



# **The right to strike in the public sector Bosnia & Hercegovina**

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## 1. Legal basis

### a) International level (relevant for the right to strike)

Bosnia and Herzegovina has ratified:

- UN instruments<sup>1</sup>: International Covenant on Economic, Social and Cultural Rights (ICESR, Article 8) and International Covenant on Civil and Political Rights (ICCPR, Article 22) on 01.09.1993 (through succession<sup>2</sup>).
- ILO instruments<sup>3</sup>:
  - Convention No. 87 on Freedom of Association and Protection of the Right to Organise (02.06.1993);
  - Convention No. 98 on the Right to Organise and to Collective Bargaining (02.06.1993);
  - Convention No. 151 on Labour Relations (Public Service) (31.03.2015);
  - Convention No. 154 on Collective Bargaining (26.09.2014).

### b) European level

Bosnia and Herzegovina has ratified:

- Article 6§4 (right to collective action) of the Revised European Social Charter of 1996 (ratification: 07.10.2008, entry into force: 01.12.2008);<sup>4</sup>
- Article 11 (freedom of assembly and association) of the European Convention on Human Rights (ratification and entry into force on 12.07.2002).<sup>5</sup>

### c) National level

The Constitution sets out the internal structure of the country as a state consisting of two entities, the Federation of Bosnia and Herzegovina and Republika Srpska, as well as the Brčko District.<sup>6</sup> Competence for labour law rests with the entities, the cantons and Brčko District, whereas the state level regulates labour relations of employees and civil servants working in the institutions of Bosnia and Herzegovina. Labour laws are in place at entities' and Brčko District level.<sup>7</sup>

The right to strike is regulated by the entity-level labour laws and the laws on strikes that are in place at all levels of the government.<sup>8</sup>

Relevant provisions concerning the right to strike are prescribed by the constitutions and laws in Bosnia and Herzegovina, in the two entities – the Federation of Bosnia and Herzegovina and Republika Srpska – and in Brčko District as follows:

- Constitution
  - Bosnia and Herzegovina (hereinafter referred to as “BiH”) – the Constitution<sup>9</sup> in Articles 2 and 3 provides that: “(2) *The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.* (3) *All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental*

*freedoms referred to in paragraph 2 above; these include: (...) i) Freedom of peaceful assembly and freedom of association with others.”*

- Federation of Bosnia and Herzegovina (hereinafter referred to as “**FBiH**”) – the Constitution of FBiH<sup>10</sup> in Chapter II, Article 2 provides that: *“the Federation will provide the implementation of the highest level of the internationally recognised rights and freedoms prescribed by the documents enlisted in the Annexes to the Constitution. In particular: (1) All persons within the territory of the Federation shall enjoy the rights to: (...) (l) freedom of assembly; freedom of association, including forming and belonging to labour unions and the freedom not to associate; and freedom to work (...)”*
- Republika Srpska (hereinafter referred to as “**RS**”) – Article 42 of the Constitution<sup>11</sup> provides that: *“Employees shall have the right to strike under conditions provided by law.”*
- Statute of the Brčko District<sup>12</sup> (hereinafter referred to as “**BD**”), Article 15 (Chapter II) provides that: *“Everyone has the right to freedom of peaceful assembly and association, including the right to form political, social and other organisations. District judges, prosecutors, members of the Judicial Commission and police officers may form professional associations but shall not be members of political parties or endorse political candidates or political party platforms.”*
- Applicable laws
  - **BiH**: the Law on Strikes of Employees in the Institutions of BiH<sup>13</sup> sets out the right to strike, the procedure, the conditions and manner of organising a strike, as well as the rights and obligations of employees and employers during a strike in the **institutions of BiH**.<sup>14</sup>

The Labour Law in the Institutions of BiH<sup>15</sup> regarding the organisation of employees and civil servants in the institutions of BiH, provides for the right of employees to conclude a collective agreement (Article 90) and to organise a representative trade union (Article 92) as well as the right to strike (Article 95).<sup>16</sup>

The Law on Civil Service in the Institutions of BiH guarantees the right of civil servants to establish or join a trade union or a professional association and the right to strike in accordance with the law (Article 15 (1) (h) and (i)).<sup>17</sup>
  - **FBiH**: the Law on Strikes<sup>18</sup> sets out the conditions for organising and conducting a strike. The Labour Law of FBiH<sup>19</sup> (Article 156) provides that a strike may be organised only in accordance with the Law on Strikes, trade unions’ rules on strikes and the collective agreement.
  - **RS**: the Labour Law<sup>20</sup> (Article 258) provides that workers have the right to strike in accordance with a special law<sup>21</sup>, namely the Law on Strikes.<sup>22</sup>
  - **BD**: the Law on Strikes<sup>23</sup> sets out the right to strike of employees in companies and bodies of BD.

- Specific requirements for certain sectors or activities: provided by the Laws on Strikes at the entity level and BD (see Section 4 below).
- The case law is not rich. As indicated above, the right to strike is explicitly recognised by the Constitution of RS and ordinary laws at state level (for employees and civil servants in the institutions of BiH), in the entities and in BD.
- The role of collective agreements. In general, a strike may be organised in accordance with the law, trade unions' rules on strike and collective agreement.<sup>24</sup>

## 2. Who has the right to call a strike?

In **BiH**, every **representative trade union is entitled**, in accordance with the Law on Strikes of Employees in the Institutions of BiH and other regulations in force, **to call a strike** and conduct it with the objectives of protecting and exercising economic and social rights and interests of employees.<sup>25</sup>

According to Article 92 of the Labour Law in the Institutions of BiH, a **representative trade union** is a trade union registered at the level of BiH or two or more trade unions who act together and whose majority members are employees of one employer in the headquarters of the employer. The representative status of a trade union is confirmed by the Council of Ministers following a proposal of the Ministry of Justice of BiH and an appeal may be filed against the refusal or confirmation of the representative status with the Court of BiH (Article 93 of the Labour Law in the Institutions of BiH).<sup>26</sup>

