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European Social Charter

European Committee of Social Rights

Conclusions 2011

(BOSNIA AND HERZEGOVINA)

Articles 7, 8, 16 and 17 of the Revised Charter

This text may be subject to editorial revision.

Introduction

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

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

The Revised European Social Charter was ratified by Bosnia and Herzegovina on 7 October 2008. The time limit for submitting the first report on the application of this treaty to the Council of Europe was 31 October 2010 and Bosnia and Herzegovina submitted it on 10 December 2010. On 4 April 2011, a letter was addressed to the Government requesting supplementary information regarding Article 8. The Government submitted its reply on 1 June 2011.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Children, families and migrants":

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

Bosnia and Herzegovina has accepted Articles 7, 8, 16 and 17 from this group.

The reference period was 1 December 2008 to 31 December 2009.

The present chapter on Bosnia and Herzegovina concerns 18 situations and contains:

- 1 conclusion of conformity: Article 8§3 ;
- 9 conclusions of non-conformity: Articles 7§4, 7§6, 7§9, 8§1, 8§4, 8§5, 16, 17§1 and 17§2.

In respect of the other 8 situations concerning Articles 7§1, 7§2, 7§3, 7§5, 7§7, 7§8, 7§10 and 8§2, the Committee needs further information in order to assess the situation. The Government is therefore invited to provide this information in the next report on the articles in question.

The next report from Bosnia and Herzegovina deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

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

The deadline for the report was 31 October 2011.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The report states that labour laws in Bosnia and Herzegovina (in the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and Brčko District (BD)) and more specifically, according to Section 15, of the Labour Law No. 43/99, 32/00 and 29/03, in the Federation of Bosnia and Herzegovina, Section 14 of the Republika Srpska Labour Law No. 55/07 and Section 17 of the Labor Law No. 7/00,8/03, 33/04 and 29/05 of Brčko District, set the condition that employment contracts cannot be signed with a person who is younger than 15 years of age. The report states that the above-mentioned laws do not stipulate on any exceptions and do not allow the possibility to have an employment contract signed by person younger than 15 years of age. Also minors cannot sign an employment contract that would harm their health, morals or development.

The Committee recalls that the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). The Committee wishes to be informed whether this age limit applies to all of the above-mentioned categories.

The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

The report states that, when during its inspections, the Labour Inspectorate determines that the employer is in breach of the above-mentioned legal provisions regarding employment of children, it may take the measure of closing the business until the procedure concerning this offence is completed. The Committee asks that next report provide information on what other measures may be applied by the Labour Inspectorate.

The report states that there are no data concerning employment of children under legal age of employment. However, the Committee notes from another source¹ that in 2006 at the national level, 5.3 % of children aged 5 to 14 years were engaged in some form of child labour (4.7% in the RS and 5.8% in FBiH). Almost 1% of children aged 5-14 in BiH are engaged in some form of labour activity out of their home (paid and unpaid). The percent of boys was much higher (6.6 %) than that of girls (3.9%) and there was a significant difference between rural (6.4%) and urban (3.2%) areas. The Committee asks information on the evolution of the situation in practice during the next reference period in relation to child labour and on the measures taken by the Government to tackle child labour.

The report states that light work is not defined by law in any of the entities of Bosnia and Herzegovina. The Committee understands that the children under 15 are not allowed to perform any kind of work and asks that next report confirm whether this understanding is correct.

The Committee also recalls that regarding work done at home, States are required to monitor the conditions under which it is performed in practice. The Committee asks what is the situation in Bosnia and Herzegovina in relation to monitoring of work done at home.

Conclusion

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

¹*Bosnia and Herzegovina Multiple Indicator Cluster Survey 2006, of September 2007, http://www.childinfo.org/files/MICS3_BiH_FinalReport_2006_Eng.pdf*

Article 7 - Right of children and young persons to protection

Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

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

The Committee recalls that, in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.

The report states that according to the labour law of Bosnia and Herzegovina, young persons between 15 and 18 years of age can sign an employment contract, under the condition that a licensed doctor or competent health institution issue a certificate stating that the person is in condition to work as required by the position.

Sections 51 and 75 of the Labour Law of Federation of Bosnia and Herzegovina, Section 14§3 and Section 75 of the Labour Law of Republika Srpska and Section 41§1 of the Labour Law of Brčko District determine that young persons cannot work in extremely difficult physical work, underground or under water, nor in a position that might pose risk to his/her life and health, development and morals, taking into account his/her psychological and physical capacities. The Committee asks whether there exist further specifications in law as to the forms of work or types of risk that would constitute dangerous or unhealthy activity for young persons.

The Committee recalls that if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements. The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Committee asks whether certain exceptions are prescribed and how the situation is monitored in these cases.

The report also states that supervision over implementation of provisions concerning work of young persons, falls under competencies of the cantonal and federal institutions of Labour Inspection and Occupational Safety. The above mentioned legal acts authorise the labour inspectors to ban young persons from working in positions that are determined as extremely difficult and which might be detrimental or possessing an increased risk for life and health, development and morals of the young person. Additionally, the ban refers to positions with an increased risk of injuries or detrimental effect on health.

The report provides no information on data regarding employment of young persons in dangerous or unhealthy activities. The Committee asks that next report provide information on how the Labour Inspectorate monitors the arrangements regarding employment of young persons in hazardous work and what kind of measures are taken in case of violations.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of children subject to compulsory education

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

Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn.

Only light work is permissible for schoolchildren under this provision. The notion of "light work" is the same as under Article 7§1.

