- A decision on appropriation of budgetary funds for Roma employment, housing, health care, the implementation of registration programme and development of a database on Roma in Bosnia and Herzegovina was prepared and adopted at the 55th meeting of the Council of Ministers of Bosnia and Herzegovina in 2009,
- The Minister for Human Rights and Refugees issued a decision on the criteria for the use of funds intended for Roma housing.

The decision determined that budgetary funds to be earmarked for Roma housing would amount to BAM 1,863,000.00:

a) Roma housing in the Federation of Bosnia and Herzegovina	BAM 1,167,000.00
b) Roma housing in the Republika Srpska	BAM 583,000.00
c) Roma housing in the Brcko District of Bosnia and Herzegovina	BAM 113,000.00

The total amount of funds available for projects co-funding Roma housing was provided from:

- the budget of the Ministry of Human Rights and Refugees..... BAM 1,863,000.00
- Pooled Funds of the FBiH..... BAM 312,800.00
- Swedish SIDA BAM 1,885,714.00
- pooled funds of Hilfswerk Austria and Caritas implementing organizations and municipalities that implemented selected and qualified projects..... BAM 1.822.200,00

Total BAM 5,882,914.50

The funds were to be used exclusively for the following purposes:

- a) for the construction of apartments and houses,
- b) to improve housing conditions,
- c) rehabilitation and urbanization of Roma settlements.

The established database and projects for Roma housing in 2009 provided the following information:

- Projects were completed in the following 17 municipalities: Kiseljak, Zenica, Jajce, Ključ, Maglaj, Sanski Most, Kladanj, Bijeljina, Teslić, Kozarska Dubica, Brčko, Sarajevo Canton, Banja Luka, Zenica, Vitez, Bihać and Travnik.
- 86 new residential units were constructed
- 125 residential units were reconstructed /repaired/

TOTAL number of reconstructed/repared residential units was 211.

TOTAL number of families-beneficiaries of infrastructure projects was 182.

Based on this intended distribution of funds, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina announced a public call for project proposals for Roma housing on 23 June 2009. The proposals were to be submitted within a month and the deadline was 23 July 2009.

Eligible candidates were municipalities, cities, cantons, entities, domestic and foreign governmental and nongovernmental organizations and institutions and donors, in cooperation with the municipality on whose territory the project was implemented.

It is important to note that the Ministry of Human Rights and Refugees of BiH, together with the Roma and Centres for Social Work, implemented the Roma Needs Registration Program in Bosnia and Herzegovina in 2009. The data aggregated after the process of recoding showed that in Bosnia and Herzegovina 16,771 Roma or 4,308 households were recorded at the time. The data shows that in BiH there are about 25,000-30,000 of Roma and that there are 19,500 Roma in 4,500 households that will require a form of assistance under the Strategy and Action Plan. According to the last, 1991 census, the only 8,864 Roma lived in BiH. The next census in BiH is expected in 2013. OSCE argues that the number of Roma in Bosnia and Herzegovina is between 30,000 and 60,000, while Roma NGOs argue that there are between 75,000 and 100,000 Roma in Bosnia and Herzegovina.

With a support by CARE International and EC funds, the Ministry of Human Rights and Refugees hired a Roma coordinator at the BiH level and 4 Roma coordinators at the regional level, in order to speed up implementation of the Action Plan for Addressing Roma Problems, who give significant support to the implementation of housing projects in Roma communities and achieve cooperation with the Roma communities.

We are aware that there are still Roma families who are waiting for housing, although positive steps have been visible and identifiable for the last three years.

We particularly point out that in 2010 the Decade Watch Team made a research and evaluated the findings of the 12 member countries of the Decade of Roma Inclusion 2005-2015 (Albania, Bulgaria, Bosnia and Herzegovina, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia, Spain and Croatia) and found that Bosnia and Herzegovina was on the first place in providing housing to Roma in 2009.

Preschool establishments

Conclusion

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens and asks for a detailed list of the number of places in crèches and day nurseries, by age group, and the number of applications for places turned down. The Committee underlines that, to be in conformity with Article 16 of the Revised Charter, staff working in nurseries should be suitably qualified. It therefore asks what measures are planned to monitor the quality of such services.

ANSWER:

BIH

A TABULAR OVERVIEW OF BiH PRE-SCHOOL EDUCATION

<i>School year</i>	<i>Number of pre-school institutions</i>	<i>Number of children</i>		<i>Employees</i>				<i>Number of children per educator</i>
				<i>Total</i>		<i>Educators</i>		
		<i>All</i>	<i>Girls</i>	<i>All</i>	<i>Female</i>	<i>All</i>	<i>Female</i>	
2008/2009								
RS	69	6,342	2,982	918	828	402	394	16
FBiH	125	9,608	4,621	1,311	1,206	690	666	14
DB	2	310	160	43	39	25	25	12
BiH	196	16,260	7,763	2,272	2,073	1,117	1,085	15
2009/2010								
RS	78	6,583	3,079	981	902	449	442	15
FBiH	129	9,839	4,822	1,395	1,293	720	703	14
DB	2	367	182	48	45	27	27	14

BiH	209	16,789	8,083	2,424	2,240	1,196	1,172	14
------------	------------	---------------	--------------	--------------	--------------	--------------	--------------	-----------

Source: BiH Statistics Agency

Preschool institutions provide day-care of children and achieve upbringing, educational, preventive health care and social functions, implementing full day, half day, minimum, shortened, casual, five-days' and other forms of programmes of work with children until they start school

The Framework Law on Pre-School Upbringing and Education of Bosnia and Herzegovina (Official Gazette 88/07) governs the matter of pre-school upbringing and education.

Article 12 of the Law provides that children with special needs shall be included in preschool institutions in accordance with programs adjusted to their individual needs. Individual programs adjusted to their abilities and capabilities shall be developed for each child individually.

Article 16 provides that in year prior to primary school, preschool care and education shall be obligatory for all children at preschool age and that conditions and ways of funding, curricula and duration of preschool care and education shall be regulated by relevant law passed by Competent Educational Bodies.

Article 25 determines that preschool upbringing and education in public and private preschool institutions shall be implemented on the basis of pedagogical standards and norms which shall be determined by competent educational bodies and that the standards and norms in preschool upbringing and education shall ensure consistent and effective implementation of common core curricula in all preschool institutions in Bosnia and Herzegovina.

Article 29 defines the profile for the job of educator that is defined by common core curriculum for preschool care and education, level of education while other requirements which should be met by any person to work as an educator shall be more thoroughly defined by standards and norms of preschool care and education.

Different programs of preschool care and education in public and private sector shall be implemented by educators, specialized experts (pedagogues, specialized pedagogues, speech therapists, psychologists, doctors, social workers) with university degree.

Children's health care and health improvement at the age between six months and pre-school age shall be performed by medical staff with university degree, two-year college degree or secondary medical school.

Article 44 provides for obligations of social welfare authority, pursuant to relevant laws of Republika Srpska, cantons in the Federation of Bosnia and Herzegovina and Brčko District, and co-financing of costs of: children without parental care, children with special needs, children of disabled persons, children civilian victims of war, children of unemployed parents, children of single parents, children of beneficiaries of social welfare and children of full-time students.

Article 54 provides that educators working with children in the upbringing and education process shall have university degree in the field of preschool education and that educators with over 20 years work experience and two-year college degree or secondary school degree may continue with their service in care and education process until their retirement.

According to the statistics of the BiH Statistics Agency, in 2011/2012 school year, there were 223 pre-school establishments (173 public and 50 privately owned) with 17,293 children in Bosnia and Herzegovina. There were 2,513 employees altogether (2,200 in public and 313 in privately owned establishments) in pre-school education in this school year. Of the total number of children, 463 children were with special needs. Owing to capacity restrictions 1,753 children (1,685 in public and 68 in privately

owned establishments) were not admitted this year. Compared to the previous school year, the number of preschool establishments is higher by 1.8%, the number of children in preschool establishments increased by 1, 5% and the number of employees increased by 1.2%.

FBiH

The Federation Law on Preschool Upbringing and Education has been brought in line with the above-mentioned BiH Framework Law in all cantons except Western Herzegovina Canton, Herzegovina-Neretva Canton and Middle Bosnia Canton.

The percentage of children included in preschool establishments in FBiH ranges from 6 to 13%.

There are 139 (106 public and 33 private) preschool establishments in the Federation.

157 children have not been admitted due to capacity restrictions.

As regards requiring parents to pay part of costs of preschool education, except for the mandatory preschool classes, some parents may be required to do so by the competent educational authorities depending on their social status and this practice is different from canton to canton.

All cantons in FBiH have child care facilities.

The Law on Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children does not establish the conditions of child care in preschool education establishments, as stated in the Conclusions, but the Law provides for an entitlement to have part of expenses for children in preschool establishments exempt or subsidized, families with children being eligible in certain cases. Cantonal regulations govern in more details conditions, method, procedure and funding of this entitlement exercising. However, as is the case with the exercise of other entitlements of families with children, owing to a lack of funds in the budgets of cantons, there are problems in exercising this entitlement, too.

RS

Preschool education is an area that includes upbringing and education, care and protection of children aged six months until enrolment in primary school and it is performed in public and private establishments.

Educational groups may be: a nursery catering for babies and toddlers aged six months to three years, kindergarten catering for children from three years until enrolment in school and mixed groups catering for children of different ages.

Pursuant to the RS Law on Preschool Upbringing and Education, preschool establishments implement, besides others, the programme for children immediately before starting school, if the children have not been included in some or other form of preschool upbringing and education.

Article 38 of the RS Law on Social Welfare provides for facilities for children which can be public, private or with mixed ownership. The Ministry of Health and Social Welfare determines the criteria for registration, fees paid by users of services and curriculum. There are five establishments for children in this Entity.

In RS, preschool upbringing and education of children of six months until starting school are governed by the Law on Preschool Upbringing and Education (RS Official Gazette 119/08, 1/12). Preschool upbringing and education is an inherent part of the RS unified education system, which is the basis for

lifelong learning and whole child development. Preschool upbringing and education are conducted in kindergartens, social welfare institutions in which children of preschool age are permanently placed and other institutions that implement programs for preschool education. The preschool upbringing and education system provides equal conditions and opportunities in the exercise of children's right to upbringing and education for the benefit of their physical and mental health and safety, regardless of gender, ability, socio-economic status and lifestyle of the family, cultural, ethnic, national and religious heritage, as well as the implementation of other programs, depending on the needs and interests of children of preschool age. Each preschool child is provided with equal access to upbringing and education.

Upbringing and educational are carried out in the languages of the constituent peoples living in the RS and official alphabets are Latin and Cyrillic. Children belonging to national minorities are raised and educated in the native language or bilingually. A preschool education program can be implemented in a foreign language in whole or in part.

Children with mental and physical disabilities are raised and educated by tailor-made or special programs, depending on the needs and abilities of children. In 2010/2011, 64 children with special needs were enrolled in preschool institutions.

A preschool establishment can be organized as a public or private facility. Public and private facilities are established under equal conditions.

For the purpose of upbringing and education, care, child protection, encouragement and interests and development of children's abilities and quality leisure activities, the following can be established:

- a) "Children's Clubs" with a variety of program contents: sports, music, art, drama, folklore, language and communication, information technology, recreation etc.
- b) "Children's Groups" – playrooms and playgrounds that are established in urban and rural areas for socializing and playing games by children younger than five years and
- v) "Nature Nurseries" for rest and recreation of preschool children.

For the purposes of playing games and socializing of children, centres for peer play and socializing can be opened outdoors and indoors, such as in shopping centres, parks and other public areas.

In 2011/2012 school year the RS had 82 preschool establishments (of which 66 are public).

Preschool establishments operate in different periods (depending on the needs of children, parents and the local community and founder, as well as the substance of preschool program):

- a) full day kindergarten - up to 12 hours a day,
- b) half-day kindergarten - up to six hours a day and
- c) multi-day kindergarten - more than 24 hours.

The preschool establishments use the following programs:

- a) comprehensive development programs,
- b) specialized development programs,
- c) intervention, compensation and rehabilitation programs,
- g) programs to strengthen the parenting knowledge, protection and upbringing of children and
- d) programs for children before starting school unless they are covered by some form of preschool education.

A comprehensive development program is an open program of preschool upbringing and education, adaptable to different conditions and duration in all preschool establishments in the RS.

A preschool establishment can implement specialized development programs for gifted children, meeting interests, needs and abilities of children.

A compensation program can be implemented exclusively in less stimulating - underdeveloped communities. Activities and measures are determined on the basis of real needs of children and their families in their natural environment, covering a variety of activities from prevention to suppression factors that lead to deprivation.

A rehabilitation program can be implemented in specialized institutions that implement programs of preschool upbringing and education to support optimal functioning of children with disabilities in daily activities.

The preschool establishments work with children in educational groups. The educational groups are established according to the age of children, the type and duration of the program, abilities, needs and interests of children and parents. They can be nurseries for children of six months to three years and kindergarten groups for children of three years until starting school. The educational groups may be formed of children of the same or different ages, so-called mixed groups. The mixed educational groups are formed only in cases where the same age groups cannot be formed.

In the 2009/2010 academic year, 1,536 were not admitted in preschool establishments due to capacity constraints. In the 2010/2011 academic year, 1,261 were not admitted in preschool establishments due to capacity constraints. In 2011/2012 school year, 1,596 were not admitted in preschool establishments due to capacity constraints.

The activity of preschool upbringing and education includes upbringing and education, care, social welfare, preventive health care, which are all carried out by educational professionals: teachers, professional associates and inclusion assistants. Other jobs in the activity of preschool establishments are performed by assistants.

Upbringing and education in the nursery or kindergarten groups are performed by teachers and special education teacher for children with disabilities included in regular groups and children placed in groups under development program.

Professional associates include the following professionals: educator, psychologist, special education teacher, social worker, dietician and physician, specialist in paediatrics.

An educational group attended by a child with special needs has an inclusion assistant.

For training and professional development, teachers, professional associates and preschool establishment directors are covered by mandatory training programs, professional development programs and testing.

BD

All children were admitted to kindergarten till 2011/12 academic year, because there were enough space and staff capacities. In 2011/12 academic year, 83 requests were refused due to a lack of personnel. A competition is underway for the 2012/13 academic year and a larger number of children are expected to be admitted because conditions for it have been created (full-time employees and trainees).

Measures taken to monitor the quality of services are:

- Actively working with the Parents' Council giving their suggestions as users for improving services
- Regularly analysing of services by the Management Board of the establishment
- Professional pedagogical supervision by the Pedagogical Institute
- Training of staff

Legal protection of families

Family benefits

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equalized income. The report does not indicate the level of family benefits in Bosnia and Herzegovina. The Committee therefore asks for the next report to contain sufficient information to assess the adequacy of those benefits.

FBIH

Child allowance is one of basic rights of families with children prescribed by the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children (FBIH Official Gazette 36/99, 54/04, 39/06, 14/09).