In the **FBiH**, a **trade union is entitled to call a strike** and carry it out with the purpose of protecting and exercising economic and social rights and interests of its members.<sup>27</sup>

In **RS**, the decision **to call a strike or a warning strike** with the employer shall be made by **the competent body of the representative majority trade union or more than half of the employees of that employer**.<sup>28</sup> The decision to call a strike or a warning strike with an employer may be made by the competent body and another trade union, which is supported by more than half of the employees of that employer.<sup>29</sup>

The decision to call a strike or a warning strike in a branch or activity shall be made by the competent body of the representative majority trade union for that branch or activity. The decision to call a general strike or a warning strike shall be made by the competent body of the representative majority trade union of the Republic.<sup>30</sup>

In **BD**, the decision **to call a strike** in an enterprise or part of an enterprise shall be made by the **trade union body** determined by the act of the trade union, or by the **majority of employees of the enterprise**, *ie* part of the enterprise. The decision to call a general strike shall be made by the competent body of the Trade Union of the Brčko District of BiH.<sup>31</sup>

### 3. Definition of strike action

In **BiH**, a strike can be called and organised by a representative trade union with the purpose of protecting and exercising the **economic and social rights and interests** of its members.<sup>32</sup> A strike can be organised only in accordance with the applicable legal regulations, trade unions' rules on strike and collective agreements.<sup>33</sup>

In the **FBiH**, a strike can be called and carried out by a trade union for the purpose of protecting and exercising **economic and social rights and interests** of its members. A strike may be organised only in accordance with the Law on Strikes, trade unions' rules on strikes and the collective agreement.<sup>34</sup>

In **RS**, a strike is defined as an **organised interruption of work**, which may be carried out in an enterprise, institution or at another legal and natural person.<sup>35</sup> A strike may be organised in a branch or activity or as a general strike on the territory of RS.<sup>36</sup> A strike may also be organised as a **warning strike**, which may last for no longer than one hour.<sup>37</sup> If a strike is manifested as a gathering of workers, the place of assembly of the participants in the strike may not be outside the work premises of the employer.<sup>38</sup>

In **BD**, the Law on Strikes provides the right of employees (in companies or public administrative bodies of BD) to exercise their constitutional right to strike, with a view to protect **their economic and social rights**.<sup>39</sup> A strike is defined as an **organised interruption of work** in a company, the bodies of BD and a domestic and foreign legal and natural person who employs workers.<sup>40</sup> A strike may be organised in the enterprise as a whole or in a part of enterprise. A strike may also be organised as a general strike in the territory of BD. A strike may be organised as a **warning strike**, which may last for no longer than one hour.<sup>41</sup> If the strike is manifested as a gathering of workers, the place of gathering cannot be outside the premises of the company in which the strike is taking place, or another closed premises.<sup>42</sup>

There are no explicit legal provisions on other types of collective action such as solidarity strikes, sit-ins, go-slow actions, rotating strikes, work-to-rule, picketing, blockades, etc at state level, in the two entities or BD.

#### 4. Who can participate in strike action?

##### Limitations on the right to strike and essential services/activities

It is of relevance that the “*essential services in the strict sense of the term*” have been defined by the ILO as those services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population.”<sup>43</sup>

##### BiH

In BiH, employees freely decide on their participation in a strike.<sup>44</sup> Article 96 of the Labour Law in Institutions of BiH stipulates that an employee cannot participate in a strike if: (i) an agreement has been reached with the respective employee to resolve the dispute through arbitration; or (ii) the employee is employed in basic or maintenance services.<sup>45</sup> The employer determines his basic and maintenance services after consulting with representative trade unions.<sup>46</sup>

Article 26 of the Law on Service in the Armed Forces of BiH provides that the professional military personnel are prohibited from organising in trade unions or political parties.<sup>47</sup>

##### FBiH

According to the Law on Strikes of FBiH, an employee is free to decide on her/his participation in a strike.<sup>48</sup> An employee may in no manner be forced to participate in a strike.<sup>49</sup>

At the proposal of the employer, the union and the employer **agree on jobs that cannot be interrupted during a strike**.<sup>50</sup> The agreement referred to above contains provisions on jobs and the number of employees who are obliged to work during a strike or exclusion from work in order to ensure a **minimum level of service/production** (production maintenance jobs), the necessary living and working conditions, work of other legal entities, as well as with the purpose of protecting property and preventing risks to life and personal safety or health of the population (health, electricity, water management, post and telecommunication services, international traffic).<sup>51</sup>

Regarding the **procedural requirements**, the Law on Strikes stipulates that, if the trade union and the employer do not reach an agreement on minimum services within five days, the resolution of the dispute shall be entrusted to arbitration. The arbitral tribunal consists of one representative for each the trade union and the employer, and an independent president appointed by agreement between the trade union and the employer. If the trade union and the employer cannot agree on the appointment of the president and these matters are not established by the collective agreement or the agreement of the trade union and the employer, the president shall be appointed by the competent municipal court within five days. The arbitral tribunal shall render its decision within five days of the initiation of the proceedings. No later than the day of the announcement of the strike, the trade union is obliged to publish the agreement on jobs on which work cannot be interrupted during the strike. The activities that cannot be interrupted during the strike may also be set out by a collective agreement.<sup>52</sup>

Any strike commenced without prior agreement on the jobs that cannot be interrupted would be inadmissible.<sup>53</sup> Under the Law on Strikes of FBiH, a fine ranging from 1000-5000 KM shall be imposed on the employer if the latter prevents employees from performing work that cannot be interrupted during a strike (as set forth by Article 5 (2) of the Law on Strikes).<sup>54</sup>