In the case of states that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article. Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

In order that children still subject to compulsory education benefit fully from school after the holiday, work must be prohibited for a period of at least 4 weeks during the summer holidays and for at least half of each holiday period granted in the course of the school year.

The report states that mandatory education starts in the calendar year when as of 1 April, a child is 6 years old and it lasts not less than 8 years. Thus children are subject to compulsory education as a minimum until 14 years of age. The report informs also that a new 9-year primary education has been put in place since June 2004, which implies that as of June 2013 the minimum age for compulsory education will be 15. The Committee notes that at present there is a gap of one year between end of compulsory education and minimum age of employment. The Committee asks whether there have been conducted any surveys as to what happens during this period in practice.

The Committee refers to its conclusion under Article 7§1 and asks that next report clarifies whether there are any categories of work where children under 15 and subject to compulsory education may be employed.

The report also states that labour and education law in Bosnia and Herzegovina do not allow for the possibility of employment of children during holidays, nor do they define any types of works that may be performed.

The Committee refers to its interpretative statement on Article 7§3 in the General Introduction and requests clarification as to whether work of children during school holidays is effectively prohibited.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time for young persons under 18

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

The Committee recalls that, under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article.

The report states that Section 29 of the Labour Law in the Federation of Bosnia and Herzegovina, Section 40§1 of the Labour Law in the Republika Srpska, and Section 22 of the Labour Law in Brčko District prescribe that the working week lasts for 40 hours. This provision is in force for all employees and according to the legislation in place, there are no exceptions of shorter working hours for young persons.

The report adds that the above mentioned acts prescribe that young workers have a right to a 12-hour break between 2 working days and that it is prohibited for workers younger than 18 to perform overtime work.

The Committee finds that the limit of 40 hours per week for young workers under the age of 16 is excessive and therefore not in conformity with Article 7§4 of the Charter.

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.

Article 7 - Right of children and young persons to protection

Paragraph 5 - Fair pay

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

The Committee recalls that, in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

The “fair” or “appropriate” character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged 18 or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

Young workers

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

The report provides no information, and thus, the Committee asks that next report provide such information in order to be able to assess the adequacy of young workers wage.

Apprentices

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the beginning of the apprenticeship, and arriving at least at two-thirds at the end.

The report states that apprentices have the right to an allowance amounting to at least 80% of the lowest salary paid by the employer. The Committee asks whether by "lowest salary" is meant the minimum wage.

Since the report provides no information, in order to be able to assess the adequacy of allowances of apprentices, the Committee asks that next report provide the net minimum wage and the net average wage for the next reference period.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

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

The Committee recalls that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

The Committee recalls that this right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The report states that the legislative framework in Bosnia and Herzegovina does not provide for time spent at the training with the consent of employer, to be counted as a part of the working day.

The Committee finds that the situation is not in conformity with Article 7§6 of the Charter.

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.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

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

The Committee recalls that, in application of Article 7§7, young persons under 18 years of age must be given at least four weeks' annual holiday with pay. The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

The report states that Section 41 of the Labour Law of the Federation of Bosnia and Herzegovina (FBiH), Section 57§1 of the Labour Law of the Republika Srpska (RS) and Section 5§1 of the Labour Law of the Brčko District (BD), prescribe the right of young workers to at least 24 days annual holiday. Young workers benefit of the same conditions as for adult workers. Young workers who are employed for their first time or when there has been no break between employments longer than 8 days acquire the right to annual holiday upon completion of 6-month continuous employment. The annual holiday can be used in 2 parts, providing that the first part lasts for a minimum of 12 days.

The Committee understands that these are 24 working days and asks next report to confirm whether this understanding is correct.

The report states that penal provisions apply in case of violation of the right to young workers to use their annual holiday. In this regard, Section 140 of the Labour Law in FBiH prescribes a fine in the amount from 2,000 BAM (1 022.5 €) to 20,000 BAM (10 225.8 €) to the employer as a legal entity in case of failure to grant a young worker the annual holiday, Section 180§1 of the RS Labour Law prescribes a fine in the amount from 1,000 BAM (511.3 €) to 10,000 BAM (5 113 €) and Section 111 of the BD Labour Law prescribes a fine in the amount from 2,000 BAM ((1 022.5 €)) to 14,000 BAM (7 158 €).

The Committee wishes to know whether young workers have the option of giving-up their annual holiday with pay. The Committee also asks whether young workers have the possibility to take the leave lost at some other time in the event of illness or accident during the holidays.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

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

In application of Article 7§8, domestic law must provide that under-eighteen year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations. It is up to national laws or regulations to define the period of time considered as being "night".

Section 36 of the Labour Law of the Federation of Bosnia and Herzegovina (FBiH), Section 51§1 of the Labour Law of the Republika Srpska (RS) and Section 32 of the Labour Law of the Brčko District (BD) restrict the night work of the minor employees. For young workers employed in industry, work between 7:00 p.m. and 7:00 a.m. is considered night work. While for young workers employed in other sectors than industry, work between 8:00 p.m. and 6:00 a.m. is considered night work. Exceptionally, young workers may temporarily be exempted from the restriction of night work in case of major breakdowns, force majeure and protection of interests of the BiH, based on the approval of the competent authority of the canton.