Cantonal regulations govern in more details conditions, method, procedure, authorities and funding of this entitlement exercise (Article 90, paragraph 2 of the Law).

Right to child allowance belongs to family whose aggregate monthly income earned through all means, except the income realized from social welfare scheme and protection of families with children, per member of the household do not exceed the amount determined by the cantonal legislation as the lowest income sufficient for sustenance (Article 91 of the Law).

Given child allowance is funded from the Canton's budget, there is the same problem in practice as with the exercise of other rights of families with children, conditioned by financial abilities of each individual canton. In 2009 and 2010 the right to child allowance was exercised in five cantons (Tuzla, Zenica-Doboj, Bosnia-Podrinje, Middle Bosnia and Sarajevo Canton). Amounts of the child allowance varied and ranged from BAM 9.75 to BAM 50.00.

An overview - Payments of children allowances by cantons in the FBIH and the monthly amount per child in BAM for the period 2009-2010

Canton	YEAR	
	2009	2010
UNA-SANA	-	-
POSAVINA	-	-
TUZLA	30.00/38.00 and 50.00	20.00/40.00 and 50.00
ZENICA-DOBOJ	11.10 and 16.60	9.75 and 14.65
BOSNIA-DRINA	29.00 and 43.50	29.00 and 43.50
MIDDLE BOSNIA	28.00	29.00
HERZEGOVINA-NERETVA	-	-
WESTERN HERZEGOVINA	-	-
SARAJEVO	33.00 and 49.50	33.00 and 49.50

CANTON 10	-	-
-----------	---	---

Note: (-) child allowances were not paid

Source: Federation Ministry of Labour and Social Policy

RS

In accordance with the Child Protection Law, any citizen of Republika Srpska, primarily unemployed soldiers, veterans of the first to the third group of disability, family allowance beneficiaries, i.e. citizens who reside in the territory of Republika Srpska, are entitled to child allowance.

The right to child allowance is exercised for the second, third and fourth child in the family depending on the financial position of the family, birth order distribution and age of children, based on the submitted application, but no later than 15 years of age if they are full-time students. Regardless of the means testing, this right can be exercised by children of fallen soldiers, children of civilian war victims and war veterans of the first and second category, children civilian victims of war, children without parental care, children whom the competent body declared classified in a group due to retardation in development, if he/she is not placed in a social care institution, a child whose family is entitled to financial assistance under the Law on Social Welfare and children suffering from celiac disease and chronic diseases, which in the opinion of the competent Commission cause or have resulted in physical disability. The right to child allowance for the vulnerable categories will be exercised for all new-born children regardless of birth order, until they attain 19 years of age or until they are included in an upbringing and education program and regardless of the limits prescribed for exercising the right.

According to valid legislation, child allowance as a form of financial assistance has primarily social welfare and protective nature when it is given to vulnerable groups of children, regardless of birth order, and the second and fourth child (and the first child in exceptional circumstances), because the right is acquired on the basis of specific social welfare criteria and requirements, and when it is given to the third child in the family it is aimed at boosting birth rate since the amount is higher for the third child by birth order (but he/she previously had to qualify under the financial criteria).

An overview of the nominal amount and threshold for exercising the right to CA for the period 2010 - 2011.

Year	the nominal amount per child in BAM				threshold for exercising the right					
	Second child	Third child	Fourth child	Vulnerable categories of children	total monthly income per family member does not exceed				total cadastral income per family member is up to	catalogue estimated value of movable property does not exceed
					Second child	Third child	Fourth child	Vulnerable categories of children		
2010	45.00	100.00	45.00	100.00	95.00	100.00	100.00	-	10% (3%)	6,000.00
2011	35.00	70.00	35.00	90.00	75.00	80.00	80.00	-	10% (3%)	5,000.00

(-) the right is exercised independently of the financial condition of family

Source: Public Fund for Child Protection of RS

BD

In BD, family benefits are given to parents no matter where their children, minors under 18 and adult

children under 26, study.

Vulnerable families

The Committee asks what measures have been taken to ensure the economic protection of various categories of vulnerable families, including Roma families.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the ground that it has not been established that the living conditions of Roma families and other vulnerable families in housing are adequate.

ANSWER:

FBIH

For the purpose of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children (FBiH Official Gazette 36/99, 54/04, 39/06, 14/09) (Article 19, paragraph 1 of the Law), social welfare entitlements are as follows:

- 1) financial and other material assistance,
- 2) training or work and living,
- 3) placement to another family/household,
- 4) placement to a social care institution,
- 5) social and other professional services,
- 6) home care and assistance in the house.

Cantonal legislation determines the exact value of financial and other kinds of assistance under paragraph 1 of this Article, conditions and procedure of acquiring these entitlements and their exercise, unless otherwise stipulated by this Law (Article 19, paragraph 2 of the Law).

Cantonal legislation may determine other social welfare entitlements in accordance with the program of development of social welfare scheme and its capabilities (Article 19, paragraph 3 of the Law).

Persons and families in need, which fulfil requirements for acquiring and exercising social welfare entitlements set forth in Article 19 of this Law, are entitled to certain forms of health care and meeting housing and other needs in accordance with the law (Article 20 of the Law).

When it comes to social welfare entitlements set forth in cantonal laws in FBiH, it should be noted that the cantons largely provide for the same entitlements as the Federation law do and that a majority of cantons further provide for subsidizing of rents, heating, electricity, funeral costs and the like to the most vulnerable groups.

Roma families in the Federation are entitled to social assistance as all other families in need in Bosnia and Herzegovina are, as applications for the exercise of entitlements do not state or require any national or other affiliation.

Article 48, paragraph 1 of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children provides that the social welfare institutions provide services which wholly or partly meet social security and other needs of beneficiaries. The institutions meant in this particular case are Centres of Social Welfare/Work.

While performing activities the institutions cannot establish any restrictions regarding the territorial, ethnic, religious, political or any other affiliation of beneficiaries, including the race, colour, gender, language, social status etc.

BD

Pursuant to Article 4 of the Law on Social Welfare of BiH BD, social care shall be granted to residents of the District who are incapable to work; who have neither means for maintenance nor relatives who are responsible by law and able to provide them with maintenance; and to inhabitants and families who are not able to earn means for maintenance through work, income from their property or in any other way, and to meet their basic needs.

Roma families are citizens of the BD and subject to all criteria and standards equally with other citizens of BD.

Special benefits organized by the BD Government:

A soup kitchen, one-time financial assistance for pensioners and subsidies for utilities.

Soup kitchen

A BD-funded and run soup kitchen was set up in 2008.

The following persons are eligible for meals in the soup kitchen: beneficiaries of the permanent basic financial support, beneficiaries of allowances for care and assistance by third party, families with children with special needs or particularly difficult cases of individuals and families in need, bearing in mind their health condition.

The number of meals is conditional on the funds allocated for this purpose. The meals are delivered at the address of bedridden and semi-mobile persons and mobile beneficiaries have in or take away the meals from the kitchen.

In 2010, due to the rules of the Public Procurement Law (tender procedures) cooked meals were not delivered to beneficiaries.

Cash was paid to the beneficiaries in monthly instalments instead.

SOUP KITCHEN	December 2008	2009	2010	2011
BENEFICIARIES	162	158	114	169

Source: Sub-Department for Social Welfare of BD

Subsidies for electricity consumed

The Decision on Approval of the 2011 Program for Spending Funds for Subsidizing Electricity Bills to Persons In Need Who Reside in BD approved a program of spending of these funds. The decision is made on an annual basis.

The following persons residing in the BD were eligible for subsidizing electricity bills in 2011:

- a. pensioners with a pension not exceeding BAM 310.74, who have been registered with the Sub-Department for Social Welfare in 2011 and who were entitled to one-time financial assistance for pensioners in 2011;
- b. unemployed persons registered at the Employment Office of Breko District, as follows: women who turned 55 years of age and men who turned 60 years of age on 30 April 2011 and older;
- c. beneficiaries of permanent basic financial assistance who were granted the entitlement in August 2011 and children without parental care, registered in the Sub-Department for Social Welfare;
- d. children with mental and physical disabilities, registered in the Sub-Department for Social Welfare;
- e. war veterans registered in the Office of Veterans whose disability benefit does not exceed the amount of BAM 310.74.

Proceedings for determining the entitlement to have electricity bills subsidized are carried out by the Department of Health and Other Services to BD, Sub-Department for Social Welfare. A final list of beneficiaries of subsidies is submitted to the local Public Utility Company that reduces the beneficiaries' electricity bills by the amount of subsidy established in the program.

The amount of subsidy is conditional on the number of payments on the lowest scale.

SUBSIDIES FOR UTILITIES	2008.	2009.	2010.	2011.
BENEFICIARIES	8314	8620	9101	9692

Source: Sub-Department for Social Welfare of BD

One-time financial assistance for pensioners

Since 2005 funds have been appropriated for the purpose of financial assistance to pensioners in the current year.

The Program of Spending Funds for One-Time Financial Assistance for Pensioners Who Reside in BD is made annually.

The criteria for allocation of funds in 2011 were:

- that a pensioner has a residence in BD by 1 October 2009,
- that a pensioner is a beneficiary of one of the following pension schemes: F BiH, RS, neighbouring countries, countries in Europe,
- that he/she was registered as a pensioner of the RS Pension Fund and / or Federation Pension Fund in 2010 and his/her data and the amount of pension were checked in the April lists provided by branch offices of RS and Federation Pension Funds,
- that he/she was registered as a pensioner of funds of neighbouring countries and the countries of Europe in 2010 and provided pension checks for the period April - August 2011 and / or a statement from the

bank in the territory of the Breko District of BiH on the amount of retirement or the average amount of pensions,

- that he/she was registered as a pensioner in the period 16 April to 2 September 2011 in the relevant Sub-Department, providing a copy of ID card, pension check and bank account.

Based on a final list of beneficiaries - pensioners the relevant Sub-Department pays funds to pensioners.

Payments are classified by the amount of pensions in the three scales, pensions to the amount of BAM 310.74 - the amount of BAM 135.00 is paid; pensions of BAM 310.74 to BAM 414.30 - the amount of BAM 80.00 is paid; pensions of BAM 414.30 to BAM 813.55 - the amount of BAM 30.00 is paid.

ONE-TIME FINANCIAL ASSISTANCE FOR PENSIONERS	2008	2009	2010	2011
BENEFICIARIES	8,314	8,731	9,079	8,921

Source: Sub-Department for Social Welfare of BD

Equal treatment of foreign nationals and stateless persons with regard to family benefits

Conclusion

The Committee wishes to know the conditions for awarding permanent residence so that family benefits can be granted.

ANSWER:

BiH

Article 51, paragraph 5) of the Law on Movement and Stay of Aliens and Asylum provides that: "Permanent residence is the right of stay of aliens in BiH for an indefinite period of time."

Article 59, paragraph 1) of the Law provides that a permanent residence permit shall be issued to an alien on the following conditions:

- a) That he/she has resided in the territory of BiH on the basis of a temporary residence permit for at least five years uninterruptedly prior to submitting the application for issuance of a permanent residence permit,
- b) That he/she has sufficient and regular funds in order to support himself/herself,
- c) That he/she has confirmed adequate accommodation,
- d) That he/she has confirmed health insurance.

Paragraph 2) of this Article provides that any stay for a period of up to 90 days outside of BiH during the same year shall not be considered as an interruption of residence, in the sense of paragraph (1), item a) of this Article.

An alien who meets the conditions referred to in paragraph (1) of this Article shall not be granted permanent residence if he/she: resides in BiH for the purpose of education, on the basis of temporary protection, or he/she has submitted a request for approval of temporary protection and is waiting for a decision on his/her status, on the basis of an international protection or has filed a request for international protection and is waiting for a decision on his/her status, on the basis of a legal status as per the 1961 Vienna Convention on Diplomatic Relations; the 1963 Vienna Convention on Consular Relations; the

1969 Convention on Special Missions; or the Vienna Convention on State Representatives and their relationship with international organizations from the 1975 Universal Charter, on the basis of volunteer work, on the basis of temporary residence on humanitarian reasons, under Article 54, for the purpose of serving a prison sentence or serving another criminal sanction or other commitment on the basis of a Court decision or decision of another competent authority, on the basis of medical treatment, on the basis of the implementation of projects relevant for BiH that are implemented by an international or local institution or humanitarian organization, association, foundation or other organization.

An alien who has been granted permanent residence shall be issued an ID card for aliens for a period of five years by the competent administrative body in the place of his/her permanent residence.

When an alien has a permanent residence permit, the right of residence shall be cancelled if:

1. An alien does not comply with the legal order of BiH or takes activities of undermining security of BiH or is a member of an organization which has taken such activities;
2. An alien has endangered BiH national interests by his/her actions in a way that he/she has been engaged in the smuggling of weapons and military equipment, radioactive and other dangerous materials or narcotics substances or in the unauthorized transport and trade of materials for the production of weapons or other means of mass destruction or who has produced or possessed narcotic substances intended for sale, or has been a member of an organization involved in the above mentioned activities;
3. An alien has organized or has been connected to organizing illegal entry to, stay in or exit from BiH of individuals or groups or has participated in the trafficking in human beings in any way;
4. The Service determines that a marriage or common law marriage was entered into or adoption carried out, exclusively for the purpose of entry and/or stay of an alien in the territory of BiH, or if the Service determines that an alien who issued a letter of invitation has not fulfil the commitments from the letter of invitation and has reissued the letter of invitation, or issues the letters of invitation for fraudulent purposes or abuses them differently,
5. An alien has intentionally provided incorrect data or has intentionally concealed circumstances relevant to the issuance of a residence permit,
6. An alien entered and/or resided, with forged travel documents.

Article 69 of the Law provides for special reasons for cancellation of permanent residence, citing two cases: if it has been determined that the alien has not resided in BiH for more than one year or that the alien has resided outside of BiH for less than one year, while based on circumstances it can be explicitly determined that he/she has no intention to return and take up permanent residence in BiH.

It is widely known that BiH is among countries with the most difficult problem of refugees and displaced persons in Europe. Nevertheless, our country accepted large numbers of refugees, mainly from neighbouring countries in the region. There is no precise data, given that there are significant differences in the legal and factual understanding of the numbers depending on the sources (Ministry of Security, UNHCR).

Currently, the refugee status in BiH is enjoyed by about 145 refugees. According to the Ministry of Security of BiH, about 250 refugee IDs was issued, while the Division issued a total of 37 IDs in 2010 and 2011 and additional nine refugee IDs in 2012 (as of 31 March 2012). The number of refugees resettled to third countries through UNHCR programs, whose refugee status have never been terminated in BiH, makes the difference in the number of issued refugee IDs and the number of people who currently reside in BiH.

The largest number of refugees in Bosnia and Herzegovina comes from Serbia and Montenegro, but there is a number of refugees from other countries (Palestine, Syria, Tunisia, Macedonia, Algeria, Albania, Croatia, Moldova, Saudi Arabia etc.).