According to the Law on Strikes of the FBiH, strikes in the Army of the FBiH, the Ministries of Interior, administrative bodies and administrative services in the FBiH shall be regulated by a special law.<sup>55</sup>

The right to strike of civil servants in FBiH is guaranteed by Article 28 (1) of the Law on Civil Service of FBiH and for employees it is guaranteed by Article 5 of the Law on Employees in the Civil Service of FBiH.<sup>56</sup> These articles provide only that civil servants and employees have the right to strike and this right may be exercised in accordance with the law.<sup>57</sup> It was reported<sup>58</sup> that, however, such a law for civil servants and employees has not been enacted.<sup>59</sup>

The Trade Union of Employees of the Federation Ministry of the Interior has the right to call its members and employees to go on strike with a view to protecting economic and social interests of its members. A strike should be organised and carried out in accordance with the Law on Strikes and trade union strike rules. Organising a strike and participating in a strike are in accordance with the Law and Collective Agreement and do not breach official duty.<sup>60</sup>

## RS

The Law on Strikes provides that workers are free to decide on their participation in a strike.<sup>61</sup> Workers in sectors or specific activities of general interest can exercise the right to strike under prescribed conditions.<sup>62</sup> In **activities of general interest or in activities whose interruption, due to the nature of work, could endanger human life and health or cause large-scale damage**, the right to strike may be exercised if the special requirements established by the Law on Strikes are fulfilled.<sup>63</sup>

Such activities are defined as activities performed in the following fields<sup>64</sup>:

- electricity industry;
- water supply;
- railway transport;
- air traffic and air traffic control;
- public radio and television services;
- postal services;
- communal activities/utilities;
- fire protection;
- health and veterinary care;
- social care for children and social protection.

**Activities of general interest** are also considered the **activities related to the functioning of public administration and security of RS** in accordance with the law, as well as activities necessary for the fulfilment of obligations arising from international agreements in the activities listed above.<sup>65</sup> The Law on Strikes stipulates that if the strike in the activities referred to above is organised in one organisational part of the employer, the obligation to fulfil the special requirements regarding the exercise of the right to strike of workers applies only to that organisational part.<sup>66</sup>

Workers performing activities in the activities referred to above (as defined in Article 11 of the Law on Strikes) may start a strike if a **minimum level of service/production** is ensured that provides for the safety of people and property or is an irreplaceable living and working condition of citizens.<sup>67</sup>



With regard to **the procedure for the establishment of a minimum level of service/production**, the Law on Strikes provides that the level and the manner of its provision shall be determined by an act of the founder or director of the employer, depending on the nature of the activity, the degree endangerment of human life and health and other circumstances significant for meeting the needs of citizens, employers and other entities.<sup>68</sup> When determining the minimum level of service/production, the founder or director of the employer is obliged to seek the opinion of the trade union of or the works council, or the authorised representative of the workers.<sup>69</sup> Workers who are obliged to work during a strike in order to ensure a minimum level of service/production shall be determined by the director and the strike committee, no later than five days before the beginning of the strike.<sup>70</sup>

In order to ensure this minimum level, the employer may also hire members of the strike committee up to a maximum of 1/3 of the total number of board members, except for the president of the strike committee.<sup>71</sup>

In the activities of general interest referred to above (as defined in Article 11 of the Law on Strikes), a strike is announced to the employer, no later than **ten days before the beginning of the strike**, by submitting a written decision to call the strike.<sup>72</sup>

In case of disputes related to the activities of general interest referred to above, the parties to the dispute shall, no later than five days from the day of the written decision calling the strike, try to **resolve the dispute amicably or bring the dispute before a special body for conciliation**, which is mutually established by the parties to the dispute.<sup>73</sup> If the dispute is not resolved, the parties to the dispute shall include before the conciliation body representatives of the employer, founder, the competent authority of RS, competent local authority and other experts and representatives of workers and employers or bring the dispute before a **special mediation body**.<sup>74</sup> In the event that the dispute is not resolved by the date set for the beginning of the strike, the parties to the dispute may submit the dispute to **arbitration**.<sup>75</sup>

Under Article 64 of the Law on Police and Home Affairs, **police officers** have the right to strike, except in a state of war, a state of emergency, an emergency situation or a state of increased risk or a large-scale public danger, violent threat to democratic and constitutional order of RS and BiH, natural disaster or imminent danger of disasters or accidents jeopardising the safety of people and property in the territory of RS.<sup>76</sup>

## **BD**

Employees are free to decide on their participation in a strike.<sup>77</sup> The Law on Strikes of BD does not provide for specific requirements in relation to strikes in essential services or activities of general/vital interest.

## 5. Procedural requirements

### BiH

The Labour Law in the Institutions of BiH provides that every representative trade union is entitled, in accordance with the Law on Strikes and other regulations in force, to call a strike and carry it out with the objectives of protecting and exercising economic and social rights and interests of employees, **provided that**:

- the issue in question has been addressed to the employer;
- a period of 15 days since the date the employer was addressed the issue has expired;
- there has been no resolution of the issue to that day;
- the employer has been given a written notice concerning the beginning of the strike, no later than 48 hours in advance.<sup>78</sup>

According to the Law on Strikes in the Institutions of BiH, after the strike is announced in accordance with the provisions of this Law, the organiser of the strike and the employer should try **to resolve the dispute amicably**.<sup>79</sup>

### FBiH

**Prior conciliation proceedings:** a strike may not begin before completion of the conciliation procedure provided for by the Labour Law or before completion of another procedure for peaceful resolution of the dispute agreed upon by the parties.<sup>80</sup> The conciliation procedure referred to above may not last longer than five days from the day of submitting the request to the peace council. If the parties entrust the resolution of the dispute to arbitration provided for in the Labour Law, the decision of the arbitral tribunal shall be binding.<sup>81</sup> A fine ranging from 500-2500 KM shall be imposed on the trade union that has organised the strike, if the strike begins before the conciliation procedure is carried out, respectively before the completion of another procedure of peaceful resolution of the dispute agreed upon by the parties.<sup>82</sup>