The report states that penal provisions apply in case of violation of the prohibition of night work for young workers. In this regard, Section 140§1 of the Labour Law of FBiH prescribes a fine in the amount from 2,000 BAM (1 022.5 €) to 20,000 BAM (10 225.8 €) to a legal entity, Section 180§2 of the Labour Law of RS prescribes a fine in the amount from 2,000 BAM (1 022.5 €) to 15,000 BAM (7 669.3 €) to an employer and Section 111§1 of the Labour Law of BD prescribes a fine in the amount from 1,000 BAM (511.3 €) to 7,000 BAM (3 579 €) to an employer.

The Committee asks for information on the activity of the Labour Inspectorate concerning the supervision of the situation in practice.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

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

The Committee recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. They may, however, be carried out by the occupational health services, if these services have the specific training to do so.

The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.

According to the report, the legislative framework provides for mandatory initial medical exam for young workers. However there is no requirement for regular check-ups, which are provided only for

adult employees working under special working conditions in which young workers are not allowed to work.

The Committee considers that although young workers are not allowed to work under special working conditions, the requirement under Article 7§9 for regular check-ups remains, especially keeping in mind the physical and psychological development of young persons. For this reason it considers the situation not to be in conformity with Article 7§9.

The Committee asks whether the requirement for medical examination of the young workers is respected in practice.

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.

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

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

Protection against sexual exploitation

The Committee recalls that under Article 7§10 of the Charter, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The following are the minimum obligations:

-as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

-a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

According to the report, due to a complex structure of the Government of Bosnia and Herzegovina, it is unfortunate to find existence of the difference in the criminal policy for the same criminal actions perpetrated against children. There is a need to harmonise criminal codes applied in Bosnia and Herzegovina when it comes to the parts dealing with trafficking in persons and child pornography. There are differences in policies on crimes and responsibilities for crimes in criminal codes of the Federation of Bosnia and Herzegovina (CC FBiH) , Republica Srpska (CC RS) the Criminal Code of Brcko District of Bosnia and Herzegovina (CC BD) and the Criminal Code of Bosnia and Herzegovina (CC BiH).

According to Article 199 of the RS CC whoever abuses a child or juvenile with an aim of developing photographs, audio-visual material or other pornographic material shall be punished by imprisonment between six months to 5 years. Production and display of child pornography perpetrated against a person younger than 16 years of age is punishable by imprisonment up to three years. In the FBiH CC the same offence is punishable with a term between one and five years. Selling, showing or rendering available pornographic material depicting a child is punished by a fine or imprisonment for a term not exceeding one year.

The Committee notes from the report that the CC BiH, defines a child (Article 1) as is a person who has not reached 14 years of age. Production and display of child pornography of a minor young than 16 is punishable under the RS CC. In this context, the Committee recalls that states must

criminalise sexual exploitation of all children under 18 years of age irrespective of lower national ages of sexual consent. The Committee asks whether all criminal codes provide for criminalisation of all acts relating to child pornography, including procurement, production, distribution, making available and simple possession, until the age of 18. In the meantime it reserves its position on this issue.

The Committee notes that according to the report each person under 18 years of age shall be considered as victim of trafficking in human beings regardless how he/she became the subject of trafficking. The Committee asks whether in all four criminal codes a child is considered a victim of sexual exploitation and whether children can be prosecuted for any act connected with exploitation. The Committee also asks whether a simple possession of child pornography is a criminal offence in all criminal codes.

As regards trafficking of children, the Committee notes from another source¹ that some progress has been made in the area of trafficking of human beings, but sustained efforts remain necessary to ensure proper investigation and prosecution of criminal activities in this area. Bosnia and Herzegovina has started implementing the national action plan for combating trafficking in human beings for 2008-2012. Offences involving trafficking of human beings are regulated by the Criminal Code of Bosnia and Herzegovina, which is harmonised with the relevant international documents ratified by Bosnia and Herzegovina. However, Entity and Brčko District criminal codes are not harmonised with the State criminal code, which undermines proper prosecution. The office of the national coordinator for the fight against trafficking in human beings within the Ministry of Security has been provided with sufficient financial resources to operate. The total number of identified victims of human trafficking continued to decrease in 2008, mainly due to a reduction in the number of foreign victims. However, internal trafficking continued to increase in 2008, with a majority of the victims being children, in particular Roma children. The Committee wishes to be informed about the implementation of the national action plan for 2008-2012 as concerns trafficking of children.

According to the report in 2007 17 children were identified as victims of abuse, all of them as victims of trafficking in persons-child prostitution.

Protection against the misuse of information technologies

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

Protection from other forms of exploitation

Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States parties must also take measures to prevent and assist street children. States parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

The Committee notes from another source² that a significant number of children, especially Roma, living or working on the streets, do not attend schools and that many are forced to work. The UN CRC recommends that the Government ensure that street children are provided with nutrition, clothing, housing, health-care and educational opportunities.

According to the report a number of projects are implemented in cooperation with international organisations, aiming at assisting street children. Day-care centre for children working in the streets in Sarajevo aims at providing shelter to such children. Such centres offer services such as

food and clothes and psychosocial treatment. Since its opening this day-care centre was used by more than 150 children. The protocol on protection of children boarding on a street was signed in November 2009 by the Sarajevo Canton Ministry of Labour. In Zenica-Doboj Canton regular activities are implemented to improve living conditions for families whose children live in the streets. In Tuzla Canton social welfare centres provide support to children that board and work on the street by allocating single financial assistance.

The Committee asks what preventive measures are taken and also, what measures are taken that would be conducive to the return of children to their families or other settings, as appropriate.