In accordance with the Law on Movement and Stay of Aliens and Asylum, the Ministry of Security is responsible for determining the status while the Ministry of Human Rights and Refugees is responsible for providing the persons with refugee status and subsidiary protection status with access to the right to work, education, health care and social welfare under the same conditions as nationals in BiH.

In this regard, the Ministry of Human Rights and Refugees has passed six laws which ensure access to those guaranteed rights to persons with refugee status:

1. Rulebook on the Manner of Joining the Health Insurance and Health Care Schemes by Persons with Recognized Refugee Status or Another Form of International Legal Protection in Bosnia and Herzegovina,
2. Rulebook on Person's Status and Registration of Birth, Marriage and Death of Refugees and Persons under International Protection in Bosnia and Herzegovina,
3. Rulebook on Exercise of the Right to Work of Persons Granted International Protection in Bosnia and Herzegovina,
4. Rulebook on Exercise of the Right to Education of Persons Granted International Protection in Bosnia and Herzegovina,
5. Rulebook on Exercise of the Right to Social Security of People Granted International Protection in Bosnia and Herzegovina and
6. Rulebook on the Identification Documents of Persons Granted International Protection in Bosnia and Herzegovina.

In accordance with these regulations the Ministry of Human Rights and Refugees, pays directly for health insurance of recognized refugees in Bosnia and Herzegovina, so BAM 39,806.60 from 2011 budget were paid for 50 insurance holders, covering 131 persons granted international protection in BiH or family members of the insurance holders.

Through the centres for social work the Ministry for Human Rights and Refugees pays funds for exercising the right to social security by about 35 families that receive limited financial assistance, covering about 130 people, so BAM 44,562.00 from the 2011 Ministry's budget were paid for this purpose. The people are eligible for this entitlement if they do not receive any employment related income.

All persons above 15 years of age with recognized status are registered in Employment Offices with the possibility of employment under the same conditions as BiH nationals.

The Salakovac - Mostar Refugee and Reception Centre, which houses 37 individuals, of which 28 persons under international protection, is under the Ministry for Human Rights and Refugees. The remaining number of refugees in BiH with recognized status are in private housing.

In addition to people with refugee status, for many years now, a large number of persons accepted as refugees have been living in BiH and they have not integrated in BiH yet. They are mainly Serb refugees from Croatia and Bosniacs, Roma and Albanians from Serbia and Montenegro. A significant portion of these people has not resolved the issue of legal status or other issues in BiH, which would facilitate the integration, or they have BiH citizenship, which prevents both them themselves and appropriate authorities from solving difficulties of this group of people in BiH in accordance with rules of international legal protection.

Domestic violence against women

The Committee asks the next report to provide information on the application of these laws on protection from domestic violence. It also asks for the next report to provide a comprehensive description of the measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions).

FBiH

General principles and rules set forth in the Law on Protection against Domestic Violence (FBiH Official Gazette 22/05, 51/06) and other regulations governing the area of domestic violence ensure the prevention and suppression of this type of violence, the impact of effective measures on offenders and other persons not to commit violence and redress consequences of violence, prescribing the manner of providing the protection.

Article 6 of the Law on Protection against Domestic Violence defines that domestic violence is any act of inflicting physical, psychological, sexual or economic harm or suffering, as well as threats as regards the aforementioned, and lack of due care and attention which may seriously impede family members from enjoying their rights and freedoms in all areas of public and private life which are based on equality.

State authorities, which often have the first contact with a victim of violence are: police, social work centres and courts. These bodies, each within its competences, intervene to protect and care of women and children victims of violence and keep records of these cases.

Domestic violence and assaults, particularly violence against women, children and the elderly, often remains hidden from the centre for social work, because the victims rarely seek help for fear of retaliation. Owing to the attitude of non-interference in other family's problems, those who have information about violence do not report it either. The Centre for Social Work interferes in the family primarily because of the protection of interests of children who are, unfortunately, in families where there is violence, victims of psychological abuse, neglect and abandonment, but very often also of physical abuse.

In order to improve child protection, based on direct knowledge or information, the Centre for Social Work as a guardianship authority, i.e. as the basic social welfare service in the local community, is obliged to *ex officio* take necessary measures to protect rights and interests of the child, i.e. to provide help and support to all children whose life, health and development are threatened as a result of abuse or neglect. Further, anyone who has a suspicion of domestic violence has the right and obligation to report it to the competent social work centre.

Pursuant to the Family Law of the Federation of Bosnia and Herzegovina and the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children of the Federation, the Centre for Social Work is not only authorized but also obliged to take measures under the Family Law and Social Welfare Law when deeming that interests of children or a person deprived of legal capacity or an elderly person are threatened. Their interests are undoubtedly threatened if the family or institution in which they are placed subjects them to violence. The interests of a child are threatened in his/her family when he/she is exposed to the father's violence against the mother or vice versa. The Centre for Social Work is required to act upon the report and involve the team (psychologist, counsellor, social worker and other professionals, as required) and to draw up a plan to protect victims of violence. The plan includes psychosocial support to children and the parent who are victims of violence, providing financial assistance to victims and if there is a need to organize the displacement from the home and placement in a shelter / safe house, if such resources in the area and legal grounds exist.

The Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children does not define victims of violence as a group of beneficiaries of social security benefits, but it is left to cantonal laws to regulate. The laws respecting social welfare enacted by Sarajevo Canton, Zenica-Doboj Canton and Tuzla Canton are examples of good practice where victims are defined as a special group of beneficiaries.

Practice has shown that it is necessary to amend the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children stating that victims of domestic violence are defined as a group of beneficiaries of social security, whereby rights of victims of violence would be equal in the whole territory of the Federation. Accordingly, the Federation Ministry of Labour and Social Policy is planning to enact a new law on social welfare and families with children together with appropriate Cantonal Ministries. In preparing it guidelines and recommendations of international documents ratified by Bosnia and Herzegovina, the Strategic Plan for the Prevention of Domestic Violence of the Federation of Bosnia and strategies for preventing and combating domestic violence in Bosnia and Herzegovina will be taken into account so that victims of violence can be treated as a group of beneficiaries of social security benefits.

Furthermore, under the Strategic Plan for Prevention of Domestic Violence institutions in the area of employment were given recommendations to include in employment projects victims of domestic violence, as a special target group, whether the project involve co-financing of employment, training, retraining or self-employment. In this regard, since 2009 the Federation Institute of Employment has been successfully implementing the program of employment co-financing for people with disabilities and other hard-to-employ groups of unemployed people and women victims of violence.

Further, the Federation Ministry of Labour and Social Policy planned to make the Manual of Training and Professional Development in Proceedings of Staff of Centres for Social Work in the Federation in Cases of Domestic Violence. Based on this Manual, in cooperation with the cantonal ministries of social welfare, employees of the centres for social work will be provided with training in the prevention, detection and combat of domestic violence.

In the territory of the Federation of BiH there are six safe houses available for assistance and care of victims of domestic violence: Žena BiH-Mostar Association, „Mirjam“ Mostar Women's Association, „Žene sa Une“ Bihać Association, Foundation of Local Democracy of Sarajevo, „Medica“ Zenica Citizens' Association and „Vive žene“ Tuzla Women's Association. The Federation Ministry of Labour and Social Policy has recognized the importance and, according to its abilities, continuously financially aids their work. These funds are primarily spent for improving conditions for temporary accommodation of victims of domestic violence in safe houses.

RS

Fulfilling the State's obligation under Article 16 of the Charter to ensure adequate protection for women victims of domestic violence, both in laws and in practice, the RS has taken the following measures: In 2007 the Government of Republika Srpska adopted the Action Plan for Combating Domestic Violence in Republika Srpska, whose implementation started in 2008; the Strategy for Combating Domestic Violence in Republika Srpska 2009 – 2013 has been adopted; the Gender Centre of Republika Srpska, as a professional service of the RS Government for gender equality, is implementing the Action Plan and, in cooperation with the Ministry of Justice, the Ministry of Health and Social Welfare, the Ministry of the Interior, the Ministry of Family, Youth and Sports and the Ministry of Education and Culture, it published A Handbook for Treating Subjects of Assistance - Preventing and Combating Domestic Violence in the RS.

The 2011 Action Plan to Combat Domestic Violence (Health care and social welfare) was designed in accordance with commitments under the Strategy. In accordance with the Action Plan a document/sectoral analysis in the field of health care and social welfare entitled "Preventing and Combating Domestic Violence and Other Forms of Gender-Based Violence in the RS" was prepared. Further, in accordance with commitments under the Strategy, train-the-trainers courses for health and social workers titled "Stop the Violence" are held. A Handbook for Treating Objects of Assistance - Preventing and Combating Domestic Violence in the RS was printed and distributed to all participants of training.

Every year the RS appropriates funds in support of safe houses in its budget.

Besides the "safe houses" in developed municipalities, teams for domestic violence operate under Centres for Social Work, and the Centre for Social Work of Prijedor and the Centre for Social Work of Banja Luka set up a shelter for victims of domestic violence.

According to the "The Future" Safe House of Modrica, in 2009 it housed 86 women and 98 children victims of domestic violence. According to the safe house of Prijedor, in 2009 it housed 4 women and 6 children victims of domestic violence. According to the safe house of Banja Luka, in 2009 it housed 42 women and 51 children victims of domestic violence.

According to data available to the Ministry of Health and Social Welfare 1,432 and 1,330 victims of domestic violence were reported in the territory of RS in 2009 and 2010, respectively.

BD

Article 3 of the BD Family Law provides that violence against a spouse or other family members is not allowed in a family.

Violence is any conduct which has characteristics of a crime of domestic violence defined in the Criminal Law of the BD.

Article 22 of the Law on Social Welfare of BiH BD defines that an abused person is any adult person who was subjected to a deliberate act of inflicting pain, physical or psychological harm causing impairment of health, physical or mental integrity of the person.

According to Article 288 of the BD Family Law, the right to protection from domestic violence is afforded to spouses, common-law partners and all family members.

The BD police and guardianship authority are obliged to provide protection against violent behaviour.

Upon learning of violent behaviour all natural and legal persons are obliged to immediately report it to the police or Prosecutor's Office of BD.

Article 218 of the BD Criminal Code determines as follows:

1. A person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour shall be fined or sentenced to prison to up to one year.
2. A person who commits the offence referred to in Paragraph 1 of this Article against a family member with whom he lives in a household shall be fined or sentenced to prison to up to three years.
3. If the person who committed the offence referred to in Paragraphs 1 and 2 of this Article used weapons, dangerous tools or other objects that can cause serious bodily injuries or health impairments, he shall be sentenced to prison from three months to three years.
4. If the family member suffered from serious bodily injuries or serious health impairments as a

result of the offence referred to in Paragraphs 1 through 3 of this Article, or if the offence referred to in Paragraphs 1 through 3 of this Article was committed against a child or a juvenile, the perpetrator shall be sentenced to prison from one to five years.

5. If the offence referred to in Paragraphs 1 through 4 of this Article caused death of the family member, the perpetrator shall be sentenced to prison from two to fifteen years.
6. A person who causes death of the family member whom he had previously abused shall be sentenced to minimum ten years or long-term imprisonment.

Protection from domestic violence takes place through advisory work and social welfare scheme.

Professionals of the Sub-Department of Social Welfare of BD (social worker, educator and psychologist) are on stand-by around the clock to be able to respond to the police's call in the event of domestic violence and take statements from minors. Together with the police, they visit families having experienced (reported) violence and provide counselling to the victims and the perpetrator of violence and displace the victim, as required. Should a need arise, together with the victim they try to find an adequate solution for temporary accommodation, with relatives, friends or in a safe house. If the safe house is the only solution, then the victim is placed in any safe house in BiH, with which the Sub-Department of Social Welfare of BD cooperates and they are usually safe houses in the surrounding municipalities. So far, the safe houses have provided services free of charge and if it is the only option, the Sub-Department accepts to pay for the services of accommodation and professional work with victims.

The Sub-Department of Social Welfare of BD provides women victims of domestic violence and their family members with accommodation in humanitarian settlements in BD and, where appropriate, approves one-time cash assistance.

We emphasize that in BD:

- the Law on Protection against Domestic Violence is in the process of enacting!
- BD has adopted the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of BD.

Protective measures against an offender are not implemented because of a lack of legislation on protection from domestic violence to prescribe them.

The Police of BD follow special procedures within their competencies, paying special attention to the protection of minors as victims or witnesses of violence in, of course, clearly defined legal procedures and not in the absence of professional staff of the Centre for Social Work in any way.

Police officers, as well as professionals of the Sub-Department of Social Welfare of BD underwent the necessary training to work with victims and perpetrators of domestic violence.

DOMESTIC VIOLENCE			2007	2008	2009
Number of reported cases			55	26	29

Source: Brčko District of BiH Police

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1

Status of the child

Conclusion

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks under what circumstances this right would be restricted. It further recalls that under Article 17 of the Charter there should no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.

ANSWER:

FBIH

Article 92 of the FBiH Family Law (FBiH Official Gazette 35/05, 41/05) provides that a child has the right to know that he/she was adopted and that the adoptive parents must inform the adopted child about it until he/she is seven or immediately after the adoption, if an older child is adopted. In addition, the Law provides that an adult adopted child shall be allowed to review the adoption file, while the guardianship authority shall allow a minor adopted child to review the adoption file if it determines it is in his/her interest.

The Family Law of FBiH does not contain any provisions that restrict an adult adopted child's access to the adoption file.

The report has already stated that the Family Law of FBiH does not contain provisions that treat differently legitimate and illegitimate children in any given issue, and so is the case when it comes to maintenance of a minor child. Thus, the Law has several provisions determining that parents are obliged to support their minor children and that in fulfilling this obligation they must use all their abilities and capabilities.

The Federation applies the old Law of Inheritance ("Official Gazette of SR BiH" 7/80, 15/80) which provides that illegitimate kinship is equalised with legitimate kinship in terms of inheritance and adoptive kinship with blood kinship. In the case of full adoption, inheritance rights of the adoptee and his descendants are severed from his relatives by blood (Article 5).

The Federation is preparing a new law on inheritance.

RS

The current RS Family Law does not specifically provide for the child's right to know his/her origin, so the cases when it can be restricted are not provided for.

Article 8 of the RS Family Law provides that the rights and duties of parents and other relatives of children and the rights and duties of children towards their parents and relatives are equal, regardless of whether the children were born within marriage or outside marriage.

Article 237 of the RS Family Law provides that the stepfather and stepmother shall support their minor stepchildren, if they do not have relatives who are obliged to support them under provisions of this Law. Stepfather and stepmother's obligation to support their minor stepchildren remains even after the death of the child's parent, if at the time of his/her death a family union between the stepfather or stepmother and stepchild existed.