**Notification:** the strike must be announced by the organiser of the strike (trade union) to the employer in writing, no later than ten days before the beginning of the strike.<sup>83</sup> The written notice announcing the strike shall state the reasons for the strike, the place and the date and time of the beginning of the strike. At the same time, the organiser of the strike is obliged to inform the Ministry of the Interior about the time and place of the strike.<sup>84</sup> If the trade union does not announce a strike to the employer or fails to announce it ten days before the beginning of the strike, the employer may, in accordance with Article 10 of the Law on Strikes, request the competent court to ban the strike which is contrary to the Law.<sup>85</sup> A fine ranging from 500-2500 KM shall be imposed on the trade union that has organised the strike if the above mentioned requirements regarding the notification of the strike (set forth by Article 4 of the Law on Strikes) are not observed.<sup>86</sup>

In activities that cannot be interrupted during the strike<sup>87</sup>, no later than the day of the announcement of the strike, the trade union is obliged to publish the agreement on jobs that cannot be interrupted (see also Section 4 above).<sup>88</sup> A fine ranging from 500-2500 KM shall be imposed on the trade union which organises the strike for failure to publish the above mentioned agreement no later than the the day of the announcement of the strike.<sup>89</sup>

### RS

**Strike balloting:** the decision to call a strike or a warning strike with the employer shall be made by the competent body of the representative majority trade union or more than half of the

employees of that employer.<sup>90</sup> The decision to call a strike or a warning strike with an employer may be made by the competent body and another trade union, which is supported by more than half of the employees of that employer. The decision to call a strike or a warning strike in a branch or activity shall be made by the competent body of the representative majority trade union for that branch or activity. The decision to enter a general strike or a warning strike shall be made by the competent body of the representative majority trade union of RS.<sup>91</sup>

The **decision to call a strike** shall contain: (a) the requirements of workers, (b) time of the beginning of the strike, (c) place of the strike, (d) the manner in which the strike is conducted and (e) the composition of the strike committee which represents the interests of the workers and conducts the strike on their behalf.<sup>92</sup> If a strike is manifested as a gathering of workers, the place of assembly of the participants in the strike may not be outside the work premises of the employer.<sup>93</sup>

**Notification:** the strike committee is obliged to announce the strike to the employer, by submitting a written decision on calling the strike, **no later than seven days before the day set for the beginning of the strike, or 24 hours before the beginning of the warning strike.**<sup>94</sup>

In activities of general interest (referred to in Article 11 of the Law on Strikes), a strike is announced to the employer, **no later than ten days before the beginning of the strike**, by submitting a written decision on calling the strike.<sup>95</sup>

The strike committee and the workers participating in the strike are obliged to organise and lead the strike in a way that does not endanger the safety and health of people and property, prevents immediate material damage and enables the resuming of work after the strike ends. The strike committee and the workers participating in the strike must not prevent the employer from using the funds and disposing of the funds in order to perform her/his activity.<sup>96</sup>

The strike committee and workers participating in the strike may not prevent employees who do not participate in the strike from working.<sup>97</sup>

The employer cannot prevent workers from organising and participating in a strike. The employer may not use threats and coercion to end the strike and cannot provide higher wages or other favourable working conditions for workers who do not participate in the strike.<sup>98</sup>

The employer is obliged to provide the strike committee and the workers participating in the strike with the use of appropriate premises and the necessary administrative-technical and communication services.<sup>99</sup>

The strike committee and the employer, ie the negotiating body determined by the employer, are obliged to try to resolve the dispute in an amicable way from the day of delivery of the written decision on calling the strike and during the strike or may bring the dispute before a special conciliation body that the parties establish by agreement.<sup>100</sup> If the dispute is not resolved within eight days from the beginning of the strike, the parties may bring the dispute before a special mediation body, which is formed by the parties to the dispute in the conditions set forth by Article 7 (2) of the Law on Strikes.<sup>101</sup> In the event that the dispute is not resolved within 30 days from the beginning of the strike, the parties to the dispute may bring the dispute before arbitration.<sup>102</sup>

The arbitral tribunal set up in accordance with Article 8 of the Law on Strikes shall render a decision on the disputed issues by a two-thirds majority, which must be motivated and rendered within 15 days from the day of the formation of the arbitration. The decision of the arbitral tribunal shall be final and no appeal or litigation may be lodged against it.<sup>103</sup>

The labour legislation of RS does not provide for collective action by employers.<sup>104</sup>

## **BD**

The decision on calling the strike shall contain<sup>105</sup>: (a) the requests of employees and the body to which the requests are addressed; (b) the time of beginning of the strike; (c) the composition of the strike committee; (d) the place of gathering of employees if the strike is manifested as a gathering, provided that the place of gathering cannot be outside the premises of the company in which the strike is taking place, or another closed premises<sup>106</sup>.

