PN-ACE-935
101337

ZAŠTITA LJUDSKIH PRAVA I NEDISKRIMINACIJA

U OBLASTI RADNIH ODNOSA

U BOSNI I HERCEGOVINI

PRIRUČNIK

MEĐUNARODNA PRAVNA GRUPA ZA
LJUDSKA PRAVA

HUMAN RIGHTS PROTECTIONS AND NON-DISCRIMINATION IN LABOR RELATIONS IN BOSNIA & HERZEGOVINA

A Working Manual

Prepared by the
International Human Rights Law Group, BiH Project

Staff, BiH Project
Deena Hurwitz, Director, Sevima Sali-Terzic, Legal Advisor,
Diana Sehic, Senior Staff Attorney, Fedra Idžakovic, Staff Atorney and
Žana Jamakovic, Financial Assistant

Marsala Tita, 8/II Sarajevo BiH
tel/fax (00387-71) 205-319 email ihrlgbih@bih net ba

Specific funding and support for the preparation, translation and printing of this manual has been generously provided by

U S AID/Mission in BIH, ENI, U S Agency for International Development, under the terms of Grant No 168-0020-G-SS-8106-00

and the

Royal Netherlands Embassy in Sarajevo, BiH

Other sources of funding and support for the work of the International Human Rights Law Group, BiH Project include

The John D & Catherine T MacArthur Foundation
Charles Stewart Mott Foundation
Open Society Institute

The opinions expressed herein are those of the IHRLG and do not necessarily reflect the views of our funders

Copyright © March 1999 by the International Human Rights Law Group All rights reserved Parts of this working manual may be cited or used provided the Law Group is duly acknowledged No part of this manual may be photocopied or otherwise reproduced without the prior permission of the International Human Rights Law Group

B

ZAŠTITA LJUDSKIH PRAVA I NEDISKIMINACIJA U OBLASTI RADNIH ODNOSA U BOSNI I HERCEGOVINI

Priručnik

Pripremila
Međunarodna pravna grupa za ljudska prava, BiH projekt

Članovi, BiH projekta
Deena Hurwitz, direktorica, Sevima Sali-Terzic, pravna savjetnica,
Diana Šehic, viša pravna saradnica, Fedra Idžakovic, pravna saradnica i
Nilžana Jamakovic, saradnica za finansije

Maršala Tita, 8/II Sarajevo BiH
tel/fax (00387-71) 205-319 email ihrlgbih@bih net ba

Naročitu pomoc i podršku za pripremanje, prevod i štampanje ovog priručnika dobili smo od

U S Misije u Bosni i Hercegovini, ENI, Agencija za razvoj iz SAD,
prema uslovima iz donacije br 168-0020-G-SS-8106-00

i

Kraljevske Ambasade Holandije u Sarajevu, BiH

Ostali izvori finansiranja i podrške radu Međunarodne pravne grupe za ljudska prava, BiH uključuju

The John D & Catherine T MacArthur Foundation
Charles Stewart Mott Foundation
Open Society Institute

Misljenja izrazena u ovom materijalu su misljenja IHRLG i ne odrazavaju mišljenje naših donatora

Copyright © Mart 1999 Medunarodna pravna grupa za ljudska prava Sva prava zadrzana Dijelovi ovog Prirucnika se mogu citirati ili koristiti ukoliko se navede da su to dijelovi iz Prirucnika Međunarodne pravne grupe za ljudska prava Niti jedan dio ovog Prirucnika ne moze se fotokopirati ili reprodukovati na bilo koji drugi nacin bez prethodne dozvole Međunarodne pravne grupe za ljudska prava

C

TABLE OF CONTENTS

	Law Group Programs in Bosnia and Herzegovina	p ix
I	**Introduction**	p 1
II	**International Human Rights Instruments Protecting Labor Relations**	
1	Instruments applicable throughout the state in accordance with the BiH Constitution	p 5
2	Other agreements binding at the state level	p 7
	2 1 International Labor Organization Conventions	p 7
3	Instruments applicable in the Federation in accordance with the FBiH Constitution	p 7
III	**Human Rights Standards in Labor Relations Discussion**	
1	Basic points	p 9
	1 1 ICESCR as general framework	p 9
	1 2 Overall State obligations to non-discrimination and the equal rights of men and women	p 9
	1 3 Additional texts interpreting the ICESCR The Limburg Principles on the Implementation of the ICESCR and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights	p 11
	1 4 Obligations with respect to violations by non-state actors	p 17
	1 4 1 Failure to exercise due diligence in controlling behavior of non-state actors (from the Maastricht Guidelines)	p 17
	1 4 2 Issues related to privatization	p 17
	1 5 International Labor Organization its role and enforcement mechanisms	p 19
	1 6 Reporting requirements and enforcement mechanisms	p 21
	1 6 1 Reporting mechanisms for the key international instruments on economic, social and cultural rights	p 21
	1 6 2 Complaint procedures under the ILO Conventions	p 23
2	Protected rights in labor relations (*as framed by the provisions of the ICESCR*)	p 23
	2 1 Prohibition of discrimination	p 25
	2 1 1 ICESCR (Article 2)	p 25

SADRŽAJ

	Programi Pravne grupe u Bosni i Hercegovini	x
I	**Uvod**	2
II	**Međunarodni dokumenti o ljudskim pravima koji štite prava u vezi sa radom**	
1	Dokumenti koji se primjenjuju u cijeloj državi u skladu sa Ustavom BiH	6
2	Drugi obavezujući dokumenti u BiH	8
	2 1 Konvencije Međunarodne organizacije rada	8
3	Instrumenti koji se primjenjuju u FBiH u skladu sa Ustavom FBiH	8
III	**Standardi ljudskih prava u radnim odnosima diskusija**	
1	Osnovne stavke	10
	1 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima kao opći okvir	10
	1 2 Ukupne obaveze države u vezi nediskriminacije i jednakih prava muškaraca i žena	10
	1 3 Dodatni tekstovi o MPESKP Limburški principi i Mastrihtski vodič o povredama ekonomskih, socijalnih i kulturnih prava	12
	1 4 Obaveze s obzirom na povrede od strane nedržavnih činilaca	18
	1 4 1 Propusti vršenja revnog kontroliranja ponašanja nedržavnih Aktera (iz mastrihtskih vodiča)	18
	1 4 2 Pitanja u vezi privatizacije	18
	1 5 Međunarodna organizacija rada njena uloga i mehanizmi provođenja	20
	1 6 Standardi izvještavanja i mehanizmi sprovođenja	22
	1 6 1 Mehanizmi izvještavanja za ključne međunarodne instrumente o ekonomskim, socijalnim i kulturnim pravima	24
	1 6 2 Procedure podnošenja žalbi prema MOR Konvencijama	24
2	Zaštićena prava iz radnih odnosa (*kako je definirano odredbama MPESKP*)	24
	2 1 Zabrana diskriminacije	26
	2 1 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima (član 2)	26
	2 1 2 MOR Konvencija br 111 o diskriminaciji	26

	2 1 2	ILO Convention No 111 on Discrimination	p 25
	2 1 3	Women's Convention (Article 2)	p 27
	2 1 4	CERD (Article 1 and 5)	p 29
2 2	Equal rights of women and men		
	2 2 1	ICESCR (Article 3)	p 29
	2 2 2	Women's Convention (Article 3, 4 and 11)	p 31
	2 2 3	ILO Convention No 100 on Equal Remuneration	p 33
2 3	Right to work		p 35
	2 3 1	ICESCR (Article 6)	p 35
	2 3 2	European Convention prohibition against forced labor (Article 4(2))	p 35
	2 3 3	Women's Convention (Article 11(1)(c))	p 37
	2 3 4	ILO Convention No 29 on Forced Labor	p 37
2 4	Right to just and favorable conditions of work		p 39
	2 4 1	ICESCR (Article 7)	p 39
	2 4 2	Women's Convention (Article 11(1)(f))	p 41
	2 4 3	ILO	p 41
2 5	Right to form and join trade unions		
	2 5 1	ICESCR (Article 8)	p 41
	2 5 2	ILO Convention No 87 on Freedom of Association and the Right to Organize and Convention No 98 on Collective Bargaining	p 43
2 6	Right to social security and social insurance		p 45
	2 6 1	ICESCR (Article 9)	p 45
	2 6 2	Women's Convention (Article 11)	p 45
2 7	Rights of pregnant women		p 47
	2 7 1	ICESCR (Article 10)	p 47
	2 7 2	Women's Convention (Articles 4 and 11)	p 47
2 8	Rights of children		p 49
	2 8 1	ICESCR (Article 10)	p 49
	2 8 2	Convention on the Rights of the Child (Article 32)	p 49