Article 4 of the RS Inheritance Law (Republika Srpska 1/09) provides that illegitimate kinship is equalised with legitimate kinship in terms of inheritance and adoptive kinship with blood kinship. In the case of full adoption, inheritance rights of the adoptee and his descendants are severed from his relatives by blood.

BD

Chapter IV of the BD Family Law governs the matter of adoption.

Article 76 of the BD Family Law provides that: "Adoption is a special form of family-legal protection of children without parents or without parental care, which establishes parental relationship, i.e. kinship. Adoption may be established as incomplete and complete."

Article 77 provides that a child has the right to know that he/she was adopted and Article 94 provides that in pronouncing an adoption the Guardianship authority states the following: personal name of the adopted child, date and place of birth, citizenship of the adoptee, the personal name of one parent, national identification number and nationality of adoptive parents, the type of adoption and the new name of the adoptee.

Adoption may be established only if it is in the interest of the adoptee.

Article 96 of the Law provides that, with complete adoption, unbreakable kinship, the same as blood kinship is established between the adoptive parents and their relatives on the one hand and the adoptee and his descendants on the other hand. The adoptive parents are registered in the birth register as parents.

The same article provides that incomplete adoption creates rights and obligations under the law that exist between parents and children between the adoptive parents, on the one hand, and the adoptee and his descendants on the other hand. Incomplete adoption does not affect rights and duties of the adoptee toward his parents and other relatives.

Article 102 of the Family Law provides that in incomplete adoption the adoptive parent may limit or exclude the adoptee from the right of inheritance, under the conditions provided for in the law on inheritance. In BD, there is no law on inheritance and the old Law of Inheritance ("Official Gazette of SR BiH" 7/80, 15/80) applies.

Cohabitation in terms of the Family Law (Article 5, paragraph 1) is considered to be a union of a man and woman who are not married to or a common-law partner with other party, which lasts at least three years if they do not have children or less if a child is born.

Bearing in mind that the Family Law of BD considers cohabitation to be equal with marriage as regards rights to mutual maintenance and other property issues, a conclusion that the position of children born within marriage and outside marriage are fully equal (Article 5, paragraph 2) is reached.

Protection of children against ill treatment and abuse

Conclusion

The Committee considers that there is no explicit prohibition of corporal punishment in the home in the Federation of Bosnia and Herzegovina and the District of Brcko. Corporal punishment is not explicitly prohibited in schools and in institutions and therefore the situation is not in conformity with the Charter.

ANSWER:

BiH

Article 34, paragraph 2) of the Framework Law on Primary and Secondary Education of Bosnia and Herzegovina defines the role and functions of school and bans corporal punishment of students, providing the following „School implements its role and functions in a motivating environment for acquiring knowledge; respectful and supportive towards the individuality of every student, as well as towards his or her cultural and national identity, language and religion; safe and free of any form of intimidation and abuse, **physical punishment**, insults, humiliation and degradation and damage to health including damage caused by smoking, or by the use of any other intoxicating or illegal substances.“

FBIH

It has already been discussed above that in the reform activities in the field of social welfare, in the context of shared responsibilities and activities of the Federation and the cantons in the field of social welfare, the Federation Ministry of Labour and Social Policy, together with line cantonal ministries, plans to draft a new law on social care and protection of families with children. In preparing the new legislation, the provisions of the European Social Charter and the conclusions of the Committee, relating to prohibition of physical punishment of children in social care establishments and alternative forms of care for children without parental care, will be taken into account.

BD

Article 110 of the BD Family Law (BD Official Gazette 23/07) implies that a child is entitled to protection from all forms of violence, abuse, a lack of care and neglect in the family.

Guardianship authorities, police, prosecutor's offices and courts are in charge of protection of personal rights and interests of the child, taking measures and advisory work, including protection from domestic violence and taking actions.

Term „an abused person“ is recognized in the Law on Social Welfare of BD where Article 16 defines that abused children are minors who suffer physical or mental pain or injury, which caused damage to their health, physical and psychological integrity of persons or prevent normal development of the child.

Abused children are beneficiaries of social welfare scheme, too.

Neglect or abuse of a child or minor - Article 21 of the BD Criminal Code (consolidated text) provides that:

1. A parent, adoptive parent, guardian or other person who seriously disregards his duties of taking care or raising a child or a juvenile shall be sentenced to prison from three months to three years.
2. A parent, adoptive parent, guardian or other person who maltreats the child or the juvenile, forces him to excessive work or work inadequate for his age, or forces the juvenile to beg or, out of self-interest persuades him to perform other actions harmful to his development, shall be sentenced as referred to in paragraph 1 of this Article.
3. If the offence referred to in paragraphs 1 and 2 of this Article resulted in a serious damage of health of the juvenile, or if the child or juvenile indulged in begging, prostitution or other types of asocial behaviour or delinquency due to offences referred to in paragraphs 1 or 2 of this Article, the perpetrator shall be sentenced to prison from three months to five years.

Article 218 of the BD Criminal Code defines:

(1) A person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour shall be fined or sentenced to prison to up to one year.

(2) A person who commits the offence referred to in Paragraph 1 of this Article against a family member with whom he lives in a household shall be fined or sentenced to prison to up to three years.

(3) If the person who committed the offence referred to in Paragraphs 1 and 2 of this Article used weapons, dangerous tools or other objects that can cause serious bodily injuries or health impairments, he shall be sentenced to prison from three months to three years.

(4) If the family member suffered from serious bodily injuries or serious health impairments as a result of the offence referred to in Paragraphs 1 through 3 of this Article, or if the offence referred to in Paragraphs 1 through 3 of this Article was committed against a child or a juvenile, the perpetrator shall be sentenced to prison from one to five years.

(5) If the offence referred to in Paragraphs 1 through 4 of this Article caused death of the family member, the perpetrator shall be sentenced to prison from two to fifteen years.

(6) A person who causes death of the family member whom he had previously abused shall be sentenced to minimum ten years or long-term imprisonment.

Children in public care

Conclusion

The Committee wishes to be informed about measures to be taken to transform institutional care, develop alternative services, strengthen the capacity of centres for social work and develop legal framework for protection of families and children.

ANSWER:

FBIH

With a view to developing the social welfare system that will have the capacity to respond optimally to the need of child to live in his/her biological family, as well as to the needs of children already separated from their parents to get the protection which will be in the best interests of each child individually, a Policy Document on the protection of children without parental care and families at risk of being separated in Bosnia and Herzegovina 2006-2016 was drafted and subsequently adopted by the FBiH Government and in both Houses of the FBiH Parliament in July 2008. The adoption of this document launched a common policy on children without parental care and families at risk of separation in the Federation in all aspects of protection of children's human rights, as set forth in the Convention on the Rights of the Child.

The Federation committed itself in the document to carrying out deinstitutionalization and transformation of existing institutions for the care of children without parental care, which includes the provision of various services that will provide adequate support to families and children during the process of transformation of institutions.

An Action Plan for the period 2013-2016 was designed within this document, but it has not been adopted by the Federation Government yet. This Action Plan provides guidelines for the harmonization of legislation relating to the care of children without parental care and families at risk of separation with European standards.

The significance of this Action Plan is in the establishment of plans and programs, both at entity and cantonal levels and at local levels, with the aim of improving and implementing activities to successfully protect children without parental care and children at risk of separation and ensure decent conditions for life and optimal development of each child in a family environment.

In part related to the field of institutional childcare, the Action Plan provides for a Book of Rules on general, technical and professional requirements for the establishment and operation of social care

institutions including the institutions for children without parental care, with the aim of converting the existing homes housing more than 40 children into homes to house 40 children. In the second phase the reduction should be made continued so that the capacity would be up to 12 children.

It is also necessary to amend the Law on Fundamentals of Social Welfare, which will define the possibility of opening new small family homes housing up to 12 children, whose services will be standardized. The amendments to the Law would provide for the placement of children without parental care under five years in homes only in exceptional situations, for a maximum period of 60 days.

Measures to strengthen the capacity of centres for social work in order to ensure adequate access to social assistance programs for children and their families are taken mainly in projects.

The "Support for Social Security Networks and Employment" Project is implemented by the Federation Ministry of Labour and Social Policy, i.e. PIU SESER and WB, which provide assistance to centres for social work in the Federation in order to renovate 40 centres for social work based on findings and proposals for the renovation made by a chosen consultant.

The "Strengthening the Social Care System and Inclusion of Children in BiH" Project (SPIS) is implemented for capacity building of the social care system and inclusion of children and families in BiH.

Since autumn 2011 the SPIS program has been at the third stage of implementation and will be finalized with IPA 2010 funds. The overall objective of this stage is to improve social care systems at all levels of government, strengthening its programmatic framework and social care capacities, inclusion of children and institutional mechanisms for coordination and communication between providers of social services and authorities responsible for decision making at the local level, with a special emphasis on the needs and human rights-based approach. This will help to train professional employees in the centres for social work.

The SPIS project is implemented by the Ministry of Civil Affairs, the Ministry of Human Rights and Refugees, the Federation Ministry of Labour and Social Policy, the RS Ministry of Health and Social Welfare, the Government of Brcko District, the Directorate for Economic Planning and NGOs. Implementing this project, UNICEF will build on its experience of general training in human rights and specific technical training in the social sector.

The Committee wishes to be kept informed about the development of foster care in the Federation of Bosnia and Herzegovina, how well it is organized and the numbers of children placed in foster care as opposed to institutions.

FBiH

Pursuant to Article 31 of the Law on Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children, placement in another family can be provided to the children and adult persons who are in need of permanent assistance and support in order to provide for their sustenance, as they are incapable of meeting them in their own families or in some other way:

- children without parental care, educationally neglected children, educationally uncared children, children with problems in development, caused by the family situation, prior to return to their own families and before the completion of their full-time education, for the maximum period of 12 months following the completion of their full-time education,
- disabled persons, elderly persons and persons with socially negative behaviour who are incapable of taking care of themselves, and due to the housing or family situation may not have the protection ensured in some other manner,
- woman during pregnancy, during or after giving birth and single mother with child younger than 1

year, and in case that she does not have means to support herself or who needs temporary shelter due to unresolved housing question or disorderly family relations.

The centre for social work decides on placement into the third family's care and on termination of such placement of individuals who reside in its territory. The centre for social work which has decided on placement of a person into the third family's care provides assistance to this family and maintains contact with the person placed into the care through regular visits (Article 33 of the Law).

The member of the family in which the person is placed, who shall be in charge of caring for that person (hereinafter: foster parent) has to be sound in body and mind and have housing space and other conditions warranted for protection, care, food, studying and satisfying other needs and interests of that person (Article 34 of the Law).

A person cannot be placed in a family (Article 35 of the Law): in which one of the spouses has been deprived of legal capacity or it has been diminished, in which one of the spouses is deprived of the parental right, in which family relations are unstable, in which some of the members are persons with socially negative behaviour, in which due to the illness of a family member the health of the placed person would be endangered.

To place a child in another family the consent of the parents, that is adoptive parents or custodians, and if the person is older than 15, his/her consent shall be warranted as well. The consent is not warranted if the parents are deprived of the parental right (Article 36 of the Law).

A family in which the child shall be placed may not undertake, without consent of parents, adoptive parents or custodians, significant actions in terms of the child's future, and especially it may not give the child to someone's care, terminate his/her education, change the type of school, decide on vocation choice and conclude an employment contract in terms of the labour regulations (Article 37 of the Law).

The foster parent has the right to an allowance. The value of allowance is determined by the cantonal legislation. Allowance is not considered as salary, nor is it other type of income that is liable to taxation (Article 38 of the Law).

On the basis of the decision on placement in another family, the Centre or the Ministry from one part and nursing parent from the other shall conclude a written contract on placement. The contract shall regulate the mutual relations between the Centre and the nursing parent, and specifically: the value and manner of payment of the allowance for accommodation of the persons, the person/institution under the obligation of allowance payment, conditions and period for contract cancellation, and other significant issues as well (Article 39 of the Law).

The cost of placement into the third family's care bears the person who is placed into the care of the third family, parent, adopted parent, custodian, or relative who is legally obliged to sustain that person, or other legal or physical persons who took over the responsibility to settle the costs, in accordance with the cantonal legislation (Article 40 of the Law).

Placement in a social care institution may be obtained by children and adults in the need of permanent protection and support to satisfy their needs of life, and they may not obtain them in their own or some other family or through home care and assistance at home (Article 41 of the Law).

The Centre shall decide on placement in the institution based upon the opinion of the Centre's Expert team, enforcing court decision, custodian body or based upon findings and opinion of the relevant medical institution that is findings and opinion of the expert medical commission. The centre for social work that placed a person in to the institution is responsible for following up his/her treatment in that

institution for the sake of care, protection, medical treatment, and physical and mental health of that person (Article 42 of the Law).

The institution is obliged to receive the person referred by the Centre. Exceptionally of the provision from par. 2 of this Article the institution may deny the admission of the person in the instance when its capacity is full and in the instance when, considering its field of work, it is not capable of providing adequate service to the beneficiary (Article 43 of the Law).

If further stay of the person placed in the Institution has become impossible due to some changes in his/her characteristics or due to non-existence of the conditions for appropriate treatment, the Institution shall be obliged to, minimum two months prior to the persons release, notifies the Centre which issued the decision on his/her placement, for the purpose of the placement in another institution or for the purpose of applying another form of social care (Article 44 of the Law).

The cost of the services provided by the Institution established in the territory of the Canton shall be set by the founder. The expenditures of placement in the institution shall be paid by the placed person, a parent, adoptive parent, custodian or relative who is, pursuant to the Law, obliged to support that person or physical or legal person who assumed contractual obligation to settle the costs. The contract regulates the mutual relations between the centre for social work and the institution, conditions and deadline for rescinding the contract, value and manner of paying the allowance, the entity responsible for paying the placement allowance, and other issues (Article 45 of the Law).

The collected data, although incomplete, show that the Federation still has a large number of children without parental care in residential children's homes housing children without parental care. In this respect there is a need to take action to develop alternative forms of care, primarily placement in foster families.

"The 2006-2016 BiH Policy of Protection of Children without Parental Care and Families at Risk of Separation" was developed.

The purpose of the Policy of Protection of Children without Parental Care and Families at Risk of Separation was to design a protection system with capacities to optimally meet the need of children to live in their biological family, as well as the needs of children already separated from their parents to get such protection, which will meet the requirement of the best interests of each individual child. This system will favour family care for children without parental care, the transformation of large institutions into small units, where the existing capacities and resources will be transformed into a series of services, primarily aimed at activities to prevent separation of children from their parents.

In accordance with "The 2006-2016 FBiH Policy of Protection of Children without Parental Care and Families at Risk of Separation", in 2011, Middle Bosnia Canton launched a campaign to promote placement in another family / foster family, which was implemented by "Hope and Homes for Children of BiH" NGO (HHC) in cooperation with the Ministry of Health and Social Policy of Middle Bosnia Canton. The campaign plans to distribute promotional materials, broadcast video and audio clips on local TV and radio stations. The campaign is expected to contribute to promotion of foster family care and the new foster families in the area of Middle Bosnia Canton facilitating growing up in a family environment for children without parental care who are currently growing up in institutions across the country. In addition, they implemented training programs for professionals of social work centres of the Canton.