**Notification:** a strike shall be announced by submitting the decision to call the strike to the employer **no later than five days before the day of the beginning** of the strike, or **with 24 hours in advance in case of a warning strike**.<sup>107</sup> The decision on calling a general strike shall be submitted to the Mayor and the Chamber of Commerce of BD.<sup>108</sup>

Before taking a decision on calling a general strike, the procedure of amicable settlement of the dispute (conciliation and mediation) must be exhausted, provided that the notification procedure is mandatory before initiating the strike. Exceptionally, a conciliation and mediation procedure is not necessary if there is a reasonable belief that it is not reasonable to expect that such a procedure will give the expected effect or that, due to its slowness or complexity, it would become practically impossible or lose its effectiveness.<sup>109</sup>

The body to which the strike was announced is obliged to contact the strike committee no later than 24 hours from the day of receiving the decision, in order to resolve the dispute amicably. If the dispute is not resolved, the parties to the dispute are obliged to continue the negotiations during the strike, without interruption, until the final settlement of all disputed issues.<sup>110</sup>

The strike committee is obliged to organise and lead the strike in such a way that the strike does not endanger the safety of people and property and public safety.<sup>111</sup>

The strike committee and employees participating in the strike may not prevent employees who do not participate in the strike from working, and they cannot prevent the employer from disposing of the funds for performing its activity.<sup>112</sup>

## **6. Legal consequences of participating in strikes**

### **Participation in a lawful strike**

#### **BiH**

By participating in a strike which is organised in accordance with the law, an employee does not breach official duty and she/he cannot be placed in an unfavourable position as compared to other employees for having organised or participated in a strike. An employee may not be in any way forced to take part in a strike.<sup>113</sup>

#### **FBiH**

Organising and participating in a strike carried out in accordance with the law, the collective agreement and trade unions' rules on strike do not constitute a violation of the employment contract.<sup>114</sup>

An employee may not be placed at a disadvantage compared to other employees for having organised and participated in a strike which was organised in accordance with the Law on Strikes, trade unions' rules on strike and collective agreement.<sup>115</sup>

The salary of an employee who has participated in a strike may be reduced in proportion with the time spent striking, in accordance with the collective agreement and labour regulations.<sup>116</sup>

During a strike organised under the conditions and in the manner determined by the Law on Strikes, the collective agreement and trade unions' rules on strike, the employer may not employ new employees to replace the participants in the strike.<sup>117</sup> A fine ranging from 1000-5000 KM shall be imposed on the employer in case new employees are employed to replace workers on strike, contrary to the above.<sup>118</sup>

An employer may exclude employees who do not participate in a strike from the work process only in response to a strike that has already begun. The exclusion of employees from the work process cannot begin before the expiration of eight days from the day the strike has started. The number of employees excluded from the work process may not exceed half of the number of employees on strike. Exclusion of employees from the work process may last until the end of the strike. The employer is obliged to pay social security contributions for employees excluded from the work process, determined by law, on the basis of the lowest salary.<sup>119</sup> A fine ranging from 1000-5000 KM shall be imposed on the employer for failure to comply with the above mentioned requirements when excluding workers from the work process (as set forth by Article 7 of the Law on Strikes).<sup>120</sup>

The trade union may request the competent court to prohibit the exclusion of employees from the work process carried out contrary to the provisions of the Law on Strikes. The trade union may ask the employer for compensation for the damage suffered by the trade union or the employees due to the exclusion from the work process which was not carried out in accordance with the provisions of the Law on Strikes.<sup>121</sup> Such cases will be decided by the competent municipal court at the seat of the employer within five days.<sup>122</sup>

#### **RS**

Organising a strike or participating in a strike under the conditions set forth by the Law on Strikes does not constitute a violation of work discipline, cannot be a reason for initiating proceedings to determine disciplinary and material responsibility of workers, cannot constitute

grounds for dismissal of workers and cannot result in the termination of the employment contract.<sup>123</sup>

A worker who participates in a strike is not entitled to compensation of salary during absence from work due to participation in a strike, unless the employer and the strike committee agree otherwise.<sup>124</sup> By exception, a worker who participates in a strike has the right to compensation of wages during the participation in the strike, which is organised exclusively due to unpaid salaries and which does not last longer than 12 days.<sup>125</sup> A worker who is obliged to work during the strike in order to ensure the minimum work process in activities of general interest is entitled to a salary that must be proportional to the time spent at work.<sup>126</sup>

The worker who participates in a lawful strike has the right to pension and disability insurance, health insurance, as well as the right to unemployment insurance in accordance with the regulations governing these areas.<sup>127</sup>

During a strike organised under the conditions set out by the Law on Strikes, the employer may not employ new persons to replace the participants in the strike, unless the following are at risk: (a) security of persons and property in accordance with Article 9 (1) of the Law on Strikes; (b) maintaining a minimum work process that ensures the safety of property and persons and (c) fulfillment of international obligations in accordance with Article 11 of the Law on Strikes.<sup>128</sup>

A fine ranging from 1000-5000 KM shall be imposed on an employer if they initiate a procedure for determining disciplinary and material responsibility, temporarily remove the employee from work or terminate the employment contract of the employee on grounds of organising or participating in a strike carried out in accordance with the law (Article 16, paragraph 1)<sup>129</sup>; and when during a strike organised under the conditions determined by this Law, the employer employs new workers who would replace the participants in the strike, in other situations than the ones expressly established by the Law on Strikes (as set forth in Article 17 of the Law on Strikes – see above)<sup>130</sup>.

## **BD**

Organising and participating in a strike carried out in accordance with the provisions of the law and the collective agreement does not constitute a violation of the employment contract.<sup>131</sup> Under the Law on Strikes, the employee may not bear any consequences for having organised and participated in a strike that was conducted in accordance with the provisions of this Law and the collective agreement.<sup>132</sup>

During a strike organised under the conditions and in the manner determined by the Law on Strikes and the collective agreement, the employer may not employ new employees to replace the participants in the strike.<sup>133</sup>

The salary of an employee who has participated in a strike may be reduced in proportion to the time of participation in the strike, in accordance with the collective agreement and by-laws.<sup>134</sup>

## **Participation in unlawful strike**

### **BiH**

If an employee participates in a strike although an agreement has been signed with him/her to resolve the issue through arbitration or that he/she is employed in core services or maintenance services, or, deliberately or through negligence, causes damage to the employer, the employee

will be found to be in severe breach of official duty and, based on that, his/her employment contract may be terminated, without observing the notice period as prescribed by the Labour Law and the employee shall be obliged to pay compensation to the employer for the total amount of damage.<sup>135</sup>