Conclusion

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

¹http://ec.europa.eu/enlargement/pdf/key_documents/2009/ba_rapport_2009_en.pdf

²<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPSC-BIH-CO-1.doc>

Article 8 - Right of employed women to protection of maternity

Paragraph 1 - Maternity leave

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

The right to maternity leave

Section 55§1 of the Labour Act of the Federation of Bosnia and Herzegovina states that women are entitled to maternity leave of 12 months. In exceptional cases, women can shorten their leave, but 42 days after birth are compulsory in accordance with Section 55§3. The same duration and compulsory period is provided for by the Labour Act of the District of Brčko. Section 79§1 of the Labour Act of the Republika Srpska also states that women are entitled to maternity leave amounting to 12 months, but the compulsory postnatal leave is 60 days.

The Labour Act on Bosnia and Herzegovina Institutions regulates the protection of women and maternity in the civil service. The report however does not indicate what the duration of maternity leave and length of the compulsory postnatal leave in the civil service are. The Committee therefore asks information on the matter.

The right to maternity benefits

In the Federation of Bosnia and Herzegovina, the "Basis of Social Protection, Protection of the Civil Victims of War and Protection of Families with Children" Act (Nos. 36/99, 54/04, 36/06 and 14/09) establishes the principle of salary compensation for employed women during absence from work linked to pregnancy, birth and the taking care of their child (Section 89§2). However, legislation at canton level regulates the conditions and level of coverage of the benefits. In some cantons the basis of calculation of maternity benefits is the average salary of the employed woman over a period of six months, in others it is the average salary in the canton. Moreover, maternity benefits represent from 50% to 90% of the average salary, be it of the employee or the canton, and in one Canton the situation is not regulated at all.

The Committee has held that a benefit must be adequate and be equal to the salary or close to its value (Conclusions XV-2, United Kingdom). It has considered that a benefit equal to 70% of the salary is adequate (Conclusions XVII-2). It considers that the fact that some cantons of the Federation of Bosnia and Herzegovina have benefits equal to only 50% of the average salary of the employed woman is not in conformity with the Charter. The fact that in one canton maternity benefits are not regulated is also not in conformity. The fact that in some cantons these benefits are based not on the salary of the employee concerned but on the average salary in the canton and that in addition it sometimes only amounts to 60% of the average salary is not in conformity with the Charter.

In the Republika Srpska, Section 84§1 of the Labour Act states that during maternity leave a woman is entitled to compensation amounting to her average salary over the six months preceding the beginning of their maternity leave. Article 84§2 states that if a woman has not received a salary for all six months the compensation will be equal to the average salary she received during the months she was working before her maternity leave. Salary compensation during maternity leave amounts to 100% of the employee's average salary.

There is no information on how maternity benefits are calculated in the District of Brčko. The Committee therefore asks for this information to be provided. Should the next report not provide it, there will be nothing to establish that the situation is in conformity on this point.

As to employees of the Bosnia and Herzegovina State Institutions, maternity benefits were different according to the area where maternity leave was taken and followed the legislation in force in this area. The Constitutional Court however found, in a judgment of 28 September 2010, that this situation resulted in discrimination between state employees, and that maternity benefits should not be based on their place of residence. The Committee asks to be kept informed about the evolution of the situation following the judgment of the Constitutional Court.

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.

Article 8 - Right of employed women to protection of maternity

Paragraph 2 - Illegality of dismissal

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

Prohibition of dismissal

According to Section 53 of the Labour Act of the Federation of Bosnia and Herzegovina, an employer cannot terminate an employment contract because of pregnancy. The Committee underlines that Article 8§2 makes it unlawful to dismiss a woman from the time they notify the employer of their pregnancy to the end of the maternity leave. Therefore, it asks whether female employees are protected against dismissal not only during pregnancy but until the end of maternity leave.

According to Section 77 of the Labour Act of the Republika Srpska, an employer cannot terminate a woman's employment contract during her pregnancy or maternity leave. According to Section 43 of the Labour Act of the District of Brčko, an employer cannot terminate a woman's employment contract for reason of pregnancy or maternity leave.

Consequences of unlawful dismissals

In the Federation of Bosnia and Herzegovina in accordance with Section 103 of the Labour Act pregnant women who allege they have been unlawfully dismissed may bring their case before the courts. If the courts find the dismissal unlawful, the employer can be asked to reinstate the employee and pay her compensation for the amount that she would have received had she worked and to compensate any damage caused or to pay the amount of salary she would have earned if she had worked, to pay compensation for damage and severance pay and other benefits to which she is entitled by law, collective agreement, and the employment contract.

In the Republika Srpska in accordance with Section 118 of the Labour Act a pregnant woman or a woman on maternity leave are entitled to bring their claim before a court. In the District of Brčko Section 88§3 of the Labour Act entitles employees to bring claims on the violation of their rights before the courts; this is therefore possible for pregnant women and women on maternity leave that have allegedly been unlawfully dismissed. The Committee underlines that in case of illegal dismissal reinstatement of the women concerned should be the rule (Conclusions 2005, Cyprus), and that if this is impossible (e.g. the enterprise has closed down) or the woman concerned does not wish it, adequate compensation that is sufficient to deter the employer and fully compensate the victim must be available. The Committee therefore asks for more information in this respect for the Republika Srpska and the District of Brčko. Should the next report not provide this information, there will be nothing to establish that the situation is in conformity with the Charter.

The Committee understands that women employed in the private and public sectors are equally protected. It asks for confirmation that such is the case.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

Section 59§1 of the Labour Act of the Federation of Bosnia and Herzegovina and Section 49 of the Brčko District provide for the right of women to two one-hour breastfeeding breaks until the child is one year old, on the basis of a medical doctor's opinion. Time off for breastfeeding mothers is considered as part of the working day and are remunerated as such.