2 1 3 Konvencija o ženama (član 2) 30

2 1 4 Konvencija o eliminaciji rasne diskriminacije (član 1 i 5) 30

2 2 Jednaka prava za muškarce i žene

2 2 1 MPESKP (član 3) 32

2 2 2 Konvencija o ženama (članovi 3, 4 i 11) 34

2 2 3 MOR Konvencija br 100 o jednakosti nagrađivanja 34

2 3 Pravo na rad

2 3 1 MPESKP (član 6) 36

2 3 2 Evropska Konvencija zabrana prisilnog rada (član 4(2)) 38

2 3 3 Konvencija o ženama (član 11(1)(c)) 38

2 3 4 MOR Konvencija br 29 o prinudnom radu 40

2 4 Pravo na pravedne i povoljne uslove rada

2 4 1 MPESKP (član 7) 40

2 4 2 Konvencija o ženama (član 11(1)(f)) 42

2 4 3 MOR 42

2 5 Pravo na formiranje i udruživanje u sindikat

2 5 1 MPESKP (član 8) 42

2 5 2 MOR Konvencija br 87 o slobodi udruživanja i pravu organizovanja i Konvencija br 98 o kolektivnom pregovaranju 44

2 6 Pravo na socijalnu sigurnost i socijalno osiguranje

2 6 1 MPESKP (član 9) 46

2 6 2 Konvencija o ženama (clan 11) 46

2 7 Prava porodilja

2 7 1 MPESKP (član 10) 48

2 7 2 Konvencija o ženama (članovi 4 i 11) 48

2 8 Prava djece 50

2 8 1 MPESKP (član 10) 50

2 8 2 Konvencija o pravima djeteta (član 32) 50

2 8 3 MOR Konvencija br 138 o minimalnim godinama za zapošljavanje 52

3 Evropska socijalna povelja 52

2 8 3 ILO Convention No 138 on Minimum Age for Employment p 51

3 The European Social Charter p 51

3 1 Protected rights p 55

3 1 1 Individual rights in labor relations p 55

3 1 2 Social protections for the population as a whole p 55

3 1 3 Special protections outside of the workplace p 55

3 2 Protection of employment rights p 57

3 2 1 Right to work and the prohibition of discrimination (Article 1) p 57

3 2 2 Right to just and equal remuneration for women and men (Article 4) p 59

3 2 3 Right to organize and bargain collectively (Articles 5 and 6) p 61

3 2 4 Special safeguards for children and young persons (Article 7) p 63

3 2 5 The right of employed women to protection (Article 8) p 63

IV How to prepare a discrimination claim using international human rights standards in domestic courts

1 Definition of Discrimination p 65

2 Distinction Versus Discrimination p 69

2 1 The basis of discrimination p 69

2 2 Permissible distinctions p 69

2 3 Direct discrimination p 71

2 3 1 How to prove discrimination p 73

2 4 Indirect discrimination p 75

V Analysis of domestic legislation from the perspective of international human rights standards

1 Introduction p 75

1 1 Labor laws p 75

1 2 Privatization and labor relations p 77

2 Prohibition of discrimination p 79

2 1 Federation BiH p 79

3 1 Zaštićena prava

3 1 1 Pojedinačna prava iz radnog odnosa 56

3 1 2 Socijalna zaštita za svo stanovništvo 56

3 1 3 Posebna zaštita izvan radne sredine 56

3 2 Zaštita prava iz radnog odnosa 58

3 2 1 Pravo na rad i zabrana diskriminacije (član 1) 58

3 2 2 Pravo na pravično i jednako nagrađivanje žena i muškaraca (član 4) 60

3 2 3 Pravo organizovanja i kolektivnog pregovaranja (članovi 5 i 6) 62

3 2 4 Posebna zaštita djece i maloljetnika (član 7) 64

3 2 5 Pravo zaposlenih žena na zaštitu (član 8) 64

IV Kako pripremiti žalbu o diskriminaciji koristeći međunarodne standarde za ljudska prava u domaćim sudovima

1 Definicija diskriminacije 66

2 Razlikovanje nasuprot diskriminaciji 70

2 1 Osnov diskriminacije 70

2 2 Prihvatljivo razlikovanje 70

2 3 Direktna diskriminacija 72

2 3 1 Kako dokazati diskriminaciju 74

2 4 Indirektna diskriminacija 76

V Analiza domaćeg zakonodavstva sa aspekta međunarodnih standarda za zaštitu ljudskih prava

1 Uvod 76

1 1 Zakoni o radu 78

1 2 Privatizacija i radni odnosi 78

2 Zabrana diskriminacije 80

2 1 Federacija BiH 80

2 2 Republika Srpska 82

3 Pravo na rad

3 1 Federacija BiH 84

3 1 1 Zakon o radu 84

	2 2	Republika Srpska	p 81
3	Right to work		p 83
	3 1	Federation BiH	p 83
		3 1 1 The Law on Labor Relations	p 83
		3 1 2 FBiH Criminal Code	p 87
	3 2	Republika Srpska	p 87
4	Equal rights for men and women and the protection of the family		p 89
	4 1	Federation BiH	p 89
	4 2	Republika Srpska	p 91
5	The Right to organize and associate in trade unions		
	5 1	Federation BiH	p 91
	5 2	Republika Srpska	p 91
6	Status of workers on waiting		p 93
	6 1	Federation BiH	p 93
	6 2	Republika Srpska	p 93

Appendices

International Covenant on Economic, Social and Cultural Rights	p 99
European Social Charter	p 111
Limburg Principles on the Implementation of the ICESCR	p 145
Maastricht Guidelines on Violations of Economic, Social and Cultural Rights	p 165
ILO Convention No 111 on Discrimination in Respect of Employment and Occupation	p 181
Complaint against Violation of ILO Convention No 111 concerning Discrimination in Employment submitted by the Association of Independent Trade Unions of BiH	p 185
Brief of *Amicus Curiae* to the Human Rights Chamber of BiH in Respect of an Application by Sakib Zahirovic (Case No CH/97/67) submitted by the International Human Rights Law Group	p 191
Special Report No 392/97 of the Human Rights Ombudsperson for BiH, Discrimination concerning the right to work in Kozaraprevoz	p 209

3 1 2 Krivični propisi FBiH 88

3 2 Republika Srpska 88

4 Jednaka prava za muškarce i žene i zaštita porodice

4 1 Federacija BiH 90

4 2 Republika Srpska 92

5 Pravo na organizovanje i udruživanje u sindikat 92

5 1 Federacija BiH 94

5 2 Republika Srpska 94

6 Status radnika na čekanju

6 1 Federacija BiH 94

6 2 Republika Srpska 96

Dodaci

Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima 100

Evropska socijalna povelja 112

Limburški principi o implemntaciji MPESKP 146

Mastrihtski vodiči o povredi ekonomskih socijalnih i kulturnih prava 166

ILO Konvencija br 111 o diskriminaciji u pogledu zapošljavanja i zanimanja 182

Tužba protiv povrede MOR Konvencije br 111 u vezi sa diskriminacijom u zapošljavanju podnesena savezu nezavisnih sindikata BiH 186

Podnesak *Amicus Curiae* za Dom za ljudska prava u BiH u vezi sa tužbom Sakiba Zahirovica (slučaj br CH/97/67) koja je podnesena Međunarodnoj pravnoj grupi za ljudska prava 192

Specijalni izvještaj br 392/97 Ombudsmeni BiH, Diskriminacija koja se tiče prava na rad u slučaju Kozaraprevoz 210

International Human Rights LAW GROUP

Sarajevo, Maršala Tita 8/2, tel /fax (387-71) 205-319
1200 18th Street NW Suite 602 Washington D C 20036, (1-202)822-4600

PROGRAMS IN BOSNIA AND HERZEGOVINA

The General Framework Agreement for Bosnia and Herzegovina, known as the Dayton Agreement which brought an end to the war in 1995, devotes significant attention to individualized protection of human rights and fundamental freedoms, most notably through the direct incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) As a result, complaints alleging basic human rights violations, including precedents in the European human rights protection system to support such claims, may now be brought before local courts, or, if such avenues of redress prove too difficult or too dangerous, before various quasi-international institutions, including the Human Rights Chamber, that are charged under the Dayton agreement with enforcing these rights