### **FBiH**

If an employee organises or participates in a strike which contravenes the Law on Strikes, trade unions' rules on strikes and the collective agreement (acts contrary to Article 156 (2) of the Labour Law) or if during a strike he/she deliberately causes damage to the employer, the employee may be dismissed in accordance with the law.<sup>136</sup>

The employer may submit a request to the competent court to prohibit the organisation and conduct of a strike which is contrary to the provisions of the Law on Strikes, the collective agreement and trade unions' rules on the strike. The employer may ask the trade union to pay compensation for the damage suffered due to the strike which was not organised and carried out in accordance with the provisions of the Law on Strikes of FBiH.<sup>137</sup> Such cases will be decided by the competent municipal court at the seat of the employer within five days.<sup>138</sup>

### **RS**

The organisers of a strike and participants in a strike which is not organised in accordance with the provisions of the Law on Strikes shall not have the right to protection against disciplinary or material responsibility, dismissal or termination of the employment relationship (see Article 16 (1) of the Law on Strikes), compensation of wages during participation in a strike which is organised exclusively due to unpaid salaries and which does not last longer than 12 days (see Article 16 (3) of the Law on Strikes) and the right to pension and disability insurance, health insurance or unemployment insurance (see Article 16 (5) of the Law on Strikes).<sup>139</sup>

A situation when a member of a strike committee or a participant in a strike, who organises and leads a strike in a way that endangers the safety of persons, human health and property, or prevents workers who do not participate in the strike from working, or prevents the employer from using the funds and disposing of the funds for performing its activity, constitutes a breach of duty for which a measure of termination of the employment contract may be imposed.<sup>140</sup>

In activities of general interest (referred to in Article 11 of Law on Strikes), the refusal by a worker to execute an employer's order issued to ensure the minimum work process constitutes a serious breach of duty for which the measure of termination of the employment contract may be imposed.<sup>141</sup>

## 7. Case law of international/European bodies

### International Labour Organisation

- **The Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>142</sup>**

Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020) <sup>143</sup>

#### **Act on Strikes in the Institutions of Bosnia and Herzegovina**

In its previous comment, having noted the adoption of the Act on Strikes in the Institutions of Bosnia and Herzegovina, the Committee requested the Government to provide information on the exact scope of its application and the nature of the public servants concerned. *Observing that the Government does not provide any information in this regard and that it remains unclear as to which categories of workers the Act on Strikes applies, the Committee requests the Government once again to provide information on **the exact scope of application of the Act on Strikes in the Institutions of Bosnia and Herzegovina and the categories of public servants concerned.***

#### **Determination of minimum services – Institutions of Bosnia and Herzegovina**

In its previous comment, the Committee also requested the Government to provide information on the application of sections 15 and 26 of the Act on Strikes in the Institutions of Bosnia and Herzegovina in practice, in particular, on the manner in which trade unions can participate in the determination of minimum services and on the manner of resolution of any disputes. *In the absence of any new information in this regard and recalling that **trade unions should be able to participate in defining the minimum services along with the employers and the public authorities and that any disagreement among the parties should be resolved by a joint or independent body,** the Committee requests the Government once again to provide clarification in this respect.*

#### **Right to strike in the civil service – Federation of Bosnia and Herzegovina**

In its previous comments, the Committee noted the adoption of the Act on Civil Service in the Federation of Bosnia and Herzegovina, 2003 which allows **civil servants to go on strike in accordance with law, but does not govern issues of organising and leading strikes**, and observed the Government's indication that separate laws governing the issue of strikes in administration bodies and services would be adopted. The Committee has therefore been requesting the Government to provide information on the regulation of the right to strike (in collective agreement or legislation) in the civil service in the Federation of Bosnia and Herzegovina. The Government indicates that a special law regulating the issue of strikes in the civil service has not yet been adopted but that the **matter of strikes and the conditions of work in trade unions of officers in the administrative and judicial authorities are regulated by the 2018 collective agreement in force.** *Taking due note of this information, the Committee requests the Government to continue to provide information on any legislative provisions adopted in this respect and to transmit a copy of the 2018 collective agreement.*

#### **Act on Strikes – Republika Srpska – Determination of minimum services**

In its previous comment, having noted that under the Act on Strikes in the Republika Srpska (the RS Act on Strikes) the determination of minimum services continued to be a prerogative of the employer, **the Committee requested the Government once again to take the necessary measures to amend section 12, so as to allow trade unions along with the employers and the public authorities, to participate in defining the minimum services and, in case of disagreement among the parties, to provide for a joint or independent body to define the minimum services.** The Committee requested the Government to provide information on the instances in which the determination of the minimum services was the subject of collective bargaining. The Committee welcomes the Government's indication that **the draft Act on**



**Amendments to the RS Act on Strikes is currently being developed**, in consultation with the social partners, that the Committee's proposals will be reviewed and that the Government will define the optimum legal solution in cooperation with the social partners. *The Committee trusts that its previous comments in this regard will be taken into account in the development of the Act amending the RS Act on Strikes and requests the Government to provide information on any progress made in this regard and a copy of the Act, once amended.*