In 2011 Canton Sarajevo initiated activities for the implementation of the Foster Care Promotion and Foster Family Training Project, whose goal is to turn attention of the public to the needs of children without parental care and promote foster care as a better form of children care. The project is implemented by "Cantonal Centre for Social Work" plc in collaboration with the Ministry of Labour, Social Policy, Displaced Persons and Refugees of Sarajevo Canton, the "Mjedenica" Institution for

Special Upbringing and Education of Children, Hope and Homes for Children of BH, SOS Children's Villages and "Perspective" Association of Bosnia and Herzegovina Foster Families.

It is important to note that, when drafting new legislation in the Federation, the provisions of the European Social Charter respecting the development of placement of children in foster care will be taken into account in accordance with financial capabilities of the FBiH.

The Committee asks what the criteria for the restriction of custody or parental rights are and what is the extent of such restrictions. It also asks what the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances are. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

The Family Law of FBiH (FBiH Official Gazette 35/05 and 41/05) stipulates that at the request of one or both parents, or *ex officio*, the guardianship authority may decide on the placement of the child with and giving custody over him to another person or institution, if it is necessary to protect the best interests of a child. Such decision of the guardianship authority shall be adopted without the consent of parents if they are absent, detained or unable to take care of a child while failing to entrust the custody to a person who meets the requirements for guardianship. In case of issuing the decision without the parental consent, the placement, care and upbringing of a child shall last up to two months (Article 147, paragraphs 1, 2, and 3).

If the circumstances which led to entrusting a child to another person or an institution without the consent of parents still exist, the guardianship authority shall immediately issue a decision on appointing a legal guardian to the child (Article 147, paragraph 5 of the Family Law FBiH).

If parents file a request on issuing a decision on the cessation of fostering and surrendering a child, and the guardianship authority establishes that this request is not in the interest of the child, it shall undertake measures to protect the rights and the best interest of the child (Article 147, paragraph 6 of the Family Law FBiH).

If the guardianship authority does not undertake measures to protect the rights and the best interest of the child within 15 days from the day the parents submitted the request, the parents may initiate a lawsuit in order to decide on the further care of the child (Article 147, paragraph 7 of the Family Law FBiH).

While issuing the decisions above, a guardianship authority acts in pursuance of the Law on Administrative Procedure (FBiH Official Gazette 2/98, 48/99) and pursuant to provisions of this Law a party may lodge an appeal against a decision taken by the guardianship authority as the authority of first instance. The Federation Ministry of Labour and Social Policy, as an appellate authority, shall take a decision on the appeal and an administrative dispute may be instituted against this decision before the Cantonal Court.

In addition, the Family Law of FBiH provides for the circumstances in which a parent can be deprived of the right to live with a child, i.e. of parental care.

The court shall deprive a parent of a right to live with a child in a non-contentious proceedings, and entrust the care and upbringing of the child to another person or an institution if the parents, i.e. the parent with whom the child lives, endangers the interest of the child and seriously neglects the raising, upbringing and education of the child or fails to prevent the other parent or a member of the family to treat the child in such a manner, or the child's upbringing has been seriously disrupted (Article 153, paragraph 1).

The Court shall restore the right of a parent to live with the child when it is in the interest of the child (Article 153, paragraph 4).

The parent who abuses his rights, profoundly neglects his duties, abandons the child, or neglects the child who does not reside with him and by acting so obviously puts at risk the safety, health or morals of the child, or who fails to protect the child from such behaviour of the other parent or another person, shall be deprived of his parental rights by the court in non-contentious proceedings (Article 154, paragraph 1).

The abuse of rights exists especially in cases of physical and mental violence against children, sexual exploitation of children, enticement of a child to socially unacceptable behaviour, and gross violations of child rights in any other way (Article 154, paragraph 2).

Gross neglect of duty exists especially in cases when a parent fails to fulfil the obligation of supporting the child for more than three months, fails to comply with the previously defined measures to protect the rights and interests of the child, fails to prevent child to drink alcohol, use drugs or other intoxicants, and prevents minor below the age of 16 to late night outings (Article 154, paragraph 3).

Parental custody can be revoked also to a parent who was revoked the right to live with the child, if in the course of one year s/he fails to fulfil the obligations and rights that did not cease by imposing this measure and fails to create conditions to restore these rights (Article 154, paragraph 4).

Parental custody can be revoked also to a parent who fails to create conditions for keeping personal relations and direct contacts of child with the second parent, or impedes, or prevents these contacts/relations (Article 154, paragraph 5).

Parental custody will be reinstated by the court decision when reasons for revocation cease to exist (Article 154, paragraph 8).

An appeal may be filed against a court decision revoking the right to a parent to live with an underage child and/or revoking the parental custody (Article 354 in conjunction with Article 337, paragraph 1). The first instance court is required to forward the appeal and the case file without delay to the second instance court (competent cantonal court), which shall issue decision within 15 days of receipt of the appeal.

The FBiH Family Law stipulates that child has the right to live with his/her parents. If not living with both or with one parent, the child has the right to keep regular personal relations and direct contact with a parent with whom s/he does not live. The child has the right to keep personal relations and direct contact with his/her grandparents (Article 124, paragraph 2). Personal relations and direct contact with a parent may be restricted or prohibited only to protect the interest of the child (Article 145, paragraph 3).

Accordingly, a child that was placed with foster family or an institution has the right to keep personal relationship with parents and grandparents, if this is not contrary to his/her interest, and pursuant to the court decision issued in accordance with the provisions of the FBiH Family Law. The social welfare centre shall decide about the placement into an institution and follow up the treatment therein in order to protection the interest of the child (Article 42 of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children).

Provisions of the Law on Administrative Procedure (FBiH Official Gazette 2/98, 48/99) are applied to proceedings for the exercise of entitlements under the Social Welfare Law, including making decisions about placement of a child in an institution or foster family, so a party may lodge an appeal against these decisions in pursuance of the Law. The cantonal ministry in charge of social policy, as an appellate authority, shall take a decision on the appeal.

An administrative dispute may be instituted against the decision of the appellate authority before the competent cantonal court in the Federation of BiH having personal jurisdiction in the case. The court proceedings are governed by the Law on Administrative Disputes (FBiH Official Gazette 9/05). The court proceedings are instituted after the administrative proceedings were completed solely on the basis of a final decision – that is a decision against which there is no regular legal remedy in the administrative procedure. Further, a party may institute court proceedings (an administrative dispute) when the appellate authority in the administrative procedure fails to issue a decision on an appeal against the decision of the authority of first instance within 30 days and then within further 7 days after a written request. In this case the party institute court proceedings as if his/her appeal had been rejected.

RS

RS ensures that any limitation or restriction upon the rights of parents to have custody of child is based on the criteria set forth in legislation and does not go beyond the limits necessary to protect the best interests of the child and family rehabilitation.

The Law on Social Welfare of RS provides conditions under which a child is entitled to be placed in an institution or foster family. Namely, the right to foster family placement is enjoyed by children without parental care and children whose development is hindered by family circumstances until the completion of training for independent life, return to their own family or placement with adoptive parents or another family, until the completion of formal education, i.e. training for independent life and work; children with moderate, severe and profound mental retardation, with multiple developmental disabilities, diagnosed with autism and children with physical developmental disabilities if the conditions do not allow him/her to remain in his/her family, while there is a need for this form of care and as long as the reasons for placement exist for neglected children (Article 37).

Also, the RS Family Law prescribes requirements under which the guardianship authority may revoke custody and entrust a child to other parent, another person or a relevant institution. Namely, this measure of the guardianship may apply when no judicial decision on entrusting the child was issued, if parents or if one parent with whom the child lives, abuses or neglects child, fails to bring the child up or the child shows signs of lack of upbringing (Article 97 paragraph 1). If parents, adoptive parent or guardian are unable to implement the measure of intensified supervision of a child (ordered by the guardianship authority), the guardianship authority may decide to entrust a minor to foster family that has the ability and voluntarily accepts to conduct supervision (Article 101).

When selecting the appropriate measure of custody the guardianship authority is obliged to take into account the child's age, his/her psycho-physical development, psychological characteristics, preferences and habits, previous education and training, social circumstances of the family in which s/he lived, and other relevant circumstances. When selecting the appropriate measures, the guardianship authority is obliged to respect the principle of least intrusive (Article 103)

The validity of adoption depends on the consent given by both, the adoptive parents and biological parents and/or guardian before the competent guardianship authority (Article 145, paragraph 1). The consent of the adoptee to adoption is required for adoption of a minor over 10 years of age (Article 145, paragraph 2). The adoption shall be in the interest of the adoptee (Article 146). If there are particularly valid reasons the adoptive parent may be a foreign national. An adoption by foreign nationals cannot be completed without an approval issued by the Ministry of Health and Social Welfare (Article 147).

The adoption can be simple and full (Article 149). The simple adoption requires consent of both parents if adoptee has parents. The consent is not required if parents were revoked parental right, if parents were revoked legal capacity, if parents' residence is unknown for at least one year and if they fail to care for

the child in that period (Article 152). Only a child up to 5 years old which has no living parents, or whose parents are unknown, or who have abandoned the child and their whereabouts are unknown for more than one year, can be fully adopted, or a child whose parents consented before the competent guardianship authority to full adoption (Article 157).

Persons who are entitled to the placement in an institution can be placed in a foster family (Article 38 of the Law on Social Welfare). The placement agreement is concluded between a social welfare centre and a member of a family who thus becomes a foster parent. A foster parent is entitled to allowance for supporting the child and to reward payment, both payable from funds earmarked for social welfare. The Ministry of Health and Social Welfare establishes criteria for determining the amount of allowance and payment (Article 40, paragraph 1, 2, 3 and 4).

The Law on Social Welfare stipulates that the Law on Administrative Procedure shall apply in the process of exercising rights under this Law, and that the appeal against a decision of the first instance authority shall be resolved by the ministry competent for social welfare (Article 71, paragraph 1 and Article 75, paragraph 1). Article 12 of the Law on General Administrative Procedure prescribes that a party shall have the right to appeal against a decision taken in the first instance. Only the law may provide that in certain administrative matters an appeal shall not be allowed, and this only if the protection of rights and rule of law are otherwise ensured.

Moreover, the Family Law stipulates that a person who wants to adopt a child may file an appeal against a decision rejecting the application for adoption with the second instance body competent for social policy issues. The appeal against a decision granting adoption may be filed only in case of error, fraud or coercion and in such cases no deadline shall apply (Article 169, paragraphs 1, 2 and 3).

An administrative dispute may be instituted against the decision of the appellate authority. The right to initiate an administrative dispute shall be vested in a natural or legal person if the final administrative act violated his/her right or direct personal interest based on law (Article 2, paragraph 1 of the Law on Administrative Disputes). Administrative disputes shall be decided by the District Court having territorial jurisdiction over the authority of first instance, being either the head office or an organizational unit, unless otherwise provided by law (Article 5). A party to the proceedings may lodge a request for extraordinary review of a final judgement of the District Court with the Supreme Court of Republika Srpska through the competent court (Article 35, paragraph 1). A citizen whose rights or fundamental freedoms enshrined in the Constitution of Republika Srpska have been violated by a final administrative individual act of an authority shall be entitled to request the protection of the rights or freedoms from the Court, in accordance with this Law, unless a different judicial protection is provided (Article 53.) The request shall be decided by the District Court (Article 54, paragraph 1). Protection of freedoms and rights of citizens enshrined in the Constitution shall also be protected if those rights or freedoms are violated by an action of an official in a RS administrative body, local self-government body or responsible person in a public agency or public corporation or any public body, which directly prevents or restricts, contrary to law, a certain individual in exercising such freedom or right (Article 55).

The Book of Rules on detailed conditions regarding space, equipment, necessary professional and other workers as requirements for the establishment of a social care institution provides *inter alia* that in a children's home a sleeping room for children under seven must be of at least 2 square meters per beneficiary and for children over seven years it must be of at least 5 square meters per beneficiary. The size of a living room shall be 2 square meters per beneficiary, the area of personal hygiene facility must be at least 15 square meters per residential group of 15 beneficiaries, a toilet must be provided for every 10 beneficiaries, the size of the room for team and group work is determined depending on the number of beneficiaries and professionals and the kind of work and must be of at least 30 square meters (Article 22).

A sleeping room shall have a maximum of five beds. The beds must be adapted to the age of users and the space between them must be at least 0.65 meters (Article 23).

Provisions of Articles 22-26 are applied to the institutions of social care for neglected children, whereas the facilities of these institutions must be located near facilities for primary education and upbringing, or secondary vocational education and upbringing, if education and training is not carried out within the institution. These institutions must have the following capacities: the Institution for education of children and young people cannot have a capacity of more than 50 children; disciplinary centre for juveniles cannot have capacity of less than two children; reception facility for children and young people cannot have a capacity of more than 20 children; diagnostic and observation Centre for neglected children and adolescents cannot have a capacity of more than 20 children (Article 28).

The capacity of the Institute for Children and Youth with physical or mental disabilities cannot be more than 250 people in one location. The bedrooms for children of 3-7 years can accommodate up to 5 beneficiaries, and dormitory areas must be of at least 3 square meters per user. Each facility must have at least one room as living area of 2 square meters per user. The Institute must have a play room of at least 2 square meters per beneficiary for each group of children aged from three to seven years and a room for learning materials, mattresses etc. of 6 square meters. The personal hygiene facilities must be of at least 25 square meters for a group of 15 beneficiaries. A toilet must be provided for every 6 beneficiaries. A room for storage, washing and disinfection of night vessels, measuring at least 6 square meters, has to be provided for severely mentally retarded beneficiaries (Article 34).

According to the report, the government develops its policy in relation to measures to be taken to transform the institutional care, develop alternative services, strengthen the capacity of the centres for social work and build a legal framework to protect families and children. The Committee wishes to be informed about the results of such policies.

The RS government adopted a strategy of improving the social welfare of children without parental care with a plan of action for the period 2009-2014. The Action Plan for the area of foster care and the Action Plan for the area of adoption envisage the following activities: the ratification of international instruments on adoption; establishment of a central registry of adoption and foster care database, creation of unique forms of adoption, introduction of procedures for monitoring the adoption and foster care and regular reporting to the competent institutions; training of professionals in the field of adoption and foster care, training of potential adopters, adoption and foster standardization, promotion of activities in public in order to promote adoption as the most complete social care for children without parental care and public awareness raising about the benefits of being a foster family.

The Ministry of Health and Social Welfare has initiated the process of standardization of social care services. The ultimate goal of standards for social care services is to improve the quality of life of those who depend on these services and to ensure their effectiveness and efficiency. The first five standards that have been piloted relate to social care services that are intended for children (day care centres for children with special needs, institutional housing, early identification of children with special needs, children's village and foster care).