The Law Group, working together with local organizations, seeks to provide a practical program of technical assistance and advisory services to support the work of lawyers and human rights defenders who are actively engaged in pursuing these new legal avenues All the Law Group's programs are designed to bring together legal professionals from all three ethnic groups and from the two entities of Bosnia and Herzegovina This multi-ethnic approach seeks to reintroduce former colleagues from the legal profession who have been separated by the bitter conflict in Bosnia and Herzegovina and it has been successful on a number of levels, especially facilitating legal exchanges and cooperation between lawyers working on both sides of the Inter-Entity Boundary Line

The main focus of the Law Group's programs in Bosnia and Herzegovina are

I Legal training

The Law Group offers focused, concrete training programs for human rights defenders concentrating on various articles of the European Convention These training programs seek first and foremost to build on the direct incorporation of the European Convention into the domestic legal system The Law Group's efforts, in essence, attempt to build confidence in the new legal and human rights machinery, providing local advocates with training and documentation to allow them to use these legal mechanisms more effectively Since April 1997, the Law Group has conducted 27 trainings for more than 400 legal professionals, including lawyers, judges, prosecutors and human rights activists, in 14 different cities in both entities of Bosnia and Herzegovina

In implementing these training programs, the Law Group cooperates with the Organization for Security and Co-operation in Europe (OSCE)

Međunarodna za ljudska prava PRAVNA GRUPA

Sarajevo, Marsala Tita 8/2, tel /fax (387-71) 205-319, 207-328
1200 18th Street NW Suite 602 Washington D C 20036, (1-202)822-4600

PROGRAMI U BOSNI I HERCEGOVINI

Opci okvirni sporazum za Bosnu i Hercegovinu, poznat kao Daytonski sporazum, koji je 1995 godine zaustavio rat, posvecuje značajnu pažnju individualiziranoj zaštiti ljudskih prava i osnovnih sloboda, a najočiglednije kroz neposredno unošenje Evropske konvencije o zaštiti ljudskih prava i osnovnih sloboda (Evropska konvencija) u domacu legislativu Kao rezultat toga, lokalnim sudovima se sada mogu podnijeti tužbe za kršenje osnovnih ljudskih prava, oslanjajuci se na precedente iz evropskog sistema zaštite ljudskih prava, odnosno, ako se taj put pokaže suviše teškim ili opasnim, tužbe se mogu podnijeti raznim kvazi-međunarodnim institucijama, uključujuci Dom za ljudska prava, koje su prema Daytonskom mirovnom sporazumu postale nadležne za njih

Pravna grupa, u saradnji sa domacim organizacijama, nastoji dati praktični program tehničke pomoci i savjetodavne usluge kojima ce se pomoci rad pravnika i branitelja ljudskih prava koji su aktivno uključeni u ostvarivanje tih novih pravnih mogucnosti Programi pravne grupe su tako kreirani da okupe pravnike iz sve tri nacionalne skupina i oba entiteta u Bosni i Hercegovini Ovakvim multietničkim pristupom nastoje se povezati bivše kolege pravne profesije koji su bili razdvojeni gorkim sukobom u Bosni i Hercegovini, i do sada je postignut uspjeh na više razina, naročito u smislu omogucavanja pravne razmjene i saradnje među pravnicima koji djeluju na obje strane međuentitetske linije razgraničenja

Najvažniji fokusi programa Pravne grupe u Bosni i Hercegovini su

I Pravna obuka

Pravna grupa nudi usmjerenu i konkretnu obuku za branitelje ljudskih prava koja se koncentrira na pojedine članove Evropske konvencije Ovi programi obuke imaju kao prvi i najvažniji cilj da daju nadgradnju neposrednom unošenju Evropske konvencije u domaci pravni sistem U suštini, Pravna grupa nastoji izgraditi povjerenje u novi mehanizam pravosuđa i ljudskih prava, pružajuci domacim advokatima obuku i dokumentaciju koja im omogucava da efikasnije koriste te pravne mehanizme Od aprila 1997 , Pravna grupa je održala 27 kurseva obuke za više od 400 pravnih profesionalaca, uključujuci pravnike, sudije, tužitelje, i aktiviste u zaštiti ljudskih prava u 14 gradova u oba entiteta Bosne i Hercegovine

U realizaciji ovih programa obuke, Pravna grupa surađuje sa Organizacijom za sigurnost i saradnju u Evropi (OSCE)

II Individualized Assistance with Human Rights Cases

The Law Group continues to support the efforts of those undergoing significant discrimination based on ethnic, religious or political grounds to utilize the new legal avenues created under the Dayton Agreement to address human rights violations The Law Group has been involved in a number of litigation efforts working in conjunction with attorneys in a mentoring relationship to support individual cases

A **Livno Bus Case** The Law Group submitted a legal brief, as *amicus curiae*, to the Human Rights Chamber in the Livno Bus Case (Sakib Zahirovic v Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina) on behalf of employees of the Livno Bus Company who filed applications with the Chamber alleging employment discrimination based on their ethnicity The Chamber granted the Law Group limited standing in the case to file the *amicus curiae* brief outlining the human rights arguments in the case based on international law

B **Zvornik 7 Case** The Law Group has been involved in the well known Zvornik 7 case since April 1997 On 31 December 1997, the Bijeljina District Court in the Republika Srpska overturned the initial convictions, following an appeal in which the Law Group filed a supplemental brief with the Bijeljina Court outlining international human rights arguments that were applicable in the case Unfortunately, in a surprising development, 3 of the defendants were convicted again on murder charges on 11 December 1998 The Law Group has prepared another annex to the appeals drafted by the defendants' lawyers, arguing once again applicable human rights standards in this case

C **Kosovar Refugees Case** The Law Group filed an emergency application to the Human Rights Chamber on behalf of Albanian Kosovar refugees in the Sarajevo region who were being housed by government authorities in inadequate facilities an abandoned warehouse Following the Law Group's application, the Chamber immediately issued provisional measures in the case, calling on the Federation of BiH and the State of BiH "to take all necessary steps to protect the applicants' health by improving the heating and sanitary conditions in the Hadžici refugee camp and by considering urgently the applicants' transfer to more substantial premises " Both governments have complied with the Chamber's order

III Advocacy Program

The Law Group's public advocacy program focuses on technical assistance and capacity building programs that are intended to activate greater civic participation in the political and economic life of the country In essence, the Law Group's program focuses on the pivotal role that must be played by civil society as an anchor for the democratic processes and a s a vehicle by which a wide cross-section of the Bosnian population may ultimately participate in the governance of the country The Law Group has identified several advocacy target issues

A **Discrimination in Education** This program builds on the successful campaign launched by the Law Group in the first year of its operations in BiH to revoke the Federation Ministry Instruction ordering a dual educational curriculum implemented

II Individualizirana pomoc u slučajevima zaštite ljudskih prava

Pravna grupa nastavlja pružati podršku naporima onih koji su izloženi značajnoj diskriminaciji po osnovi nacionalne, religiozne ili političke pripadnosti odnosno mišljenja, da koriste nova pravna sredstva kreirana Dejtonskom sporazumom za rješavanje kršenja ljudskih prava Pravna grupa je bila uključena u više pravnih postupaka radeći zajedno sa advokatima u mentorskom odnosu kako bi podržala pojedinačne slučajeve

A **Slučaj Livno Bus** Pravna grupa je *amicus curiae* podnesak Domu za ljudska prava u slučaju Livno Bus (Sakib Zahirovic protiv Bosne i Hercegovine i Federacije Bosne i Hercegovine) u ime radnika Livno Bus preduzeca koji su podnijeli aplikacije Domu navodeci diskriminaciju kod zapošljavanja na osnovu njihove nacionalne pripadnosti Dom je odobrio Pravnoj grupi ograničenu mogucnost u tom slučaju da podnese *amicus curiae* podnesak navodeci argumente koji se odnose na ljudska prava na osnovu međunarodnog prava

B **Slučaj Zvornik 7** Pravna grupa je uključena u poznati slučaj Zvornik 7 od aprila 1997 Okružni sud u Bijeljini u Republici Srpskoj je 31 decembra 1997 godine ukinuo prvu presudu, nakon žalbe u kojoj je Pravna grupa podnijela dodatnu žalbu sudu u Bijeljini navodeci argumente zaštite ljudskih prava koji se odnose na taj slučaj Nažalost, iznenađujuci preokret je doveo do toga da su 3 optužena 11 decembra 1998 god ponovno osuđena za ubojstvo Pravna grupa je pripremila novi dodatak na žalbu koju su priredili odvjetnici optuženih, iznoseci ponovno standarde zaštite ljudskih prava koji se odnose na ovaj slučaj