#### **Act on Strikes – Republika Srpska – Strike vote**

The Committee further requested the Government to provide information on the application in practice of section 4(1) and (2) of the **RS Act on Strikes**, which sets the requirements for taking a decision to begin a strike action or a warning strike (the decision must be taken by the authorized body of the relevant majority trade union or by more than 50 per cent of the workers of that employer or by another trade union which has the support of more than 50 per cent of the workers of the employer). The Government indicates that the term “majority” refers to 50 per cent plus 1 employee, whereby workers freely decide on whether they participate or not in a strike irrespective of their vote. While taking due note of this indication, **the Committee recalls that if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (in other words, workers participating in the respective meeting as opposed to all workers of the employer) and that the required quorum and majority are fixed at a reasonable level.** While observing that a strike can also be declared by the authorized body of the majority union, the **Committee considers that for a strike to be declared by workers, the requirement of an absolute majority of all workers of the employer, as currently stated in the law, may be excessive** (see 2012 General Survey on the fundamental Conventions, paragraph 147). *Therefore, the Committee requests the Government to provide information on the application in practice of this provision and requests it to take the necessary measures, in the context of the current revision of the RS Act on Strikes, to revise the voting requirements in line with the above, for example by setting a reasonable quorum, so as not to unduly hinder the workers’ exercise of the right to strike.*

#### **Right to assembly in the context of a strike – Republika Srpska and the Brčko District**

In its previous comment, the Committee requested the Government to take the necessary measures to **amend section 5(2) of the RS Act on Strikes and section 4(1)(d) of the Act on Strikes in the Brčko District (the BD Act on Strikes), which do not allow the gathering of workers in case of a strike outside the company in which the strike takes place, so as not to restrict freedom of assembly or impede the lawful exercise thereof.** The Committee notes the Government's indication, with regard to Republika Srpska, that any assembly of workers outside of the workplace is considered as a public gathering, assembly or protest, regulated by the Act on Public Assembly. In accordance with this law, there is no limitation for the organizer of a strike to organize a public gathering outside the work area of the employer. The Government also states in general terms that the BD Labour Act provides that any lawful trade union activity may not be prohibited and assures that in the revision of the BD Labour Act section 4(1)(d) will be amended in line with the Committee's comments to allow the full exercise of the right to strike (information contained in the Government's report on the Collective Bargaining Convention, 1981 (No. 154)). *The Committee therefore requests the Government to clarify the rationale behind section 5(2) of the RS Act on Strikes and to provide information on its application in practice, in particular to whether workers can freely gather outside the workplace of the employer in the context of a strike. The Committee trusts that, as indicated by the Government, section 4(1)(d) of the BD Act on Strikes will be amended not to unduly hinder the exercise of the right to strike.*

### **European Social Charter**

- **Conclusions on Article 6§4 of the European Committee of Social Rights**

*Conclusions 2018 – Bosnia and Herzegovina - Article 6§4<sup>144</sup>*

With regard to the **definition and permitted objectives of collective action**, the Committee previously examined the situation in Bosnia Herzegovina (BiH), Federation of Bosnia and Herzegovina (FBiH), Republika Srpska and Brčko District (BD), and found it to be in conformity with the Charter (Conclusions 2014<sup>145</sup>).

With regard to **entitlement to call a collective action**, the Committee recalls that entitlement to call a strike is reserved to a trade union in FBiH, and to the most representative trade unions in BiH. No information was provided in respect of RS or BD (Conclusions 2014). It requests that this information be provided in the next report.

The Committee recalls that the right to call a strike may be reserved to trade unions exclusively but only under the condition that forming a trade union is not subject to excessive formalities (Conclusions 2004, Sweden). On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4 (Conclusions XV-1 (2000), France). The Committee recalls that according to Article 92 of the Labour Law in BiH, a representative trade union is a trade union registered at the level of BiH or two or more trade unions who act together and whose majority members are employees of one employer in the headquarters of the employer.

Given the specificity of the situation in BiH, in particular the fact that a representative trade union is one which is registered in BiH, the Committee reserves its position on this point, pending information on the registration of trade unions in BiH (see Conclusion 2018 on Article 5<sup>146</sup>) and pending further information on strike in practice.

With regard to **specific restrictions to the right to strike and procedural requirements**, the Committee noted that Article 96 of the Law on Strikes of the BiH stipulates that an employee cannot participate in a strike, inter alia, when the employee is employed in basic or maintenance services. The employer determines his basic and maintenance services after consulting with representative trade unions.

Likewise in FBiH the Law on Strikes (Article 5) provides that the trade union and the employer have to reach an agreement on which activities cannot be interrupted during the strike.

In RS, the Law on Strikes (Article 11) provides that in the activities of general interest or activities where the stoppage of work could endanger human life or health or inflict large-scale damage due to the nature of work, a minimum service must be guaranteed. The Law lists the following activities: electricity and water supply; rail transport; air traffic and air traffic control; public radio and television services; postal services; utilities; fire protection; health and veterinary care and (child) social care. The report also indicates that activities of general interest under this Law are the activities related to the functioning of public administration and security of the RS in accordance with the law, as well as activities necessary for the fulfilment of obligations arising from international agreements in the services listed above.

The Committee finds that **the range of sectors where strike action is restricted and a minimum service required is extensive and considers there is no information enabling the Committee to conclude that all these services or sectors may be regarded as “essential” in the strictest sense of the term.** In accordance with Article G of the Charter, essential services are activities that are necessary in a democratic society in order to protect the rights and freedoms of others or to protect the public interest, national security, public health, or morals. **The Committee therefore concludes that the situation is not in conformity with Article 6§4 on the grounds that the sectors in which the right to strike may be restricted is overly extensive and the restrictions do not satisfy the conditions laid down in Article G of the Charter.**

Since no information is provided in respect of BD, the Committee repeats its request for information on the restrictions on the right to strike and minimum service requirements.

The Committee asks for information on any restrictions on the right of civil servants to strike in BiH, FBiH, RS and BD.

The Committee notes that in RS police officers have the right to strike however as regards BiH, FBiH and BD refers to its general question on the right of members of the police to strike.

Legislation provides for a cooling off period of 15 days in BiH, 10 days in FBiH, the Committee seeks information as to the situation in RS and BD. It also seeks information on other procedural requirements such as ballot requirements and quorum.

In respect of consequences of a strike, the Committee previously found the situation to be in conformity in this respect in BiH, FBiH, RS and BD.