Section 80§2 of the Labour Act of the Republika Srpska states that if a woman returns to work before the end of her maternity leave (i.e. before her child is one year old), she has the right to 60 minutes of absence for breastfeeding purposes. These breaks are considered as part of the working day, and remunerated as such.

The same regime applies for women employed in the public sector.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 8§3 of the Charter.

Article 8 - Right of employed women to protection of maternity

Paragraph 4 - Regulation of night work

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

Whilst there is no prohibition of night work for women who are pregnant, who have recently given birth and who are breastfeeding as such in the Federation of Bosnia and Herzegovina, Section 54 of its Labour Act provides that women who are pregnant or who are breastfeeding can be reassigned to other posts for health reasons, as determined by a medical doctor. This should not result in a loss of salary. Moreover, if an employer cannot propose reassignment to another adequate post, the employee concerned will be entitled to paid leave. The Committee asks whether this protection in practice extends to women having recently given birth who might not be breastfeeding.

Section 52 of the Labour Act of the Republika Srpska prohibits night work for pregnant women and women who have child who is not yet one year old.

The Committee recalls that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of women. The regulations must lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (where applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc (Conclusions X-2, Statement of Interpretation on Article 8§4).

The report that the Labour Act of the Brčko District does not prohibit night work for women except in cases stipulated in Section 52 which concern, inter alia, single parents, and situations where both parents are employed. The Committee does not consider that this constitute a sufficiently protective regulation on night work for women who are pregnant, who have recently given birth or who are breastfeeding.

The Committee asks what protection exists for women employed in the public sector.

The Committee underlines that should the next report not provide the various requested information, there will be nothing to establish that the situation is in conformity in respect of the issues raised.

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.

Article 8 - Right of employed women to protection of maternity

Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

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

Section 52 of the Labour Act of the Federation of Bosnia and Herzegovina prohibits the employment of women in mines except women performing management which does not require manual work or women performing health and social protection jobs, as well as women working in education who must spend time in underground parts of mines, or those who must enter underground parts of mines to perform non-manual works. The report indicates that the prohibition on women taking up arduous or dangerous work has been repealed in 2000. A similar prohibition regarding the employment of women in mines exists in Section 78 of the Labour Law of the Republika Srpska and Section 76 of the Labour Act of the District of Brčko. The Committee notes that this prohibition goes beyond women protected by Article 8 and covers all women. The Committee underlines that, insofar as the said prohibition concerns specifically pregnant women, women having recently given birth or nursing their infant, the situation is in conformity with Article 8§5.

Whilst there is no prohibition of dangerous, unhealthy or arduous work for women who are pregnant, who have recently given birth and who are breastfeeding as such, Section 54 of the Labour Act of the Federation of Bosnia and Herzegovina, Section 78 of the Labour Act of the Republika Srpska and Section 44 of the Labour Act of the District of Brčko provide that women who are pregnant or who are breastfeeding can be reassigned to other posts for health reasons, as determined by a medical doctor. This should not result in a loss of salary. Moreover, if an employer cannot propose reassignment to another adequate post, the woman concerned will be entitled to paid leave.

The Committee nevertheless 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. National law must ensure a high level of protection hazards to the health and safety of women who come within the scope of this provision (Conclusions 2003, Bulgaria). The Committee considers that the provisions in force in the Federation of Bosnia and Herzegovina, the Republika Srpska and the District of Brčko are too general to protect adequately women covered by Article 8 in respect of dangerous, unhealthy and arduous work. The situation is therefore not in conformity with the Charter.

The same regime applies to women employed in the public sector in the different entities of Bosnia and Herzegovina.

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.

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

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

As the notion of the “family” is variable, the Charter applies to every family according to the definition of this notion in domestic law. According to the report, domestic law defines families as persons linked by family ties or sharing residences or households.

Social protection of families

Housing for families

The Committee points out that Articles 16 and 31, though different in personal and material scope, partly overlap in several areas relating to the right of families to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31 (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 115). As Bosnia and Herzegovina has not accepted Article 31, housing for families is examined under Article 16.

According to the report, the right to housing is a competence not of the state, but of the entities and the Brčko District. The process of reconstruction and restoration of the property and housing rights of refugees and displaced persons in the wake of the conflict in the former Yugoslavia was completed at the end of 2006. Since the signature of the Dayton peace agreement in 1995, 322 000 housing units have been rebuilt, including 236 200 in the Federation of Bosnia and Herzegovina, 73 300 in the Republika Srpska and 12 600 in the Brčko District. However, 146 000 housing units, or 30% of those destroyed or damaged, were not rebuilt. Today there is still a large number of refugees (abroad), displaced persons (within the country's borders) or persons affected by the conflict who remain in need of assistance with housing. About 2 500 families, or 8 000 people, are homeless or live in improvised settlements or housing.

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (COHRE v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54)

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; FEANTSA v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that "as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community" (COHRE v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

According to the report of European Commission against Racism and Intolerance ((ECRI), second report on Bosnia and Herzegovina, 7 December 2010, §113), many Roma continue to live in informal settlements, which frequently lack access to basic utilities such as electricity, sewage treatment, waste disposal or drinking water. Forced evictions continue to occur, sometimes in the context of implementing local programmes to improve Roma housing, and in some cases without appropriate alternative accommodation being provided. In such cases Roma have little alternative in practice but to resort to building new illegal homes elsewhere. Many Roma are thus without adequate shelter.