C **Slučaj kosovskih izbjeglica** Pravna grupa je podnijela hitnu aplikaciju Domu za ljudska prava u ime albanskih izbjeglica sa Kosova koji su u regionu Sarajeva vlasti smjestile u neodgovarajuce objekte u napuštenom skladištu Nakon aplikacije Pravne grupe, Dom je odmah odredio privremene mjere u ovom slučaju, pozivajuci Federaciju BiH i državu BiH da "preduzmu sve potrebne mjere da zaštite zdravlje podnositelja aplikacije popravljajuci grijanje i sanitarne uvjete u kampu za izbjeglice u Hadžicima i razmotre mogucnost hitnog premještanja podnositelja aplikacije u pogodnije prostorije " Obje vlade su se povinovale nalozima Doma

III Program zagovaranja

Program javnog zagovaranja Pravne grupe se fokusira na programe tehničke pomoci i programe izgradnje kapaciteta kojima se želi aktivirati vece učešce građana u političkom i ekonomskom životu zemlje U suštini, program Pravne grupe se bavi središnjom ulogom koju mora imati građansko društvo kao osnova za demokratske procese i kao sredstvo kojim ce široki presjek stanovništva Bosne i Hercegovina moci na kraju učestvovati u upravljanju zemljom Pravna grupa je identificirala nekoliko pitanja zagovaranja kojima ce se pozabaviti

A **Diskriminacija u obrazovanju** Ovaj program je nastavak uspješne kampanje koju je pokrenula Pravna grupa prve godine svoga djelovanja u BiH kako bi se povukla instrukcija Federalnog ministarstva obrazovanja kojom se nalaže primjena dvostrukog nastavnog plana i programa u odvojenim razredima

segregated classrooms As a follow-up, the Law Group, in close cooperation with domestic NGOs, issued a status report on "Segregation and Discrimination in Education in the Federation of BiH" with recommendations to governments at all levels To date, this paper has been used as an advocacy tool on several occasions

B **Women's Rights** The Law Group has initiated creation of a coalition of women's groups to work on a National Report on Women's Human Rights in BiH For that purpose, the Law Group has conducted three training/workshop programs using Law Group guidelines as a basis for the program The Law Group has also compiled and translated source materials on the methodology and integration of gender perspectives in human rights reporting It is expected that this document will also serve as an educational resource for other gender related work The NGO coalition will release the report to the public in a press conference and present copies to government officials in person, as a means of highlighting specific recommendations The report will also be distributed to various bodies of the United Nations, including the Division on the Advancement of Women

C **Discrimination in Employment** The Law Group will address the growing problem of ethnic and gender-based discrimination in employment by facilitating an initial training phase focused on heightening citizen awareness of their rights in the workplace and capacity building of lawyers, labor inspectors, trade union activists and others in human rights protection related to labor relations With the assistance of domestic NGOs, the Law Group intends to form a coordination group with representatives of human rights and other NGO activists from both entities to plan and organize around workers' rights issues and to develop plans for advocacy campaigns

D **Advocates Circle** In this part of our advocacy program, the Law Group will periodically gather participants from our various training sessions to discuss different human rights/advocacy issues This program is primarily designed to facilitate contacts among legal activists form both entities, to support their ongoing work in their local communities and to encourage the free-flow of ideas for new initiatives

The Law Group's staff in Sarajevo include Deena Hurwitz, Director, BiH Project, Sevima Sali-Terzic, Legal Advisor, Diana Sehić, Senior Staff Attorney, Fedra Idžakovic, Staff Atorney and Žana Jamakovic, Financial Assistant

For more information please call (387 71) 205-319 and 207-328

Nastavljajuci se na to, Pravna grupa je, u bliskoj saradnji sa domacim nevladinim organizacijama, izdala izvještaj "Segregacija i diskriminacija u obrazovanju u Federaciji BiH", dajuci preporuke svim razinama vlade Ovaj je dokument u nekoliko prigoda korišten kao sredstvo zagovaranja

B **Prava žena** Pravna grupa je inicirala formiranje koalicije ženskih grupa da rade na izvještaju o ženskim ljudskim pravima u BiH U tu svrhu, Pravna grupa je organizirala tri programa obuke/seminara, koristeci smjernice Pravne grupe kao osnovu Pravna grupa je, također, napravila izbor i organizirala prevođenje izvornih materijala o metodologiji i integraciji perspektive spolne jednakosti u izvještavanje o ljudskim pravima Očekuje se da ce se isti dokument koristiti kao obrazovni materijal za ostale poslove u vezi sa spolnom ravnopravnošcu Koalicija nevladinih organizacija ce objaviti izvještaj na konferenciji za novinare i lično dostaviti njegove primjerke vladinim dužnosnicima, kao sredstvo kojim ce se naglasiti konkretne preporuke Izvještaj ce se također dostaviti različitim tijelima Ujedinjenih naroda uključujuci Odjeljenje za unaprjeđenje žena

C **Diskriminacija pri zapošljavanju** Pravna grupa ce se pozabaviti rastucim problemom nacionalne i spolne diskriminacije u zapošljavanju omogucujuci početnu fazu obuke koja se bavi povecavanjem svjesnosti građana o njihovim pravima na radnom mjestu i izgradnji kapaciteta pravnika, inspektora rada, sindikalnih aktivista i drugih koji se bave zaštitom ljudskih prava u radim odnosima Uz pomoc domacih nevladinih organizacija, Pravna grupa namjerava formirati koordinacionu grupu od predstavnika ljudskih prava i drugih aktivista nevladinih organizacija iz oba entiteta da se organiziraju oko pitanja iz radnih odnosa i da naprave planove kampanja zagovaranja

D **Zagovarački krug** U ovom dijelu programa zagovaranja, Pravna grupa ce povremeno okupljati učesnike raznih sesija obuke da razgovaraju o različitim pitanjima ljudskih prava/zagovaranja Program je prvenstveno kreiran da olakša kontakte među aktivistima iz oba entiteta, pruži podršku njihovom tekucem radu u njihovim lokalnim zajednicama, i da se ohrabri slobodan protok ideja o novim inicijativama

Osoblje Pravne grupe u Sarajevu čine Deena Hurwitz, direktorica BiH Projekta, Sevima Sali-Terzic, pravna savjetnica Diana Šehic, viša pravna saradnica, Fedra Idžakovic pravna saradnica i Žana Jamakovic, saradnica za finansije

Za dodatne informacije možete pozvati brojeve telefona (387 71) 205-319 i 207-328

HUMAN RIGHTS PROTECTIONS AND NON-DISCRIMINATION IN LABOR RELATIONS IN BOSNIA & HERZEGOVINA

A Working Manual

I. INTRODUCTION

The 1995 Dayton Peace Agreement, which ended the war in Bosnia and Herzegovina (BiH), established a specific system for the protection of human rights This is reflected in the direct inclusion into domestic law of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (European Convention), which "shall have priority over all other law,"[1] and in the establishment of quasi-international institutions for the protection of human rights in BiH

The state is obliged to protect the rights of all who live within its jurisdiction, not only in accordance with domestic laws, but consistent with international human rights standards Despite this, or in some cases because of this, the state itself, in certain cases is a violator or a potential violator of human rights Therefore, constant accountability domestic as well as international is in the best interests of the state itself, of its people and of the international community [2]

The Constitution of BiH is a document binding the state to "the highest level of internationally recognized human rights and fundamental freedoms "[3] Having incorporated the European Convention into domestic law, the BiH Constitution applies its provisions in protecting the rights of individuals from violations by the state Thus, the state can be held responsible if a given law, whose scope falls within the ECHR, fails to protect individuals or groups of individuals, or if it regulates in a discriminatory way

It needs to be mentioned, as an initial point, that the European Convention primarily concentrates on the protection of civil and political rights, but it is much less useful for the protection of social and economic rights For instance, the European Convention provides no direct protection against violations in the workplace or dismissal from employment What's more, the fact that the European Convention can generally be invoked only against a state, and not against a private actor, limits its application in cases of violations by private employers, absent proof that the state failed to provide adequate protection or due process

---

[1] Constitution of Bosnia and Herzegovina, Article 2 2

[2] Philip Alston, "The Purposes of Reporting," *Manual on Human Rights Reporting* UN Centre for Human Rights and UN Institute for Training and Research, HR/PUB/91/1, p 13

[3] BiH Constitution Article 2 1

ZAŠTITA LJUDSKIH PRAVA I NEDISKRIMINACIJA U OBLASTI RADNIH ODNOSA U BOSNI I HERCEGOVINI

PRIRUČNIK

I UVOD

Daytonskim mirovnim sporazumom kojim je zaustavljen rat u Bosni i Hercegovini 1995 godine, uspostavljen je specifičan sistem zaštite prava čovjeka To se ogleda u direktnom uključivanju u domace pravo Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda i njenih protokola, koji ce imati "prioritet nad svim ostalim zakonima"[1], te uspostavljanju raznih kvazi-međunarodnih institucija za zaštitu ljudskih prava u Bosni i Hercegovini