### **Conclusion of the European Committee of Social Rights**

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 6§4 of the Charter on the grounds that the sectors in which the right to strike may be restricted are overly extensive and the restrictions do not satisfy the conditions laid down in Article G of the Charter.

## 8. Recent developments

The right to strike is regulated by the labour laws and laws on strike action that are in place in both entities and in Brčko District, while the state-level Law on Strikes is applicable only to employees in the institutions of Bosnia and Herzegovina.<sup>147</sup>

It has been reported<sup>148</sup> that strikes have been organised in both the private and public sectors, and have most frequently occurred in the metalworking, wood-processing and construction industries, followed by trade and catering. Reasons for collective actions are numerous; most frequently they are triggered by violation of labour legislation and collective agreements, failure to pay wages or lower payment of wages and other remunerations, failure to pay contributions for pension, disability and health insurance. Industrial conflict has also occurred in the context of closing or liquidation of enterprises in failed privatisations, which have left workers without jobs, pay and paid contributions.<sup>149</sup>

Other reports have signalled direct interference in the internal matters of trade unions,<sup>150</sup> dismissals of trade union representatives, intimidation or pressure to leave the trade unions.<sup>151</sup> In RS, there are reports of strikes in public administration, including in education, the judiciary, administration and internal affairs or a strike organised in the context of the adoption of the Labour Law in December in 2015.<sup>152</sup> In BD, reports show that from 2012 until the end of 2016, the Labour Inspectorate performed one control of application of the Law on Strikes and there were no strikes in the BD Police during the period 2013-2016.<sup>153</sup>

It was commented that employee involvement in improving working conditions and in enterprise decisions that affect their working conditions is limited. Workers assert their rights most often through strikes, which are very frequent.<sup>154</sup> Employees have major complaints over the slowness of courts to protect their rights, as well as over the poor organisation and inefficiency in the work of inspection bodies. The protection of employees' rights at work is also weakened by the existence of four legal systems in Bosnia and Herzegovina (the state, the two entities, and the Brčko District).<sup>155</sup>

According to the EU Commission Report 2020, implementation of the labour laws remains inadequate, especially when it comes to social dialogue, protection for workers and the enforcement of labour inspection. The outbreak of COVID-19 exposed some deficiencies in the legislation related to crisis management, such as lack of detailed provisions regulating work from home, paid and unpaid leave due to force majeure, temporary reduction of working hours as well as limited options for adequate response in order to protect jobs and provide socio-economic security for employees.<sup>156</sup>

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59 See also Direct Request (CEACR) adopted 2019, published 109th ILC session (2020), Convention on Freedom of Association and Protection of the Right to Organise (No. 87) available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNT\\_RY\\_NAME,P11110\\_COMMENT\\_YEAR:4023204,102704,Bosnia%20and%20Herzegovina,2019](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNT_RY_NAME,P11110_COMMENT_YEAR:4023204,102704,Bosnia%20and%20Herzegovina,2019)

60 See 4th National Report on the implementation of the European Social Charter submitted by the Government of BiH, 25.05.2014, p. 84, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048a133>

61 Article 2 (1) of the Law on Strikes of RS

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63 Article 11 (1) of the Law on Strikes of RS

64 Article 11 (2) of the Law on Strikes of RS

65 Article 11 (3) of the Law on Strikes of RS

66 Article 11 (4) of the Law on Strikes of RS

67 Article 12 (1) of the Law on Strikes of RS

68 Article 12 (2) of the Law on Strikes of RS

69 Article 12 (3) of the Law on Strikes of RS

70 Article 12 (4) of the Law on Strikes of RS

71 Article 12 (5) of the Law on Strikes of RS

72 Article 13 of the Law on Strikes of RS

73 Article 14 (1) of the Law on Strikes of RS

74 Article 14 (2) of the Law on Strikes of RS

75 Article 14 (3) of the Law on Strikes of RS

76 See 8th National Report on the implementation of the European Social Charter submitted by the Government of BiH, 11.12.2017, available at: <https://rm.coe.int/8th-report-from-bosnia-and-herzegovina/1680776366>

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79 Articles 9 and 10 of the Law on Strikes in the Institutions of Bosnia and Herzegovina, see 8th National Report on the implementation of the European Social Charter submitted by the Government of BiH, 11.12.2017, information provided under Article 6§3 of the ESC available at: <https://rm.coe.int/8th-report-from-bosnia-and-herzegovina/1680776366>

80 Article 156 (3) of the Labour Law of the FBiH and Article 6 (1) of the Law on Strikes of the FBiH

81 Article 6 (2) of the Law on Strikes of the FBiH

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83 Article 4 (1) of the Law on Strikes of the FBiH; see 4th National Report on the implementation of the European Social Charter submitted by the Government of BiH, 25.05.2014, p. 83, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048a133>  
84 Article 4 of the Law on Strikes of the FBiH  
85 Article 10 of the Law on Strikes of the FBiH, see 4th National Report on the implementation of the European Social Charter submitted by the Government of BiH, 25.05.2014, p. 83, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048a133>  
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87 As set forth by Article 5 of the Law on Strikes of the FBiH  
88 Article 5 of the Law on Strikes of the FBiH  
89 Article 13 (2) of the Law on Strikes of the FBiH  
90 Article 4 (1) of the Law on Strikes of RS; see also Direct Request (CEACR) adopted 2019, published 109th ILC session (2020), Convention on Freedom of Association and Protection of the Right to Organise (No. 87) available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNT\\_RY\\_NAME,P11110\\_COMMENT\\_YEAR:4023204,102704,Bosnia%20and%20Herzegovina,2019](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNT_RY_NAME,P11110_COMMENT_YEAR:4023204,102704,Bosnia%20and%20Herzegovina,2019)  
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