According to the report of the Framework Convention for the Protection of National Minorities (second opinion on Bosnia and Herzegovina, adopted on 9 October 2008, §89), the housing situation of many Roma is still very difficult on the whole and a cause for grave concern. Despite the efforts made by certain local authorities, often with the support of international organisations and NGOs, there are still numerous illegal settlements whose inhabitants are particularly at risk of being evicted and are not offered suitable alternative housing solutions. In addition, many of these sites are devoid of basic amenities and living conditions there are often deplorable.

The Committee asks that the next report provide information on measures taken to improve the housing situation of Roma families. Meanwhile, it considers that it has not been established that the living conditions of Roma families in housing are effectively guaranteed.

Childcare facilities

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

In the Federation of Bosnia and Herzegovina the Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children establishes the conditions of child care in pre-school education establishments. However, it is the cantons that regulate the access conditions, procedures and budget management aspects. Some cantons have no child care facilities for lack of funds.

In the Republika Srpska, Article 38 of the Law on Social Protection provides for child care in establishments that may be public, private or under mixed ownership. The Ministry of Health and Social Welfare lays down the access criteria, the fees charged to service users and the educational curriculum. This entity has five child care establishments.

In the Brčko District, the Law on Social Welfare regulates children's access to establishments. During the reference period, 140 children up to the age of 3 and 230 children aged 3-6 attended childcare facilities. Two adults care for 25 to 28 children.

In order to assess whether this provision matches the needs of families, the Committee 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.

Family counselling services

In the Federation of Bosnia and Herzegovina, the Social Welfare Law and the Family Law provide for family counselling services, which are located in the social welfare centres. In 2009 there were 7 family counselling services, which advised over 3 500 people.

The Republika Srpska offers family counselling services free of charge in 45 social welfare centres.

In the Brčko District, family counselling services are provided by educational specialists, psychologists and social workers. There are 11 associations supplying these services.

Participation of associations representing families

To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

Legal protection of families

Rights and obligations of spouses

The Family Law of the Federation of Bosnia and Herzegovina governs questions of family law, marriage, relations between parents and children, adoption, child custody and guardianship, the legal effects of common-law marriage between women and men and the rights and duties of family members. Under this law the family is defined as a living community of parents and children sharing a common home. The law provides that spouses shall be equal in marriage and in making decisions concerning their children. Each spouse may seek a divorce in the event of irretrievable marital breakdown; however, the husband cannot ask for a divorce while his wife is pregnant or until the child reaches the age of three.

The Family Law of the Republika Srpska governs family and legal relations between spouses and between parents and children. Article 2 of this law defines a family as a living community of parents, children and other relatives. The legal age for marriage is 18, and a marriage is concluded freely between the spouses who are equal in rights and owe each other mutual respect and support. Marriage ends with the death of one of the spouses, annulment or divorce. A divorce may be sought if marital relations have been seriously and lastingly disrupted. However, a husband cannot ask for a divorce while his wife is pregnant or until the child reaches the age of one.

The Family Law of the Brčko District governs family and legal relations between spouses and between parents and children. The family is a unit consisting of parents, children and other relatives. Family relations are based on protection of private life, equality, mutual assistance and respect, the duty of parents to protect children's interests and ensure their wellbeing and the responsibility of the Brčko District to ensure protection of the family in accordance with international conventions. Parents exercise joint parental authority and are responsible for their children's upbringing and education. A marriage is ended inter alia by divorce.

Mediation services

Under Article 45 of the Family Law of the Federation of Bosnia and Herzegovina, before initiating divorce proceedings, either spouse or both spouses of a couple having children are required to submit a mediation request to the competent authority. If need be, the mediation authority can recommend other institutions that can provide the spouses with advice. Should the spouses fail to reach a reconciliation, the mediation authority proposes an agreement on the children's custody, their financial support and any other matter relating to the children. The Federation of Bosnia and Herzegovina has 93 institutions authorised to provide mediation services.

Under Article 57 of the Family Law of the Republika Srpska, when divorce proceedings are initiated mediation services are supplied by the Social Welfare Centres or the social services, in particular as regards arrangements for under-age children.

Under Articles 42 to 47 of the Family Law of the Brčko District, mediation is to be initiated between spouses who are seeking a divorce, particularly to safeguard their children's rights and interests. Mediation is conducted by a team of psychological and educational experts and social workers.

The Committee asks for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are.

Domestic violence against women

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims).

Bosnia and Herzegovina's Law on Gender Equality defines violence against women as any violence that may cause physical, psychological, sexual or economic damage or severe suffering. The competent authorities are duty-bound to take appropriate measures to prevent or eliminate gender based violence in the private and public spheres and to ensure that instruments are adopted making it possible to protect, assist and compensate victims.

The Criminal Codes of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District lay down prison penalties for perpetrators of domestic violence.

The Federation of Bosnia and Herzegovina and the Republika Srpska have legislation on protection against domestic violence providing for prevention measures, measures to protect victims and restraining orders against perpetrators of violence. Similar legislation is in the process of being adopted by the Brčko District.

In the Federation of Bosnia and Herzegovina there are special safe houses which can accommodate up to 235 victims of domestic violence and a help line for victims. In the Republika Srpska there are three similar safe houses with a capacity of 57 persons.

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).