(SPIS) Project - "Enhancing the Social Welfare and Inclusion System for Children in Bosnia and Herzegovina" - is currently being implemented. The overall objective of the Project is to contribute to development of integrative model of social welfare of children and families with children at all levels. The Project will also contribute to the development of close cooperation between relevant social and

financial sectors. The integrated, inter-sector approach to policy development, based on best practices, planning, implementation, monitoring and evaluation, will serve to define and enhance the function, role and strategic goals in the field of education, health, social welfare and other similar sectors which deal with specific forms of the exclusion of children and their families.

In order to provide adequate supervision of the social welfare the Minister has issued a Book of Rules on the Supervision over Professional Work and Providing Professional Assistance to Social Welfare Institutions of RS (RS Official Gazette 67/02).

According to recent figures from the Ministry of Health and Social Welfare, there are 45 Centres for Social Work, whereas 150 foster families are located in the territory of 12 centres.

BD

Certain rights to accommodation in institutions or foster family are provided within the social welfare scheme.

The purpose of the placement in a foster family is to enable children to meet their basic needs which cannot be met within their own families or otherwise. Placement into a social care institution shall be performed by sending a beneficiary to an appropriate institution that provides shelter (housing, food, clothes, care and assistance), education, vocational training and health care in accordance with special regulations on occupational, cultural, recreational/rehabilitative activities and services of social work.

The type of accommodation is suggested by the Professional Social Welfare Team on the basis of comprehensive consideration of a beneficiary's needs and the possibilities of his/her family and approved by the Department of Health and Other Services.

Pursuant to Article 57 of the Law on Social Welfare of BD, costs, i.e. part of the costs, of accommodation into an institution that provides social care services or into foster family, shall be borne by the beneficiary, parent, relative who has the obligation to maintain the beneficiary, competent authority, or another organization and persons who undertook to pay for the costs. The beneficiary shall bear costs with all his/her income and salary reduced for the amount needed for his/her personal needs. Housing costs of a beneficiary shall also be borne by parents and relatives responsible for maintenance, except for persons with severe mental disability; persons with severe physical disability; children with autism; and mentally ill persons who have guardians (Article 58, paragraphs 1 and 2).

While performing their activities, social care institutions shall cooperate with beneficiaries, families, citizens, institutions active in the field of health care and education, training and rehabilitation, organizations of the Red Cross and other humanitarian organizations, other institutions and companies, religious communities and foundations.

For the sake of care, protection, treatment of physical or mental health of such a person, the Sub-Department is required to follow his treatment in an institution or foster family.

BD has no public institutions for the accommodation of juvenile inmates. On the basis of their needs the Sub-Department places them in existing public institutions in BiH after the completion of statutory proceedings.

PLACEMENT OF JUVENILES IN INSTITUTIONS	December 2008	2009	2010	2011
Public institutions outside BD	10	11	11	15

Source: BD of BiH Sub-Department for Social Welfare

Persons who have the right to placement into a social care institution have the right to placement in a foster family, too.

When choosing a family for a beneficiary to be put into, the service conducting the placement shall especially take into account personal characteristics of the beneficiary and family members, housing, other capabilities of the family and beneficiary's needs.

A beneficiary shall not be placed into a family in which a family member is deprived of parental custody or working ability; in which family relations are disturbed; in which a family member has deviant behaviour; in which, due to illness of a family member, the beneficiary's health would be endangered and the purpose of placement lost.

Minors are usually placed in families of their relatives (if any) and other families – foster families, on the basis of decision on placement.

The agreement is made between the Sub-Department and a family member, who thus becomes a foster parent. The foster parent has an obligation to care about the person, especially about health, education and training for independent life and work. The Sub-Department is required to report on all important issues for beneficiary. The family where the child is placed cannot make, without the consent of parents, adoptive or guardianship authority, any important decisions related to the child and especially cannot give him/her away to another person to take care of him/her, make him/her drop out of school, change school, choose a future occupation or job or conclude an employment contract.

For the sake of care, protection, treatment of physical or mental health of such a person, the Sub-Department is required to monitor his/her treatment in a foster family.

The foster parent has the right to financial support for maintaining the beneficiary and a fee for his/her work that is paid from funds designated for exercising rights in the field of social care.

FOSTER FAMILY	2005	2006	2007	2008	2009
Minors	34	31	29	27	26

Source: BD of BiH Sub-Department for Social Welfare

Article 114 of the BD Family Law determines that restriction and deprivation of parental custody may be ordered solely by the competent authority for the reason that a parent cannot relinquish his/her custody of a child.

Article 133 of the BD Family Law defines protection of rights and best interests of a child and prescribes that the guardianship authority shall undertake, *ex officio*, necessary measures for protection of the rights and best interests of the child on the basis of immediate information and notifications.

1. Notification of a child's rights violation, particularly of violence, abuse, sexual abuse and child

neglect, shall be promptly submitted to the guardianship authority by any authority, organization or individual.

1. The court where misdemeanour or criminal proceedings involving a child's rights violation are pending shall notify the guardianship authority thereof and submit a final decision issued in these proceedings.
2. The guardianship authority shall be assisted in taking actions under paragraph 1 above *ex officio* by the Police of Brčko District of BiH.
1. Before taking actions under paragraph 1 above the guardianship authority shall hear the minor child about the circumstances relevant to the decision, if he/she is able to understand what it is all about. The opinion of the minor child shall be respected and appreciated especially in the case of taking the measures separating the child from the parents.
2. The procedure under the preceding paragraph shall be urgent.
3. An appeal against the decision shall not stay the execution.

Article 134 of the BD Family Law – Cautions against shortcomings and provision of assistance

1. the guardianship authority shall warn parents about their failure to take proper care of the child and help them in the elimination of shortcomings.
2. the guardianship authority shall assist the parents in arranging their social, financial and personal circumstances and relationships, and if best interests of the child require so, it shall refer parents to appropriate counselling.

Article 135 of the BD Family Law – Deprivation of a parent of the right to live with a child

1. The Court shall, in non-contentious proceedings, deprive parents of their right to live with the child and entrust the care and custody over the child to another person or authority, if the parents or the parent with whom the child lives have violated the interests of the child by grossly neglecting his/her raising, upbringing and education or by failing to prevent the other parent or a family member to treat the child in the above-mentioned manner, or if the child has had a largely disturbed upbringing.
2. The imposition of the measure under paragraph 1 above shall not stop other parental duties, responsibilities and rights.
3. Deprivation of a parent of the right to live with a child shall be imposed for one year.
4. While this measure in effect, if the court finds that it is in the interest of the child, it shall impose other measures to protect the child or re-impose the same measure.
5. At request of the parent who was deprived of this right or *ex officio* and according to a prior opinion of the guardianship authority, the court shall decide whether to reinstate the right of parents to live with the child.
6. The court shall notify the guardianship authority of the imposition of the measures under paragraph 1 above and the guardianship authority shall appoint a special guardian to the child in order to protect his/her rights and interests for the duration of this measure.
7. An appeal against decision under paragraphs 1 and 5 shall not stay the execution.

Article 136 of the BD Family Law BD - Deprivation of parental custody

1. A parent who has abused parental rights, or who has grossly neglected parental duties, or who, by leaving the child or failing to provide care to the child who he/she does not live with, obviously puts at risk the safety, health and morals of the child, or who fails to protect the child from such behaviour of the other parent or another person, shall be deprived of parental custody by the court, in non-contentious proceedings.
2. The abuse of rights exists especially in cases of physical and mental violence against children, sexual exploitation of children, enticement of a child to socially unacceptable behaviour, and gross

violations of child rights in any other way.

3. Gross neglect of duty exists especially in cases when a parent fails to fulfil the obligation of supporting the child for more than three months, fails to comply with the previously defined measures to protect the rights and interests of the child, fails to prevent child to drink alcohol, use drugs or other intoxicants, and prevents minor below the age of 16 to late night outings.
4. Parental custody can be revoked also to a parent who revoked the right to live with the child, if in the course of one year s/he fails to fulfil the obligations and rights that did not cease by imposing this measure and fails to create conditions to restore these rights.
5. Parental custody can be revoked also to a parent who fails to create conditions for keeping personal relations and direct contacts of child with the second parent, or impedes, or prevents these contacts/relations.
6. In the proceedings of deprivation of one or both parents of parental custody the guardianship authority shall appoint a special guardian to the child. The guardian shall perform the duty even after the measure under paragraph 1 above has been imposed.
7. With the imposition of this measure, rights and responsibilities of the parent to his/her child shall cease to exist, except for the obligation of maintenance.
8. The Court shall reinstate parental custody in the event when the reasons for termination of custody cease to exist.
9. A final decision on deprivation or reinstatement of parental custody shall be communicated to the competent registrar for registration in the Birth Register, the guardianship authority and if the child has a right over real estate, the decision shall be communicated to the competent court land registry office for the records.

Right of Appeal

The rights under social welfare legislation are exercised through the Sub-Department for Social Welfare of BD. At request of a party or his/her legal representative or *ex officio*, the authorized officers of the Sub-Department for Social Welfare of BD institute proceedings for exercising rights according to the Law on Social Welfare of BD.

The proceedings for exercising the rights under social welfare legislation follow provisions of the Law on Administrative Procedure of BD - consolidated text. A party dissatisfied with a decision of the authority of first instance lodges an appeal against the decision with the Appellate Commission of BD within 15 days.

Effective Appeal

Persons dissatisfied with a decision of the authority of second instance may initiate an administrative dispute lodging a complaint with the Basic Court of BD. The procedure before the Court is regulated by the Law on Administrative Disputes of BD.

The court proceedings are instituted after the administrative proceedings were completed solely on the basis of a final decision. Further, a party may institute an administrative dispute when the appellate authority in the administrative procedure fails to issue a decision on an appeal against the decision of the authority of first instance within 30 days and then within further 7 days after a written request. In this case the party is entitled to lodge an appeal with the Appellate Commission of BD as if his/her appeal had been rejected.

Young offenders

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home, neither in schools nor in institutions.

ANSWER:

BIH

The maximum prison sentence and the length of pre-trial detention

Articles 75-106 of the Criminal Code of BiH govern juvenile delinquency and Article 96 governs „juvenile imprisonment“ determining that „(1) the duration of the sentence of juvenile imprisonment may not be shorter than one or longer than ten years, and shall be measured in full years or half-years.(2) In meting out punishment for a senior juvenile for a criminal offence, the court may not impose juvenile imprisonment for a term exceeding that of imprisonment prescribed for that particular criminal offence, but the court shall not be bound by the minimal punishment prescribed for the particular criminal offence.” Article 97 regulates the matter of meting out juvenile imprisonment and determines that „In meting out juvenile imprisonment for a senior juvenile, the court shall take into consideration all circumstances that may influence the sentence being longer or shorter (Article 48, *General Principles of Meting out Punishments*), paying special attention to level of mental development of the juvenile and time needed for his correction and occupational training.“

The BiH Criminal Procedure Code governs „juvenile procedure“ and the matter of ordering for a minor to be kept in custody is regulated in Article 358, which reads „(1) Exceptionally, the judge for juveniles may order that the minor be placed in custody when the reasons for the custody referred to in Article 132, Paragraph 2, Item a) through c) of this Code exist. (2) Based on the decision on custody issued by the judge for juveniles, the custody may not exceed 30 days. The Panel for juveniles is obligated to review the necessity of the custody every ten (10) days. (3) The Panel for juveniles may extend the custody for two (2) more months if there are legal reasons for the extension. (4) After completion of the preparatory proceeding, the custody may last for six (6) more months at a maximum.“

Thus, it follows from the provisions above that maximum prison term may not exceed 10 years, while pre-trial detention may not exceed 30 days.

Minors separated from adults both in pre-trial detention as well as while serving prison sentence

The Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH (BiH Official Gazette, consolidated text, 12/10) governs the execution of criminal sanctions, pre-trial detention and other measures imposed by the Court of BiH and the organization and work of the competent authorities as prescribed by the Law. Article 11 of the Law provides for a duty to provide separate accommodation and determines that separate accommodation shall be provided for each of the following groups of persons: detainees from convicts; males from females; adults from juveniles and this accommodation may be provided either as a separate Establishment or as a separate unit within an establishment. Further, Article 54, paragraph 2 of the Law determines that minor detainees shall be managed separately of adult detainees.

In BiH a juvenile prison sentence shall be served in a special unit for juveniles in the Establishment or in a special Establishment in the Entity where the prisoner has permanent or temporary residence, (Article 190). This allows better and more efficient correction of minors, which in this way are ensured a closer

contact with parents and other relatives, or attending or continuing of schooling and other penology treatments that are applied to them.

It is necessary to bear in mind the fact that currently the Federation has no specific institution for juveniles to serve sentence of imprisonment (a special department in Zenica Prison was overcrowded with convicted adult persons due to a lack of prison capacities, which is why juveniles did not have adequate conditions to serve a prison sentence, i.e. the conditions for their separation from adults or other inmates and for preventing contacts with persons convicted of serious crimes). For this reason, and because of the negative impact caused by this legal situation, the Ministry of Justice incorporated in the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH a special rule that allows that in such situations, on the basis of decision of the Minister of Justice, a juvenile may be sent to serve his sentence in an appropriate institution or in a special department for juveniles in prison in another entity. In this way a full contribution is given to the rule of law and the rule makes it impossible in practice to have such a legal situation that a juvenile cannot be sent to serve a prison sentence due to a lack of prison capacity in the given entity.

Pursuant to Article 191 - Placement of Juveniles in another Establishment or Special Unit:

(1) With respect to a juvenile whom the court with jurisdiction of any entity or of Brčko District of BiH sentenced to a prison sentence, in case of lack of accommodation capacities, implementation of modern rehabilitation measures and treatment, as well as serving juvenile prison sentence in a special unit for juveniles within the Establishment or in another establishment in the entity where a juvenile prisoner has temporary or permanent place of residence, the Minister of Justice may take a decision that such a juvenile shall serve his sentence in an adequate establishment in the other entity in Bosnia and Herzegovina.

(2) The application on the grounds referred to in paragraph (1) of this Article shall be filed by the court that is responsible for referral of such a person to serve his sentence and that is located in the place of his temporary or permanent place of residence through the entity ministry of justice or the Judicial Commission of Brčko District of BiH, which has to give prior approval for the placement of a juvenile in the establishment or a special unit in the establishment from the other entity.

(3) Based on the decision of the Minister of Justice, the court in the temporary or permanent place of residence shall refer the person sentenced to juvenile prison sentence to an appropriate establishment or to special unit for juveniles in the establishment of the other entity, with a prior approval of the ministry of justice of that entity.

(4) The costs of placement shall be borne by the entity ministry of justice or the Judicial Commission of Brčko District of BiH that gave its written for the placement of such a juvenile to a special unit or the establishment for juveniles of the other entity."