Država je obavezna da zaštiti prava svih koji žive pod njenom nadležnošcu ne samo u skladu sa domacim zakonima, nego i u skladu sa međunarodnim standardima ljudskih piava Upikos tome, ili, u nekim slučajevima, zbog toga, upravo je država kršitelj ili potencijalni kišitelj ljudskih piava Zbog toga je redovna odgovornost, kako domaca tako i međunarodna, u interesu države, naroda i međunarodne zajednice [2]

Ustav Bosne i Hercegovine je dokument koji državu obavezuje na "najviši nivo međunaiodno priznatih ljudskih prava i osnovnih sloboda"[3] Njime je Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda (ECHR) inkorporisana u domace piavo Ovim dokumentom se štite prava pojedinaca od kršenja od strane dižave Zato se država može smatrati odgovornom kada zakon, čiji sadržaj ulazi u okvire EHCR, propusti zaštiti pojedince ili grupe pojedinaca, ili kada pruži zaštitu na diskriminatorski način

Pri tome treba navesti da se EHCR primarno usredsređuje na zaštitu građanskih i političkih prava, dok ne štiti socijalna i ekonomska prava Na primjer, ECHR ne pruža direktnu zaštitu od kršenja prava kod zapošljavanja niti kod otkaza Osim toga, činjenica da se na ECHR može pozvati samo ako prava krši država, ali ne i "nedržavni" subjekt, limitira njenu primjenu u slučajevima rada kod privatnika, ukoliko se ne može dokazati da je država propustila pružiti odgovarajucu zaštitu ili pravičan postupak

---

[1] Ustav Bosni i Hercegovini čl II 2

[2] Philip Alston, "Svrha izvještavanja", *Prirucnik o izvještavanju o ljudskim pravima* UN centar za ljudska prava i UN institut za obuku i istraživanje, HR/PUB/91/1, str 13

[3] Ustav BiH, čl II 1

Democracy and human rights cannot be fully realized if protections provided do not include all rights, social and economic as well as civil and political Significant protection of these rights can be found in other documents contained in Annex I to the Constitution of Bosnia and Herzegovina Although the application of these other documents in Bosnia and Herzegovina has not yet been adequately defined or tested in practice, it is nonetheless indisputable that these instruments provide standards according to which the state of BiH may be judged and held accountable This is true not only due to Bosnia and Herzegovina's accession to these human rights conventions, but also because of their application through the Dayton Peace Agreement (Annex VI) and the BiH Constitution

Therefore in accordance with the Constitution (Article II, paragraph 4, headed "Non-Discrimination"), BiH must secure the rights and freedoms provided for in the annexed documents for all persons "without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status " A decision from the Human Rights Chamber broadly interprets this provision, noting that

> In the Chamber's view this provision includes both an obligation to secure the rights in question to all persons, and an obligation to do so without discrimination It is one aspect of the general obligation under Article II, paragraph 1 of the Constitution "to secure the highest level of internationally recognised human rights " This interpretation is confirmed by Article I of Annex 6 of the Agreement where the general obligation referred to is stated as including the obligation to secure the rights and freedoms guaranteed by all the agreements listed Where one of the human rights agreements referred to imposes a clear, precise and absolute prohibition on a particular course of action, the only way in which the obligation to secure the right in question to all persons without discrimination can be carried out is by giving effect to the prohibition [4]

The fundamental principle of human rights law is government accountability Governments are obliged to **respect** the human rights of all citizens, to **protect** them against discrimination and from violation by others, and to **fulfill** their obligations by creating conditions under which individuals may fully exercise their rights Human rights violations by definition involve state action at some level

Thus, the obligation to **respect** human rights requires that the state refrain from interfering with the exercise of economic, social and cultural rights, as well as of civil and political rights For example, paying women a lower wage than men for the same job is a violation of the prohibition against discrimination as well as women's enjoyment of their economic rights on an equal basis with men

The obligation to **protect** human rights requires that the state take active measures to prevent the violation of these rights by third parties Thus, for instance, the failure to ensure

[4] Human Rights Chamber, *Damjanovic vs FBiH* Case No CH/96/30, 5 September 1997, paragraph 37 In this case, the Chamber ruled on the applicability of an absolute ban on the death penalty from the Second Optional Protocol of the International Covenant on Civil and Political Rights

Međutim, demokratija se ne može ostvariti u punom smislu, ako se zaštita ne pruži za sva ljudska prava, kako za građanska i politička, tako i za socijalna i ekonomska Značajnija zaštita tih prava može se naći u drugim dokumentima koji su sadržani u Aneksu I uz Ustav BiH Međutim, primjena tih drugih međunarodnih instrumenata u BiH još nije adekvatno definisana ili ispitana u praksi Ipak, nesporno je da ovi instrumenti daju standarde prema kojim se država treba prosuđivati i smatrati odgovornom Ovo je opravdano ne samo zbog pristupanja BiH ovim konvencijama o ljudskim pravima, već i zbog njihove primjene kroz Daytonski mirovni sporazum (Aneks VI) i Ustav BiH (Aneks IV)

Zbog toga, u skladu sa Ustavom (Član II, stav 4, pod naslovom "Nediskriminacija"), BiH mora obezbijediti prava i slobode predviđene prema aneksiranim dokumentima za sve osobe ' bez diskriminacije na bilo kojoj osnovi kao što je pol, rasa, boja, jezik, religija, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, veza sa nacionalnom manjinom vlasništvo, rođenje ili drugi status" Odluka Doma za ljudska prava široko interpretira ovu odredbu, naglašavajući da

> Po mišljenju Doma, ova odredba uključuje i obavezu da se osiguraju i data prava svim licima i obavezu da se to učini bez diskriminacije To je jedan aspekt opće ovaveze po članu 2, stav 1 Ustava "da osigura najviši nivo međunarodno priznatih ljudskih prava " Ovo tumačenje potvrđeno je članom 1 Aneksa 6 ovog Sporazuma gdje je rečeno da navedena opća obaveza uključuje i obavezu da se osiguraju prava i slobode garantirane svim navedenim sporazumima Dok jedan od navedenih sporazuma o ljudskim pravima namece jasnu, preciznu i apsolutnu zabranu određene akcije, jedini način da se obaveza osiguranja tog prava za sve osobe bez diskriminacije može ostvariti, je da se u djelo sprovede ta zabrana [4]

Temeljni princip zaštite ljudskih prava je odgovornost vlasti Vlasti su obavezne **poštovati** ljudska prava svih građana, **štititi** ih od diskriminacije i kršenja prava od strane drugih i **ispuniti** obaveze stvaranjem uslova u kojima pojedinci mogu potpuno vršiti svoja prava Kršenja ljudskih prava, stoga, po definiciji podrazumijevaju određenu aktivnost dižave

Obaveza da **poštuje**, zahtijeva od države da se **uzdržava od miješanja** u uživanje ekonomskih, socijalnih i kulturnih prava, kao i političkih i civilnih prava Tako na primjer placanje ženama niže place nego muškarcima za isti posao predstavlja povredu zabrane diskriminacije, kao i uživanja ekonomskih prava za žene na jednakoj osnovi kao i za muškarce

Obaveza da **štiti**, zahtijeva od države da poduzme aktivne mjere kako bi spriječila **kršenje** ovih prava od treće strane Tako, npr propust da osigura da i zaposleni u privatnim kompanijama uživaju osnovne standarde rada, odn da i privatne kompanije

[4] Dom za ljudska prava Damjanovic protiv FBiH, slučaj br CH/96/30, 5 septembar 1997, stav 37 U ovom slucaju, Dom je radio na primjeni potpune zabrane smrtne kazne prema Drugom opcijskom protokolu Medunarodnog pakta o građanskim i političkim pravima

that private employers comply with basic labor standards may be deemed a violation of the right to work, or the right to just and favorable working conditions

To **fulfill** its obligations, the state must undertake appropriate legislative, administrative, judicial and other measures to implement these rights Thus, the failure of the State to provide appropriate avenues for administrative or judicial remedy for employees to appeal alleged unfair labor practices or conditions may amount to a violation [5]

II. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS PROTECTING LABOR RELATIONS

1 Instruments applicable throughout the state in accordance with the BiH Constitution

Social and economic rights throughout BiH, i e in both entities, are well protected by numerous international instruments All BiH citizens enjoy these protections and all bodies and institutions that operate on its territory are obliged to provide them to every individual, on a basis of equality and without any discrimination The most important international treaties with respect to these particular rights, and which are discussed in this Manual, are