Economic protection of families

Family benefits

According to MISSCEO¹, the average monthly, family benefits are governed by the Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children in the Federation of Bosnia and Herzegovina, by the Law on Child Protection in the Republika Srpska and by the Law on Child Protection in the Brčko District. In the Federation of Bosnia and Herzegovina family benefits are funded under the budgets of the cantons, which pay benefits to families meeting the legal requirements (variable from one canton to another). In the Republika Srpska there is a universal system funded with contributions, donations, interest income on short-term deposits and income from other sources. In the Brčko District there is a universal system funded via the district's budget, which guarantees flat rate benefits to all residents whose children live in the district, provided they fulfil the conditions laid down by law. In all three entities the granting of benefits is means-tested.

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 equivalised 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. It also asks that the next report furnish information on the situation in the Brčko District as regards the benefits provided for their dependent children not residing in the District to parents who live there.

Vulnerable families

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families. The Committee

consequently asks what measures are taken to ensure the economic protection of Roma families and other vulnerable families.

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

In the three entities a permanent residence requirement applies for the granting of family benefits. The Committee wishes to know the conditions for awarding permanent residence.

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.

¹*MISSCEO – Mutual Information System on Social protection of the Council of Europe, Comparative tables of social protection systems in 13 member states of the Council of Europe, Australia, Canada and New Zealand, 2005, in www.socialcohesion.coe.int/MISSCEO/DisplayAnswerEN.aspx.*

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

Paragraph 1 - Assistance, education and training

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

Status of the child

The Committee notes from the report that the establishment of paternity and maternity is foreseen under the family laws. Maternity and paternity may be established either by recognition of parentage before a registrar, a guardianship authority, or by the court decision, or through the will and is irrevocable. A child may file a lawsuit to establish maternity or paternity. If the child is underage or has been declared incapacitated, a lawsuit may be filed on his behalf by the guardian, with the consent of the guardianship authority, in order to establish maternity, while a lawsuit to establish paternity may be filed by the child's mother if she enjoys parental rights, or by his guardian, with the consent of the guardianship authority.

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 would this right be restricted.

It further recalls that under Article 17 of the Charter there should be 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.

Education

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

Protection of children against ill treatment and abuse

The Committee recalls that under Article 17 of the Charter States' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. There will be no sufficient prohibition in law unless a state can demonstrate that legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

The Committee notes from another source¹ that corporal punishment is unlawful in the home in the Republic of Srpska (RS) but lawful in the Federation of Bosnia and Herzegovina (FBiH) and the District of Brcko (BD). In the Republic of Srpska, Article 97(1) of the RS Family Law (2002, amended in 2008) states: "Parents and other family members shall not subject a child to degrading treatments, mental and physical punishment nor abuse...." In the Federation of Bosnia and Herzegovina, the FBH Criminal Code (2003), the FBH Law on Protection from Domestic Violence (2005) and the FBH Family Law (2005) prohibit violence in the family but do not explicitly prohibit all corporal punishment in childrearing. Similarly, the BD Criminal Code (2004) and the BD Family Law (2007) prohibit domestic violence but do not explicitly prohibit all corporal punishment of children.

According to the same source, there is no explicit prohibition of corporal punishment in alternative care settings. Preschool provision is governed by the Framework Law on Preschool Upbringing and Education (2007) which states the primacy of the child's right to "upbringing and education and proper care for the benefit of their physical and mental health and safety" (Article 7) but does not prohibit corporal punishment.

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.

Children in public care

The Committee notes from the report that placement in foster families (foster care) is regulated by the Law on Social Protection, the Protection of War Victims and Families with children, as well as by the cantonal laws on social protection in FBiH, and the Laws on Social Protection in the RS and BD. 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. The decision on the placement of the child in a foster family, as well as the decision on termination of such placement is rendered by the Social Work Centre, which is responsible for supervision over the family, the provision of assistance to the family and which pays regular visits to the family and thus maintains a permanent contact with the placed child.

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate, not more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved. The Committee asks what is the maximum number of children that can be accommodated in a single institution.

According to the report, the Government is developing its policies with regard to 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. The Committee wishes to be informed about the results of such policies.

The Committee notes from the report that institutional placement of minors has been decreasing since 2005 when it made 2,323 children to 1,839 children in 2008. In the RS, there is family placement (foster care) practice that includes "kinship foster care", "nonkinship foster care" and foster care taking place in the so-called socio-pedagogical living communities, that is residential care units where specially selected foster parents, with or without their own children, live and take care of a number of children without parental care. According to the latest data of the RS Ministry of Health and Social Protection, under the jurisdiction of the twelve social work centres there are approximately 150 foster families.

The Committee wishes to be kept informed about the development of foster care in other entities are well and the numbers of children placed in foster care as opposed to institutions. In this meantime it reserves its position on this issue.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. 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.

Young offenders

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

According to the report, both at the entity and state level, there is still no single law which fully regulates the area of juvenile delinquency, although a draft law consistent with international standards was prepared in January 2005. Specific provisions of general regulations contained in the entity criminal procedure codes, criminal codes, laws on police administration in the FBiH and the public security centres and police stations in the RS, do not have separate departments for juveniles, with the exception of Sarajevo where such a department exists. The Public Security Centre Banja Luka has two inspectors who work with juvenile offenders.

In pre-trial detention, efforts are made to comply with the provisions of the law on bringing a minor before a judge within 24 hours after being detained by the police. Detention can last from one to three months. The problem related to custody is the lack of appropriate detention facilities, poor conditions of existing premises and the absence of any educational activities for juveniles while in detention. The Committee asks what measures are taken to improve detention conditions for young offenders.