Thus, the valid legislation of BiH provides that a juvenile shall serve a juvenile prison sentence in a special unit for juveniles within the Establishment or in another establishment in the entity where a juvenile prisoner has temporary or permanent place of residence. Further, the law specifically states that persons serving a sentence of juvenile imprisonment must have separate rooms for stay from other inmates, if they are in a special department, and the possibility of application of modern methods of treatment in terms of correction, upbringing, education or vocational training; all this with a view to their successfully returning and integrating into free world and fulfilling duties of law-abiding citizens. Currently, the Federation has no special institutes which would be executing juvenile imprisonment, but a

special department in the Zenica High-Security Penitentiary, which also accommodates adults sentenced to imprisonment due to overcrowding of the existing capacities. This situation has undermined the basic principle of separation of juveniles from adults, which is the reason why the organization of treatment and all other professional and regular activities in the process of correction and resocialization of juveniles, as the primary objective of enforcement of penalties that may be imposed on juveniles, is considered impossible to carry out successfully. In contrast, the RS East Sarajevo middle-security prison has built a special building for the accommodation of juveniles to serve a sentence of juvenile imprisonment, where all statutory requirements have been met when it comes to the treatment process.

For these reasons, in practice, difficulties may arise about the possibility of sending juveniles to serve the sentence from the Federation BiH and there is a possibility of prolonged stay of such persons at liberty while waiting to serve their sentence, which is again contrary to the principles of administration of justice and purpose of punishment, both in general terms and specific deterrence, and just satisfaction for the families of the victims in particular.

Based on the above-mentioned legal standards and on the decision of the Ministry of Justice, the court of domicile or residence of a juvenile sends him/her to serve the sentence in a prison of the other entity. The costs of serving shall be borne by the entity ministry of justice or the Judicial Commission of Brčko District of BiH where the court gave its written order for placement of such a juvenile to a special unit or the establishment for juveniles of the other entity.

These legal standards prevent in practice a problem of the impossibility of accommodation and serving a sentence by juvenile persons convicted and thus compromising the principles of justice, the process of correction and purpose of punishment, the attitude towards the victims and the society as an organized community capable to exert influence and take measures not to do criminal acts and to raise citizens' awareness about equity of punishing perpetrators of criminal acts.

Young offenders' right to education

Article 147 of the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH provides:

(1) The Establishment shall organize educational classes and vocational training for juvenile prisoners and younger adults who have not completed primary school, so that they may achieve standards of general education that conform with regulations on primary and secondary education.

(2) When considered useful and necessary, the arrangements referred to in Paragraph 1 of this Article shall be made for other prisoners as well.

(3) If more convenient, the Establishment may conclude a special contract on cooperation with a local school in order to organize the instruction referred to in Paragraph 1.

(4) Subject to security considerations, and if, in the treatment program, it has been assessed necessary and useful for the purpose of achieving the objective of the execution of the sentence, prisoners may also become part-time correspondence students or participate in courses organized outside the Establishment.

(5) Prisoners who complete their schooling or acquire qualifications in the Establishment shall receive diplomas. Such diplomas shall not indicate that the general or any other educational qualification has been acquired in the Establishment.“

In addition, Chapter VI of the Law regulates „execution of juvenile imprisonment“ in Articles 189 – 197. So, Article 192 provides for „schooling in establishment“ and paragraph 1 specifically ordains that: „In the Special Unit or Establishment referred to in Articles 168 of this Law, there shall be primary and secondary school in the Special unit or Establishment, in accordance with the regulations on primary and secondary schools, or there shall be established forms of primary or secondary school in the Special unit or Establishment established in co-operation with appropriate primary or secondary school to provide for the education of such persons.” Paragraph 2 further determines that a juvenile prisoner may in exceptional cases and under supervision of the educator, attend school outside the Establishment in order to complete an educational programme they already started, if the security situation and the treatment programme allow.

Article 196 of the Law determines that a juvenile prisoner who has not reached 23 years of age may exceptionally be pronounced the disciplinary measure of solitary confinement for a period of up to five days and when the juvenile prisoner attends school he/she shall be able to regularly attend school during solitary confinement and to read technical books and do homework.

It follows from the above that in BiH juvenile offenders have the statutory, guaranteed right to education.

Following modern trends and international legal standards in the field of juvenile justice, as early as in January 2010 the RS passed the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure (RS Official Gazette 13/10). This law includes provisions on substantive and procedural criminal law, then the organization of the courts for juvenile offenders, execution of criminal sanctions for juvenile offenders, as well as provisions relating to crimes committed against children and minors. The following by-laws were enacted, which was an obligation of the ministry prescribed by the Law:

- Rulebook on the Implementation of Correctional Recommendations,
- Rulebook on the Execution of Correctional Measure of Particular Obligation,
- Rulebooks on Disciplinary Responsibility of Juveniles Serving Custodial Correctional Measures and Juvenile Imprisonment and Training Programs,
- Rulebook on the Application of Police Caution.

Further, the RS Ministry of Justice held the first cycle of training and professional development for officials who work in juvenile justice, which included over 1000 participants.

Answering the question whether juvenile offenders serving sentences have the legal right to education, we are informing you that Article 151, paragraph 1 e) of the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure provides that a juvenile serving a custodial measure is entitled to attend school outside the establishment if the establishment does not organize certain type of school or courses and if justified by previous achievements and performance of the juvenile, provided that this does not harm the execution of correctional measure.

Corporal punishment

Chapter III of the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures contains provisions for the execution of detention and imprisonment (Articles 52-108). Article 52 provides that the treatment of detainees and prisoners must be humane and with respect for their human dignity, preserving their physical and mental health, taking into account the maintenance of necessary order and discipline. No one shall be subjected to torture, inhuman or degrading treatment or punishment. The treatment of detainees and prisoners shall be without any prejudice on the basis of their ethnicity, race, colour, gender, sexual orientation, language, religion or faith, political or other beliefs, national or

social background, consanguinity, economic or any other status. Thus, this Article requires humane treatment of all detainees and prisoners.

Further, Article 37 of the Law provides that an authorized establishment officer may use coercive measures against a detainee or prisoner only when it is necessary to prevent escape, physical attack on a staff member or other persons, inflicting injuries to someone else, to break the resistance to lawful action by an authorized person, self-inflicting injuries or causing material damage. The use of coercive measures has to be proportionate to the level of danger and the risk presented.

Simply because the Law explicitly requires humane treatment of all prisoners and detainees it makes impossible and prohibits corporal punishment.

It should be noted that the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH contains a number of provisions ordaining the special treatment of juvenile offenders. E.g.

- Article 69 regulates the matter of diet of detainees and prisoners, providing that adult detainees and prisoners shall be provided with food with a calorific value of 12,500 joules per day and 14,500 for juveniles;
- Article 193 regulates the matter of sports, providing that juvenile prisoners shall be provided with opportunities for sports;
- Article 194, paragraph 1 provides that juvenile prisoners shall have no restriction on their correspondence with their parents and other close relatives;
- Article 195 regulates the matter of leave of absence, providing that a juvenile prisoner who behaves well and studies hard may be granted leave by the Governor of the Establishment to visit parents or other close relatives;
- Article 197 provides that measures of isolation shall not be applied to juvenile prisoners who have not reached 23 years of age.

Further, Chapter XII of the Law (Articles 219-223) regulates execution of correctional measures whose purpose is to provide to juvenile criminal offenders, to the greatest extent possible, education, correction and normal development through protection, assistance and supervision and, when necessary, to prevent them from committing criminal offences. It also emphasizes that during the execution of correctional measures juveniles should be treated in a manner that is appropriate to their age and personal characteristics, applying the pedagogical, humane and psychological principles; that juveniles should be motivated to actively participate in their own education, changing of their attitudes and bad habits and in the development of a sense of responsibility for their own actions; and that during the execution of educational measures the juveniles shall be provided with primary and secondary education and vocational training, in accordance with their age, capacities and inclinations for certain occupations..

BiH does not explicitly prohibit corporal punishment of juveniles, but in both entities and Brcko District, a number of legislative measures have been taken and a number of laws have been passed with a view to improving the protection of children. Specifically, the BiH CC and the BiH CPC regulate the field of juvenile delinquency and juvenile proceedings, leaving the regulation of the protection of family, marriage and youth to the entity criminal laws. Prohibition of corporal punishment of juveniles during imprisonment / detention certainly exists, not explicit but it is derived from the requirements for human treatment instead (... no one shall be subjected to torture or to inhuman or degrading treatment or punishment ...).

FBIH

We have already discussed above that, in the reforms in the field of social welfare, in the context of shared responsibilities and activities of the Federation and the cantons in the field of social welfare, the

Federation Ministry of Labour and Social Policy, together with cantonal appropriate ministries, makes plans to enact a new law on social welfare and protection of families with children. In preparing the new legislation they will take into account provisions of the European Social Charter and conclusions of the Committee, relating to prohibition of corporal punishment of children in social care establishments and in alternative forms of care of children without parental care.

RS

As to the Committee's conclusion that corporal punishment is not prohibited *inter alia* in schools, the education legislation of RS defines that serious misconduct of employees is considered *inter alia* "violent behaviour toward students, employees and third parties".

BD

At the 54th regular meeting held on 10 November 2011 the BD Assembly adopted the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure (BD Official Gazette 44/11).

The Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure in the BD and the Entities contains provisions governing conditions, manner and duration of pre-trial detention of juveniles and the execution of correctional measures and juvenile imprisonment were defines, which are fully in line with European standards (the UN Convention on the Rights of the Child - Articles 37, 39 and 40 respecting juvenile justice; the United Nations Rules on the Protection of Juveniles Deprived of Their Liberty (Havana Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) - these documents complement the previously adopted Beijing Rules).

This law is fully harmonized with the BiH criminal legislation respecting juvenile justice.

BiH does not explicitly prohibit corporal punishment of juveniles, but in both entities and Brcko District, a number of legislative measures have been taken and a number of laws have been passed with a view to improving the protection of children. Specifically, the BiH CC and the BiH CPC regulate the field of juvenile delinquency and juvenile proceedings, leaving the regulation of the protection of family, marriage and youth to the entity criminal laws. Prohibition of corporal punishment of juveniles during imprisonment / detention certainly exists, not explicit but it is derived from the requirements for human treatment instead (... no one shall be subjected to torture or to inhuman or degrading treatment or punishment ...).

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 2 - Free primary and secondary education - regular attendance at school

Conclusion

The Committee wishes to be informed about the measures taken to improve access to education for Roma children in the mainstream education. It asks whether ethnic segregation still exists in education. It requests that the next report provide more information on Roma children, including their enrolment rates in primary and secondary education as well as the rate of absenteeism. In the meantime the Committee reserves its position on this issue.

ANSWER:

BIH

The framework legislation at all levels of education in BiH guarantees to every child the right to equal access, equal opportunity to participate in appropriate upbringing and education and equal treatment without discrimination on any grounds and none of the law contains discriminatory provisions.

Article 6 of the Framework Law on Preschool Upbringing and Education of Bosnia and Herzegovina (Prohibition of discrimination) provides that „(1) Each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any ground. (2) Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education“.

Article 3 of the Framework Law on Primary and Secondary Education of Bosnia and Herzegovina defines goals of education, including „promoting respect for human rights and fundamental liberties, and preparing each person for a life in a society which respects the principles of democracy and the rule of law“ (point c) and „ensuring equal possibilities for education and the possibility to choose in all levels of education, regardless of gender, race, nationality, social and cultural background and status, family status, religion, psycho-physical and other personal characteristics“ (point e).

The Law defines that:

„General objectives of education result from generally accepted, universal values of democratic society, as well as its own value system based on specific qualities of national, historical, and cultural tradition of nations and national minorities living in Bosnia and Herzegovina.

„The child’s right to care and education and proper care for the wellbeing of his or her physical and mental health and safety shall have the priority over any other rights.

In case of conflict of rights, the priority shall be given to the right, interpretation or action which shall be in the best interest of the child.“

The child’s right to education is regulated in Article 4, paragraph 1 of the Framework Law, reading „Every child has a right of access and equal possibility to participate in appropriate educational process, without discrimination on whatever grounds“.

The Framework Law on Primary and Secondary Education of BiH provides that:

„The school cannot discriminate in children’s access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other basis“ (Article 35, paragraph 1).

„The school promotes equal opportunities for all its students, teachers and other employees, taking into consideration and at the same time promoting the right for differences among them. With this aim, the school shall establish and carry out its own programs that support and promote different cultures, languages, and religions of its students and staff“ (Article 36).

Since Bosnia and Herzegovina has not accepted Article 15, paragraph 1 of the Charter relating to the integration of children with disabilities in regular education in accordance with Article 17, paragraph 2, we give the following answer:

The framework legislation at all levels of education in BiH guarantees to every child the right to equal access, equal opportunity to participate in appropriate upbringing and education and equal treatment without discrimination on any grounds and none of the law contains discriminatory provisions.

Article 6 of the Framework Law on Preschool Upbringing and Education of Bosnia and Herzegovina (Prohibition of discrimination) provides that „(1) Each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any

ground. (2) Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education“.

Social inclusion in schools is improved by applying the inclusion index as a means of self-assessment (progress report).

The Framework Law on Preschool Upbringing and Education of BiH (Article 35) provides that school cannot discriminate in children's access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other basis.

In terms of paragraph 1 of this article, the competent authorities and institutions, together with schools, are particularly responsible for ensuring functional stay and supporting infrastructure for access and participation in the educational process for children, young people and adults with special needs.

The Framework Law on Preschool Upbringing and Education of BiH (Article 19) provides that children and youth with special needs shall be educated in regular schools and according to their individual needs. An individual program adapted to their possibilities and abilities shall be made for each student and shall determine the status of each student in relation to special education and speech pathology.

Children and youth with serious disorders and difficulties in the development may be educated in part or wholly at special educational facilities, where it is impossible to provide appropriate education in regular schools.

Categories, identification procedures, planning and working methods, profile, training, professional development of personnel working with children and youth with special needs, as well as other issues, shall be regulated more closely by entity, canton and Brčko District of Bosnia and Herzegovina legislation, in accordance with the principles and standards defined by this Law.

Article 21 of the Framework Law on Preschool Upbringing and Education of BiH provides “With the aim of acquiring new knowledge, improvement and professional development, teaching personnel, pedagogues, teachers of special needs education, speech pathologists, and school headmasters shall be included into obligatory programs of training, improvement and testing.

Such programs shall be established by educational authorities in the entities, cantons and BD, in accordance with the principles and standards defined in this law.

Roma education

With regard to Roma children, we have to underline that at the 128th meeting held on 14 July 2010 the Council of Ministers of Bosnia and Herzegovina adopted the Revised Action Plan on Educational Needs of Roma. This document defines four goals and 47 measures so that this marginalized group of children could have equal access to high-quality education and acquire necessary skills to later better integrate into society.