1 1 International Covenant on Economic, Social and Cultural Rights

1 1 1 Additional texts interpreting the ICESCR The Limburg Principles on the Implementation of the ICESCR and the Maastricht Guidelines of Violations of Economic, Social and Cultural Rights[6]

1 2 International Convention on the Elimination of All Forms of Racial Discrimination

1 3 Convention on the Elimination of All Forms of Discrimination Against Women

1 4 Convention on the Rights of the Child

Although the European Convention offers far less direct protection for economic and social rights than the instruments above, it should nonetheless be noted that certain related articles can be important in the context of labor relations, such as the Article 6 right to a fair hearing and the Article 4 prohibition of forced labor

[5] Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 6, *see, Human Rights Quarterly*, Vol 20 No No 3 (August 1998)

[6] These two documents are not listed in the BiH Constitution, but they are key sources for the interpretation of the International Covenant on Economic Social and Cultural Rights (*see below section 1 3)*

pružaju osnovne standarde rada svojim zaposlenicima, može se smatrati kao kršenje prava na rad ili prava na pravedne i povoljne uslove rada

Obaveza da ispuni svoje obaveze, zahtijeva od države da **preduzme** odgovarajuce zakonodavne, administrativne, sudske i ostale mjere radi pune realizacije ovih prava Tako, propust države da osigura odgovarajuce administrativne i sudske puteve za zaposlene, kako bi mogli uložiti žalbu u slučaju nepravedne radne prakse ili radnih uslova, može predstavljati povredu ovih prava [5]

II MEĐUNARODNI DOKUMENTI O LJUDSKIM PRAVIMA KOJI ŠTITE PRAVA U VEZI SA RADOM

1 Dokumenti koji se primjenjuju u cijeloj državi u skladu sa Ustavom BiH

Na nivou cijele Bosne i Hercegovine, dakle u oba entiteta, međunarodnim instrumentima pružena je značajna zaštita socijalnih i ekonomskih prava Ova zaštita je jedinstvena za sve građane Bosne i Hercegovine i svi organi i institucije koji djeluju na njenoj teritoriji dužni su da je obezbijede svima bez diskriminacije po bilo kom osnovu Najznačajniji međunarodni ugovori koji se tiču ovih prava i koja se razmatraju u ovom priručniku su

1 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima ("ICESCR"),

1 1 1 Limburški principi o implementaciji ICESCR i Mastrichtski vodič o kršenjima ekonomskih, socijalnih i kulturnih prava,[6]

1 2 Međunarodna konvencija o ukidanju svih oblika rasne diskriminacije,

1 3 Konvencija o uklanjanju svih oblika diskriminacije žena,

1 4 Konvencija o pravima djeteta

Iako Evropska Konvencija nudi manje direktnu zaštitu ekonomskih i socijalnih prava nego navedeni instrumentarij, ipak bi trebalo naglasiti da određeni članovi mogu biti važni u kontekstu radnih odnosa, kao što je pravo na pravednu istragu (član 6) i zabrana prisilnog rada (član 4)

[5] Mastrihtski vodiči o povredama ekonomskih, socijalnih i kulturnih prava, stav 6 vidi, *Human Rights Quarterly* svezak 20 br 3 (august 1998)

[6] Ova dva dokumenta nisu navedena u Ustavu BiH, ali su oni izvor tumačenja ICESCR (*vidjeti ispod odjeljak 1 3*)

2 Other agreements binding at the state level

2 1 International Labor Organization Conventions

In addition to the documents listed above, the international standards contained in the International Labor Organization Conventions are also applied in Bosnia and Herzegovina The ILO has seven fundamental human rights conventions, including

i Convention No 111 on Discrimination in Respect of Employment and Occupation (1958)

ii Convention No 100 on Equal Remuneration for Men and Women for Work of Equal Value (1951)

iii Convention No 87 on Freedom of Association and Protection of the Right to Organize (1948)

iv Convention No 98 on the Application of the Principles of the Right to Organize and to Bargain Collectively (1949)

v Convention No 29 on Forced and Compulsory Labor (1930)

vi Convention No 105 on the Abolition of Forced Labor (1957)

vii Convention No 138 on Minimum Age for Employment (1973)

Up to the present, Bosnia and Herzegovina has ratified six of these human rights documents, only Convention No 105 on the Abolition of Forced Labor has not yet been ratified by BiH

As noted above, the documents listed apply throughout the BiH territory, which means that their provisions are binding for both the Federation (FBiH) and the Republika Srpska (RS)

3 Instruments applicable in the Federation in accordance with the FBiH Constitution

The above listed documents, with the exception of the ILO Conventions, are also incorporated into the FBiH Constitution, thereby acquiring the force of constitutional provisions This makes the FBiH legal system very specific in terms of international human rights enforcement Apart from these documents the FBiH Constitution contains another important document in this field – the European Social Charter and Additional Protocol 1

2 Drugi obavezujući dokumenti u BiH

2 1 Konvencije Međunarodne organizacije rada

Pored navedenih, u Bosni i Hercegovini se primjenjuju i standardi utvrđeni konvencijama Međunarodne organizacije rada (MOR) MOR ima sedam osnovnih konvencija o ljudskim pravima, a to su

i Konvencija br 111 o diskriminaciji u pogledu zapošljavanja i zanimanja (1958,

ii Konvencija br 100 o jednakosti nagrađivanja muške i ženske radne snage za iad jednake vrijednosti (1951),

iii Konvencija bi 87 o sindikalnim slobodama i zaštiti sindikalnih prava (1947),

iv Konvencija bi 98 o primjeni principa prava na organizovanje i kolektivne pregovore (1949),

v Konvencija br 29 o prinudnom ili obaveznom radu (1930),

vi Konvencija br 105 o ukidanju prisilnog rada (1957),

vii Konvencija br 138 o minimalnim godinama za zapošljavanje (1973)

Do sada je Bosna i Heicegovina ratifikovala šest od sedam ovih dokumenata o ljudskim pravima, samo Konvencija br 105 o ukidanju prisilnog rada još nije ratifikovana od strane BiH

Svi pobrojani dokumenti, kako je vec rečeno, primjenjuju se i "pokrivaju" cijelu teritoriju BiH, što znači da su njihove odredbe obavezujuce i za Federaciju Bosne i Hercegovine ("FBiH") i za Republiku Srpsku ("RS")

3 Instrumenti koji se primjenjuju u FBiH u skladu sa Ustavom FBiH

Pravni sistem FBiH je specifičan kada je u pitanju provođenje međunarodnih odredbi o ljudskim pravima, buduci da su svi gore pobrojani dokumenti, osim konvencija MOR-a, inkorporisanjem u Ustav FBiH dobili snagu ustavnih odredaba Pored njih, u Ustav FBiH je inkorporisan i još jedan značajan dokument za ovu oblast, a to je Evropska socijalna povelja i Dopunski protokol 1

III. HUMAN RIGHTS STANDARDS IN LABOR RELATIONS: DISCUSSION

1 Basic points

1 1 ICESCR as general framework

The International Covenant on Economic, Social and Cultural Rights ("Covenant on Economic and Social Rights" or "ICESCR") is one of 15 documents listed in the Annex to the Dayton Agreement and the BiH Constitution's additional agreement on human rights, which therefore apply throughout Bosnia and Herzegovina The state is, moreover, constitutionally obliged to ensure that the rights from this Covenant are applied throughout its territory without discrimination [7]

The Covenant on Economic and Social Rights contains the most significant protections of these rights in international law, including the right to work and to just and favorable working conditions, the right to social benefits and insurance, the right to an adequate standard of living, the right of everyone to enjoy the widest possible measure of physical and psychological health, the right for education and the right to participate in cultural life and benefit from the advances of science and its application

It is the obligation of the state to periodically submit reports to the Committee on Economic, Social and Cultural Rights on all measures taken and the progress made in enabling every person to exercise the rights guaranteed by the ICESCR (Article 16) It is also important to emphasize that NGOs may submit reports to the Committee as well concerning all aspects of the rights protected in the ICESCR

1 2 Overall State obligations to non-discrimination (ICESCR Article 2)

> **Article 2**
> *(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*
>
> *(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*

Thus, the State is obliged to

[7] BiH Constitution, Article 2 4

III STANDARDI LJUDSKIH PRAVA U RADNIM ODNOSIMA DISKUSIJA

1 Osnovne stavke

1 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima kao opci okvir

Međunaiodni pakt o ekonomskim, socijalnim i kulturnim pravima ("Pakt") je jedan od 15 dokumenata nabrojanih u dodatnom sporazumu o ljudskim pravima (Aneks I, Ustava BiH), koji ce se primjenjivati u Bosni i Hercegovini Stoga je Bosna i Hercegovina prema Ustavu obavezna osiguratı prava iz ovog Pakta svima na cijeloj svojoj teritoriji bez ikakve diskriminacije [7]