As regards the length of sentence, juvenile imprisonment sentence is imposed only in exceptional cases – Article 80, paragraph 1 of the BiH Criminal Code stipulates that “educational measures and certain security measures may be imposed on a juvenile perpetrator of a criminal offence, while in extreme cases, the juvenile imprisonment sentence may be imposed on a senior juvenile”. Mentioned provisions do not stipulate a long-term imprisonment sentence – Article 96, paragraph 1 of the BiH Criminal Code stipulates that the duration of the sentence of juvenile imprisonment may not be shorter than one or longer than ten years.

The Committee thus observes that the pre-trial detention of minors cannot exceed three months and the maximum prison sentence that may be imposed on a juvenile offender may not exceed 10 years in all entities of Bosnia and Herzegovina. The Committee asks whether this understanding is correct. Considering the lack of appropriate detention facilities, the Committee asks whether minors are always separated from adults both in pre-trial detention as well as while serving prison sentence.

The Committee also asks whether young offenders serving a sentence have a statutory right to education. In the meantime the Committee reserves its position on this issue.

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.

¹*Endcorporal 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

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

The Committee recalls that under Article 17 states are required to establish and maintain an education system that is both accessible and effective. States also need to ensure a high quality of teaching and equal access to education for all children. Equal access to education must be ensured for all children, in this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc. Where necessary special measures should be taken to ensure equal access to education for these children. However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group. States are required to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

The Committee notes from UNICEF¹ that the gross enrolment rate in secondary education in 2005-2009 stood at 89% and 91% for males and females respectively. 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.

The Committee takes notes of the measures taken to improve access to education for Roma. With the aim to protect Roma, the most vulnerable national minority in BiH, a "BiH Strategy for Resolving Roma Issues" was adopted, based on which action plans were developed in the fields of education, employment, housing and health care.

The Committee notes from the report that all children, irrespective of their ethnicity, religion and race attend the same classes and are welcome to school across RS, segregation and separation along ethnic lines are not present. The Ministry of Education and Culture of RS, in line with its strategic interests and budgetary possibilities, invests maximum efforts to create as favourable as possible schooling conditions for all children. Thus, Roma children are, like all other children, included in the education system in accordance with valid education laws and the Law on Education of National Minorities. The Ministry of Education and Culture of RS takes care of Roma children, but in reality serious problems exist related to their education. Some Roma children irregularly attend classes, even leave school, because most of them live in very hard conditions (do not have adequate clothing and shoes, have irregular meals and inadequate housing – sleep in small and untidy rooms and come from uneducated families).

According to the report 427 Romani students attend primary schools, which is 80 per cent of the total number of Roma children of primary school age.

As regards access to education for Roma children, the Committee notes from the report of the Commissioner of Human Rights² that the segregation of pupils based on their national origin persists within the country through the system of 'two schools under one roof' or the existence of separate mono-ethnic schools. Many children still travel, sometimes long distances, to attend schools with their own ethnic group and relevant curricula. The system of 'two schools under one roof' is still found in more than 50 schools in the Federation of Bosnia and Herzegovina where Bosnian and Croat populations are dominant.

The Commissioner noted that on 16 February 2010 the Parliament of the Federation of Bosnia and Herzegovina invited the cantonal Ministries of Education to take necessary measures to bring the 'two schools under one roof' system to an end before the beginning of the new school year. However, on 18 February 2010 the cantonal Ministries of Education in three cantons where this system exists stated that unification of schools was not to take place before the beginning of the new school year, thereby prolonging this system.

The Commissioner reiterates that the policy of separating children according to their ethnic origin can only reinforce the prejudices and intolerance towards others and perpetuate ethnic isolation. Measures to unify the educational system are long overdue. Ethnically-based, divided education systems also remain a serious obstacle to sustainable return of persons displaced due to the war.

The Commissioner notes that despite the progress made in implementing the Action Plan for Education of Roma, inequalities in access to education by Roma have remained, as a result of which the school attendance rate continues to be unacceptably low. According to the 2007 report by UNICEF, up to 80% of Roma children in Bosnia and Herzegovina do not attend school, only 20% of Roma participate in secondary education, and less than 1% in higher education. The Commissioner has noted with satisfaction that many municipalities have continued to take positive initiatives in connection with the implementation of the 2004 Action Plan for Education of Roma. The Brcko authorities, for example, have earmarked money for implementing the Action Plan and have created a post of a Roma educational mediator. Similar posts have been set up in other municipalities and a number of study grants have been awarded to Roma students who have reached the level of secondary or higher education.

According to the report, difficulties present in resolving Romani issues, pertaining to non-existence of relevant data on their number, educational level, unemployment, housing needs and other demographic indicators, will be significantly overcome by the implementation of the Programme of Registration and Establishment of Database on Roma in BiH.

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.

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.

In this connection, the Committee recalls that, as stated in the Autism-Europe decision (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48), "the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of "independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights". Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general antidiscrimination legislation, specific legislation concerning education, or a combination of the two.

The Committee asks the next report to provide replies to the following questions:

- whether there is legislation explicitly protecting persons with disabilities from discrimination in education and training; ;
- whether measures are in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible;
- whether general teacher training incorporates special needs education as an integral component.
- whether and how individualised educational plans are crafted for students with disabilities. whether and how individualised educational plans are crafted for students with disabilities.
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- whether measures are in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible;

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§2 of the Charter as it has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient.

¹www.unicef.org

²<https://wcd.coe.int/ViewDoc.jsp?id=1766837&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>