Also it is necessary to emphasize that an expert team was appointed to monitor meeting of the educational needs of Roma, as a direct obligation that derives from it. The team collects all relevant statistical data on Roma education as of 2011/2012 school year. In order to determine the number of children dropping out of school we will need to inspect the data to be collected only at the end of the school year. All these data will be collected each school year and we will eventually be able to make a comprehensive analysis of the increasing number of Roma children attending school, as well as all other relevant information about the educational needs of Roma.

In 2011 there was an increase in enrolment of Roma children in primary, secondary and higher schools.

From an analysis of indicators of Roma needs compiled by the Ministry of Human Rights and Refugees, we can see that:

- 27 Roma children were included in the compulsory preschool upbringing and education,
- 49 Roma children were enrolled in compulsory preschool upbringing and education,
- 3024 Roma children attended primary school;
- 243 Roma children attended secondary school,
- 17 Roma children were included in higher education,
- 939 children were not covered by primary or secondary education.

Neither competent ministries of education (there are 12 ministries in BiH and 1 Department for Education of BD) nor social work centres could provide data on the number of children who were not included in schools and Roma associations do not provide schools with these data, either.

It is evident that the number of Roma children dropping out of primary and secondary school significantly reduced. In 2011:

- 49 (1.6%) Roma students dropped out of primary school;
- 43 Roma students dropped out of secondary school (2.3%);
- 32 Roma students did not get grades because of going abroad,
- 224 Roma students who dropped out of primary school were included in extramural system of primary education,
- 61 Roma children received scholarships in primary and secondary schools,
- 80% of Roma children received some form of assistance in primary school (textbooks, school supplies, transportation, school meals),
- 7 Roma university students received scholarships.

RS

As for Roma inclusion, the Ministry of Education and Culture of RS regularly monitors the implementation of the revised Action Plan of BiH on the Educational Needs of Roma:

- schools hold meetings with parents of Roma children in order to inform them that primary education is compulsory. NGOs participate in these activities. In 2011/2012 school year, 21 meetings were held in seven schools in four municipalities;
- meetings and activities are held in order to understand the importance of programs related to early child development;
- day care centres for young children have been opened;
- informative meetings and lectures for parents are held in Roma communities (with the participation of NGOs);
- Bijeljina municipality appropriated BAM 3,700 for the involvement of children in preschool programs in the current year;
- "Improving Access to Preschool Education for Roma Children" project - municipalities of Vukosavlje, Prijedor, Bijeljina and Gradiska;
- seminar titled "Improving Access for Children from Roma Communities" in order to strengthen capacity and skills of teachers working with Roma children - municipalities of Vukosavlje, Prijedor, Bijeljina and Gradiska;
- 676 students were included in the regular primary school education in 2011/2012 school year;
- incentive measures taken to advance regular attendance - regular contacts with the Association of Roma and Roma communities, the Centre for Social Work and Roma families, exemption from all fees and charges in schools/ free theatre and cinema tickets..., parental meetings, paying visits to families, free school supplies, clothes, shoes, textbooks and school meals (the Municipality of Banja Luka), free school bags and school supplies, transport for students who travel with minimal fares (Vukosavlje Municipality);

- Adapted curriculum – in the last four years we implemented "The Fundamental Right to Education" project for children who had not had the opportunity to regularly attend classes while at school age. A total number of people included in this project were 74. Students who regularly attend classes are taught under the regular curriculum,
- all students who reside over 4 km away from school are provided with free transportation;
- Bijeljina municipality provided a school meal to Roma children in primary education;
- the extramural system of primary education includes 76 Roma children;
- the Municipality of Bijeljina provides taking examinations free of charge;
- parents of Roma children are involved in school bodies - Parents' Councils;
- activities are organized for the purpose of continuous training of teachers, parents and all children in primary schools in order to raise awareness about human rights and rights of children;
- non-violent communication workshops are organized to raise awareness of teachers, parents and all children in primary schools about stereotypes and discrimination against Roma in education and to train them in overcoming them;
- 104 children enrolled in secondary school in 2011/2012 school year;
- free textbooks were provided to Roma children enrolled in secondary schools (19 children);
- free transportation of Roma children enrolled in secondary schools (14 children) was provided;
- 15 Roma children receive scholarships;
- eleven Roma children enrolled in higher education institutions;
- four Roma children at higher education institutions receive scholarships;
- information about the organization of adult primary education is sent to the Association of Roma, Association of National Minorities and the Centre for Social Work;
- the competent institutions inform about education programs of Roma adults through the media, newspapers, television, radio and Employment Office. So far there have been no Roma registered for adult primary education.
- seven schools promoted Roma culture and history as extracurricular activities (Banja Luka and Bijeljina) during the Roma Day, Roma's celebration of St George and " Kaleidoscope": Let's get acquainted! National Minorities in BiH" diversity is all around us, explore its riches;
- Let's get acquainted! National Minorities in BiH Manual was published;
- all newly born children and adult Roma have been registered in the Birth Register in Banja Luka;
- six Roma assistants were hired to teach.

BD

The Law on Education in Primary and Secondary Schools of BD requires that all children have an equal right to education. Article 6, paragraph b) of the Law prohibits discrimination or favouritism based on ethnic, religious, sexual, political, social or any other basis.

The education system of BD has no special schools or classrooms for Roma children, but they are integrated into regular classes with other students instead. The BD primary schools include 107 Roma students and 16 Roma students are in secondary schools. The legislation gives equal rights to all students but problems of Roma students caused by family and social circumstances are evident. We emphasize that the education system includes much larger number of Roma students, but the problem is the inconsistency in their declaration of nationality.

Schools help these students during their education in accordance with their capabilities, organizing humanitarian activities in the school for students and having good cooperation with local communities and NGOs with a view to providing necessary conditions for these students.

Accordingly, professional teams in school consisting of an educator, psychologist, defectologists, social workers, social educators facing the problem of poor school attendance of Roma students are trying to solve this problem in cooperation with parents, working on changing attitudes and habits that their

children attendance has become an instrument to achieve something (e.g. a school meal free of charge, one-time monetary assistance etc.). In fact, very often, the only reason the parents send their children to school regularly is to get the (albeit minimal) benefits.

A project that will provide day care of students after school in the Ninth Primary School of Prutače where a majoritiz of Roma students reside is under preparations. Students have free transport and textbooks in primary schools while secondary school students are provided free transport and efforts are made to provide textbooks to these students.

FBiH

Two schools under one roof

In order to make a real insight in the number of "two schools under one roof" and how they operate in order to work out options for their integration, at the Conference of Ministers of Education in Bosnia and Herzegovina, the Minister of Civil Affairs appointed a working group, consisting of representatives of Middle Bosnia Canton, Herzegovina-Neretva Canton and Zenica-Doboj Canton, the Federation Minister of Education and Science and the OSCE Mission to BiH.

The working group visited all the schools, analysed the situation in the field and drafted a comprehensive report, which included a categorization of the degree of integration in these schools. After touring all the schools, they found the tendency of reduction of their number as a result of administrative and legal unification of schools in Zenica-Doboj Canton and emphasized the necessity of further unification.

The working group adopted the recommendations made by the Federal Ministry of Education and Science to the Government of F BiH, which adopted the same, and it went into Federal Parliament.

On 16 February 2010 the BiH Federation Parliament deliberated the report and on that occasion adopted the following conclusions:

1. The cantonal ministries of education of Middle Bosnia Canton, Herzegovina-Neretva Canton and Zenica-Doboj Canton are invited and the Federation Minister of Education and Science is ordered to do whatever it takes to ensure the next school year in the three cantons set off without the phenomenon of "two schools under one roof".
2. The Federation Government is called upon to initiate discussions with the cantonal governments of the possibility of transfer responsibilities in the field of education from the cantonal level onto FBiH, to begin with.
3. The House of Representatives of the Parliament of the FBiH gives an assignment to the Constitutional Commission to examine, while exercising its duty of monitoring of constitutionality and legality in the FBiH, whether these values are respected and applied in the primary and secondary education system in BiH, in which many schools implement curricula of neighbouring countries.

The Constitutional Commission is obliged to inform the House of Representatives whether the teaching process in FBiH implementing curricula of other countries is in accordance with the Constitution of FBiH.

On 29 March 2010, acting on the 16 February 2010 Conclusion of the House of Representatives, in accordance with its responsibilities, the Federation Ministry of Education and Sciences sent a letter enclosing the Conclusions of the House of Representatives to all authorized representatives of the

cantonal and municipal authorities of Middle Bosnia Canton, Herzegovina-Neretva Canton and Zenica-Doboj Canton, i.e. prime ministers and speakers, mayors and chairmen of municipal councils of the three cantons where the phenomenon of "two schools under one roof" was recorded, asking the authorities to take urgent measures and activities to eliminate this phenomenon so that the next school year can begin without this phenomenon.

Following up this Conclusion, the Federation Ministry of Education proposed and the Government of FBiH adopted, on the 139 meeting held on 14 April 2010, the Conclusion (V. No. 351/2010) which determined the possibilities of transferring of jurisdiction in the area of education, in whole or in part, in accordance with the Constitution of the Federation of Bosnia and Herzegovina and initiated discussions with the cantonal governments and other authorized entities about the possibility of transferring of jurisdiction from the cantons to the FBiH. A commission was appointed for this purpose to include representatives of the Federation Ministry of Justice, the Government of the Federation Office of Legislation and Harmonization with EU Regulations and the Federation Ministry of Education and Sciences, having an obligation to implement this Conclusion of the Government of the Federation of Bosnia and Herzegovina within six months.

The ministers called upon the general public, including parents and school committees, to get involved in solving this problem.

Talking about this issue, it is necessary to emphasize that in 2012 the Municipal Court of Mostar issued the first instance judgment ordering that this discriminatory practice of "two schools under one roof" be abolished. The same lawsuit is pending before the Municipal Court of Travnik.

The integration of children with disabilities into mainstream education

Conclusion

As Bosnia and Herzegovina has not accepted Article 15§1, the Committee considers the issues relating to the integration of children with disabilities into mainstream education under Article 17§2.

ANSWER:

FBiH

- Is there legislation explicitly protecting persons with disabilities from discrimination in education and training?

These persons are protected by the Law on Primary and Secondary Education in the provisions we have already cited above. Further, in September 2003 the Council of Ministers of BiH carried the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. In April 2010 the 2010-2014 Strategy for the Equalization of Opportunities for Persons with Disabilities was adopted in FBiH, one segment being dedicated to education. This year a report on the implementation of this Strategy will be made for the United Nations.

- Are measures in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible?

New schools are built to comply with building standards and old school are repaired to meet the standards, wherever possible. A particular problem is satellite schools in rural areas.

- Does general teacher training incorporate special needs education as an integral component?

Pedagogical standards and norms envisage that schools with larger numbers of students must have an educator and psychologist. Seminars, roundtables and other forms of education are organized for educational staff.

- Are individualised educational plans are crafted for primary and secondary school students with disabilities and how? Are individualised educational plans are crafted for university students with disabilities and how?

Children with special needs use individualized and customized educational plans. These educational plans are developed in collaboration by teachers and mobile teams consisting of experts in certain fields (educators, psychologists, defectologists, occupational therapists).

RS

All laws of the RS in the field of education protect people with disabilities from discrimination:

The RS Law on Preschool Upbringing and Education (119/08, 1/12) provides that every child has the right of access and equal possibility to participate in appropriate educational process. When enrolled in pre-school establishments for children with special needs, individual programs adjusted to their abilities and capabilities shall be developed for each child respectively.

The Law on Preschool Upbringing and Education provides that an educational group attended by a child with special needs has an inclusion assistant. An educational specialist dealing with children with special needs – defectologist shall have an appropriate university degree.

Pursuant to the RS Law on Preschool Upbringing and Education, each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any ground. Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education.

Year	Number of children with special needs
2007/2008	452
2008/2009	436
2009/2010	1,204 (girls: 486)
2010/2011	1,284 (girls: 528)

I The Law on Primary and Secondary Education provides that school cannot discriminate children in their access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other grounds. RS and local self-government units, along with school, are responsible for providing premises, equipment and supporting infrastructure for access and participation in the educational process of persons with special educational needs. Education of children and young people with special educational needs is an integral part of a unified education system. The Minister enacts curricula for students with special needs for each type and degree of disability of students.

RS has adopted the 2010 -2015 Strategy of Improving the Social Position of Persons with Disabilities in the RS. The Strategy also lists the following objectives:

- harmonization of existing laws and regulations in education with the principles of international documents dealing with disability,
- improvement of work in mainstream schools / kindergartens on the principle of inclusion and establishment of resource centres and service providers in support of the regular education system, all based on the principle of promotion of students' abilities and potentials and ongoing monitoring of developments through the whole process of education,
- provision of funds in support of educational institutions in order to realize high quality and affordable education and upbringing of children and students with defects and developmental disabilities,
- improvement of performance of teachers / educators, professional associates and others who work with children / students with disabilities and special needs,
- ensuring better physical access to upbringing and education and other institutions and equipping them better in accordance with standards and modern trends,
- wider offer of textbooks and related literature, with parts that are more specific and easier depicted, richly illustrated textbooks, better adapted to children and students with various disabilities and special needs,
- inclusion of the media with a view to developing positive attitudes when it comes to the education of children / students with disabilities,
- improving conditions of study for students with disabilities.

BD

Articles 49, 50 and 51 of the Law on Primary and Secondary Education of BD regulate enrolment, identification procedure, education and rehabilitation of children with mental disabilities. This Law prohibits any form of discrimination in education and training of the students.

In order for school to be physically accessible to children with disabilities, the schools have adequate facilities tailored for such access. In one school an elevator is in operation so that the rooms upstairs can be accessible for children with disabilities and in other schools, classroom arrangement is adapted to the needs of these children.

The educational system of BD employs teachers with different specialities (oligophrenologist, surdoaudiologist, speech therapist, tiflopedagogue), who together with pedagogues, psychologists, social workers and social pedagogues make an expert teams working with these students and provide help and support to parents and teachers of these students .

Adapted curricula for children with disabilities are developed by teachers working in collaboration with professional teams consisting of appropriate professional associates.

Conclusion

The Committee considers that the enrolment rate for secondary school is low and there is no evidence that measures taken to counter this fact are sufficient, thus amounting to a violation of Article 17§2.

ANSWER:

RS

The enrolment rate in secondary schools in the RS is 97 % (almost 100 % - as if secondary school had been mandatory).

In the recent past almost all student who have completed primary school have continued secondary school. All students are provided with transport to school free of charge. The establishment of

professional teams in schools (pedagogue, psychologist, defectologist, social worker, and social pedagogue), support to marginalized groups and working with them for a change of attitudes towards school trying to get the parents and students perceive education as a long-term investment helped students to continue and complete further education. One of the benefits brought about by the continuation of schooling is the exercise of the right to child allowance under the social welfare scheme.