Pakt sadrži najznačajniju međunarodno pravnu zaštitu ekonomskih, socijalnih i kulturnih prava, uključujuci pravo na rad i povoljne i pravedne uslove rada, pravo na socijalno osiguranje, piavo na adekvatan životni standard, pravo svakoga da uživa najvecu mogucu mjeru tjelesnog i psihičkog zdravlja, pravo na obrazovanje te pravo sudjelovanja u kulturnom životu i korištenja napretka nauke i njene primjene

Obaveza države je da periodično dostavlja izvještaje Komitetu za ekonomska, socijalna i kulturna piava o svim mjerama koje preduzima i o progresu postignutom u omogucavanju svih da u cijelosti uživaju sva prava koja im garantuje Pakt (Član 16) Ono što je važno istaci je, da i NVO-i također mogu Komitetu dostaviti svoje izvještaje koji se tiču svih aspekata piava zašticeniih Paktom

1 2 Ukupne obaveze države u vezi nediskriminacije (Član 2 Pakta)

Član 2

(1) Svaka di žava stranka ovog Pakta obavezuje se da, pojedinačno i putem međunarodne pomoci i saradnje, prije svega ekonomske i tehničke, do najviše mogucnosti svojih raspoloživih sredstava, radi na tome da se postepeno postigne puno ostvarenje prava koja su priznata u ovom Paktu, svim odgovarajucim sredstvima, uključujuci prije svega zakonodavne mjere

(2) Di žave stranke ovog Pakta obavezuju se da ce garantovati da se prava proglašena u ovom Paktu vrše bez diskriminacije bilo koje vrste na osnovu rase, boje kože, pola jezika vjere, političkog ili drugog mišljenja nacionalnog ili socijalnog porijekla, imovine roda ili bilo koje druge okolnosti

Dakle, obaveze države su

[7] BiH Ustav, Član 2 4

- guarantee, without discrimination, all the rights provided by the ICESCR, meaning that all discriminatory laws and practices must be abolished,
- pass legislation which facilitates the exercise of guaranteed rights,
- take legislative action, especially where present laws are incompatible with obligations arising from the ICESCR,
- ensure effective legal protection, including judicial protection when necessary, and
- use all disposable means to ensure the gradual realization of minimum fundamental rights for every person, with respect to the economic potentials of a country [8]

1 3 Additional texts interpreting the ICESCR The Limburg Principles on the Implementation of the ICESCR and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

(See Appendix for full texts of these documents)

Two important sets of guidelines may be useful in interpreting the Covenant on Economic and Social Rights The Limburg Principles and the Maastricht Guidelines are not binding in any formal legal sense, but they are widely regarded as important interpretations of the rights protected under the Covenant

In 1986, a group of international law experts was convened by the International Commission of Jurists the Maastricht Centre for Human Rights of the University of Limburg (the Netherlands) and the Urban Morgan Institute for Human Rights, College of Law, University of Cincinnati (Ohio, USA) to consider the nature and scope of the obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights The meeting resulted in the Limburg Principles on the Implementation of the ICESCR, which were officially issued as a UN document [9]

Principles 13 and 35 - 41 address non-discrimination and equality with respect to economic, social, and cultural rights, particularly in interpreting Article 2(2) of the Covenant Among the standards elaborated

- special attention should be paid by all bodies monitoring compliance with the Covenant to the principles of non-discrimination and equality before the law (Principle 13),
- States Parties must "eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission)" affecting these rights (Principle 37),

[8] The Limburg Principles on the implementation of the ICESCR, part B, principle 25

[9] UN Doc E/CN 4/1987/17 Annex *Netherlands Quarterly of Human Rights*, Vol 15, No 2, June 1997, p 244

- da garantuju sva prava proglašena u ICESCR bez diskriminacije po bilo kom osnovu što podrazumijeva ukidanje svakog diskriminirajuceg zakona ili piakse,
- da donesu zakonsku regulativu koja ce omoguciti vršenje garantovanih prava,
- da poduzmu zakonodavne aktivnbosti, a naročito u slučajevima kada postojeci zakoni nisu kompatibilni sa obavezama iz ICESCR,
- da osigura efikasnu pravnu zaštitu, uključujuci kada je to potrebno i sudsku zaštitu,
- da koriste maksimum svih raspoloživih sredstava, te obezbijede "postepenu realizaciju" prava, odnosno minimum osnovnih piava za svakoga, s obzirom na ekonomsko dostignuce neke zemlje [8]

1 3 Dodatni tekstovi o Paktu Limburški principi o implementaciji ICESCR i Mastrihtski vodič o povredama ekonomskih, socijalnih i kulturnih prava

(vidjeti dodatak sa punim tekstom ovih dokumenata)

Dva važna seta uputa mogu biti korisna u interpretaciji Pakta o ekonomskim i socijalnim pravima Limburški principi i Mastrihtski vodiči nisu obavezujuci u bilo kojem piavno-formalnoim smislu, ali su smatraju važnom interpretacijom prava zašticeniih paktom

Godine 1986 jedna grupa eksperata iz međunarodnog prava bila je okupljena od strane Međunarodne komisije pravnika, Mastrihtskog centia za ljudska prava Univerziteta u Limburgu (Holandija), te Urban Morgan Instituta za ljudska prava, pravnog koledža Univerziteta Cincinnati (država Ohio, SAD), kako bi razmotrili prirodu i obim obaveza dižava stranaka Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima Sastanak je rezultirao Limburškim principima o implementaciji ICESCR, koji su oficijelno izdati kao dokument UN-a [9]

Principi 13 i 35 – 41 bave se nediskriminacijom i jednakošcu s obzirom na ekonomska, socijalna i kulturna prava, posebno u interpretaciji Člana 2(2) Pakta Među elaboriranim standardima

- posebna pažnja treba biti posvecena od strane svih tijela koja nadziru poštivanje Pakta principima nediskriminacije i jednakosti pred zakonom (Princip 13),
- države stranke moraju "eliminirati de jure diskriminaciju ukidanjem bez odlaganja svih diskriminatoirnih zakona, propisa i praksi (uključujuci akte propuštanja kao i činjenja)" koji utiču na ova prava (Princip 37),

[8] Limburski principi o implementaciji Pakta, dio B, princip 25

[9] UN Doc E/CN 4/1987/17 aneks Netherlands Quarterly of Human Rights, svezak 15, br 2, juni 1997, str 224

- *de facto* discrimination which results from a lack of resources or otherwise should be terminated as quickly as possible (Principle 38),

- States Parties must prohibit private individuals and associations from practising discrimination in any field of public life (Principle 40)

Furthermore, the Limburg Principles assert that

- human rights are interdependent, indivisible, and inter-related, and therefore equal attention must be given to civil and political, and economic, social and cultural rights (Principle 3),

- NGOs can play an important role in promoting the Covenant's implementation and should be assisted in doing so at both national and international levels (Principle 9),

- laws which limit the exercise of economic, social and cultural rights must not be arbitrary, unreasonable or discriminatory (Principle 49),

Principle 72 describes the grounds on which a state will be in violation of the Covenant, including (among others) if

- it fails to take a step which it is required to take by the Covenant,
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right,
- it willfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet,
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does o due to a lack of available resources or force majeure,
- it fails to submit reports as required under the Covenant

Finally, it should be noted that Principle 73 of the Limburg Principles provides for the right of States party to the Covenant,

> in accordance with international law to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party

In 1997 the same organizations convened another meeting to consider the Limburg Principles in the context of evolving international law over the 10 years since their adoption [10] They endeavored to compile a catalogue of types of violations of economic, social and cultural rights, and to use this catalogue to develop a set of guidelines to further assist the mechanisms that monitor the Covenant [11] The result of that meeting was the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

---

[10] *Human Rights Quarterly* "The Maastricht Guidelines of Economic, Social and Cultural Rights," Vol 20 No 3 (August 1998), p 691

[11] *Netherlands Quarterly*, *supra* note 8 p 245

- de facto diskriminacija koja rezultira iz nedostatka resursa ili na neki drugi način treba biti okončana što je moguce prije (Princip 38),
- države stranke moraju zabraniti privatnim licima i udruženjima praktikovanje diskriminacije u svim poljima javnog života (Princip 40)

Pored toga, Limburški principi kažu

- da su ljudska prava neovisna, nedjeljiva i međupovezana, te se stoga jednaka važnost mora pridavati civilnim i političkim, kao i ekonomskim, socijalnim i kulturnim pravima (Princip 3),
- da nevladine organizacije mogu igrati važnu ulogu u promoviranju implementacije Pakta i da im se treba u tome pomoci kako na domacem tako i na međunarodnom nivou (Princip 9),
- da zakoni koji limitiraju vršenje ekonomskih, socijalnih i kulturnih prava ne smiju biti arbitrarni, nerazumni ili diskriminatorni (Princip 49),

Princip 72 opisuje razloge zbog kojih ce se smatrati da neka država krši Pakt i to, između ostalog, ako

- ne poduzme mjeru na koju je obavezana Paktom,
- hitno ne ukloni prepreke, koje je dužna ukloniti kako bi omogucila hitno ispunjenje prava,
- namjerno ne postigne opcenito prihvaceni međunarodni minimalni standard, koji je trebala postici u skladu sa svojim mogucnostima,
- smišljeno unazađuje ili kači progresivnu realizaciju prava, osim ako ne djeluje u okviru ograničenja dopuštenih Paktom ili to čini zbog nedostatka dostupnih resursa ili više sile,
- ne podnese izvještaje kako je zatrženo u Paktu

Konačno, treba napomenuti da Princip 73 Limburških principa osigurava pravo država stranaka Pakta da,

> u skladu sa međunarodnim pravom izraze svoje gledište da se druga država stranka ne pridržava svojih obaveza prema Paktu, te da o tome obavijesti tu državu stranku

Godine 1997 ista organizacija je sazvala drugi sastanak kako bi se razmotrili Limburški principi, u kontekstu evolucije međunarodnog prava tokom 10 godina nakon njihovog

In clarifying the Limburg Principles and the evolving meaning of violations of economic, social and cultural rights, the Maastricht Guidelines considered both positive and negative obligations of States Parties to the ICESCR Thus, they considered economic, social and cultural rights in terms of State Party obligations to **'respect - protect - fulfill'** (Guideline 6) While respecting human rights is sometimes seen as a "negative" duty, i e , to refrain from acts which infringe or violate rights, the obligations to protect and fulfill rights are seen as "positive" duties requiring specific steps or interventionary measures in relation to these rights Related to the obligations to respect, protect and fulfill, the Maastricht Guidelines also articulated the obligations of **conduct and result** (Guideline 7) The obligation of conduct requires that States take action reasonably calculated to realize the enjoyment of a particular right The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard [12] Guideline 8 addresses the margin of discretion given to States in selecting the means for implementing their obligations, but the burden is on the State to show that it is making measurable progress towards the full realization of the particular rights [13]

The Guidelines highlight that violations of economic, social and cultural rights can occur "through direct action of States or other entities insufficiently regulated by States" (Guideline 14 - acts of commission) as well as "through the omission or failure of States to take necessary measures stemming from legal obligations" (Guideline 15 - acts of omission) The State's responsibility for violations includes the duty "to establish mechanisms to correct such violations, including monitoring, investigation, prosecution, and remedies for victims" (Guideline 16) What's more, the State is also liable for acts by non-state entities Inasmuch as violations of economic, social and cultural rights can also be committed by individuals or private entities ("such as transnational corporations, which sometimes are more powerful than some states and consequently may dictate actions to them"[14]), the State's failure to control the conduct of such individuals or private entities may result in the State being held accountable for their violations (Guideline 18)

Finally, the Maastricht Guidelines address the issues of victims, and remedies and other responses to violations Guideline 20 points out that

> Certain groups suffer disproportionate harm [as victims], such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless

Thus the Maastricht Guidelines demands attention be placed on specific groups whose economic social and cultural right are more easily violated [15]

Among the important remedies and responses, the Maastricht Guidelines urges

- access to "effective judicial or other appropriate remedies" (Guideline 22),

---

[12] *Human Rights Quarterly, supra* note 9, p 694
[13] Ibid
[14] Ibid, p 724
[15] Ibid p 726

usvajanja [10] Oni su uložili napor da sačine katalog tipova povreda ekonomskih, socijalnih i kulturnih prava, te da koriste ovaj katalog kako bi razvili set uputa koje bi dalje pomogle mehanizme za pracenje Pakta [11] Rezultat tog sastanka su bili mastrihtski vodiči o povredama ekonomskih, socijalnih i kulturnih prava

U razjašnjavanju Limburških principa i evoluirajucem značenju povreda ekonomskih, socijalnih i kulturnih prava, mastrihtski vodiči razmatraju i pozitvne i negativne obaveze država stranaka ICESCR Tako,da su oni ocijenili ekonomska, društvena i kulturna prava u terminima državnih partijskih obaveza koja se trebaju **poštovati- štititi- ispuniti** (Vodič br 6) Dok se poštivanje ljuskih prava nekako smatra "negativnom" dužnošcu, tj suzdržavati se od djela koja krše prava, obaveze da se štite i ispunjavaju prava se smatraju "pozitivnim" dužnostima da se poduzmu specifični koraci ili intervencionističke mjere u vezi ovih prava U vezi sa obavezom da se poštuje, štiti i ispuni mastrihtski vodiči takođe su artikulirali obaveze **ponašanja i rezultata** (Vodič 7) Obaveza ponašanja zahtijeva da države poduzmu akciju razumno sračunatu u cilju realizacije uživanja određenog prava Obaveza rezultata zahtijeva od država da postignu specifične ciljeve kako bi zadovoljile detaljne suštinske standarde [12] Vodič br 8 se bavi granicom diskrecije koja je data državama u odabiru sredstava za sprovedbu njihovih obaveza, ali teret leži na državi da dokaže da ona postiže mjerljiv progres prema punoj realizaciji određenog prava [13]

Ovi vodiči naglašavaju da povrede ekonomskih, socijalnih i kulturnih prava mogu nastupiti "putem direktnog djelovanja država ili drugih entiteta nedovoljno reguliranih od strane države" (Vodič 14 – akti činjenja), kao i "putem propuštanja ili propusta država da poduzmu neophodne mjere koje proističu iz pravnih obaveza" (Vodič 15 – akti propuštanja) Državna odgovornost za povrede uključuje i dužnost "uspostave mehanizama za korigovanje takvih povreda, uključujuci monitoring, istragu, prosekuciju i pravne lijekove za žrtve" (Vodič 16) Štaviše, država je takođe odgovorna za djela nedržavnih entiteta Buduci da povrede ekonomskih, socijalnih i kulturnih prava mogu takođe biti počinjenje od strane pojedinaca ili privatnih entiteta (kao što su transnacionalne korporacije, koje su nekada mocnije od nekih država, te im stoga mogu diktirati djelovanja"[14]), propust države da kontrolira ponašanje takvih pojedinaca ili privatnih entiteta može rezultirati u tome da se država drži odgovornom za njihove povrede (Vodič 18)

Konačno, mastrihtski vodiči se bave pitanjima žrtava i pravnih lijekova, te drugih odgovora na povrede Vodič 20 naglašava da

> neke grupe trpe neproporcionalnu štetu, kao što su grupe sa nižim primanjima, žene, domorodački i plemenski narodi, okupirano stanovništvo, tražitelji azila, izbjeglice i domace razmješteno stanovništvo, manjine, starije osobe, djeca, seljaci bez zemlje, hendikepirane osobe i beskucnici

[10] *Human Rights Quarterly*, "Mastrihtski vodič o ekonomskim, socijalnim i kulturnim pravima", svezak 20, br 3 (august 1998), str 161
[11] *Netherlands Quarterly* supra nota 8, str 245
[12] *Human Rights Quarterly* supra nota 9, str 694
[13] ibid
[14] ibid , str 724

- adequate reparation for victims, e g , compensation, rehabilitation and guarantees of non-repetition (Guideline 23),
- an emphasis on the role of national institutions, e g , ombudsmen and human rights commissions, in addressing violations of economic, social and cultural rights (Guideline 25),
- that international instruments be directly incorporated or applied in the domestic legal system (Guideline 26), and
- documentation and monitoring of violations by all relevant actors, including NGOs, national governments and international organizations (Guideline 32)

1 4 Obligations with respect to violations by non-state actors

1 4 1 With respect to a failure to exercise due diligence in controlling behavior of non-state actors (from the Maastricht Guidelines)

As noted above in the discussion of the Maastricht Guidelines, States can also be held liable for violations of economic, social and cultural rights by non-State actors or entities (Guideline 18) A State's obligation to protect the rights of individuals carries with it the responsibility to regulate all bodies under its control (state and non-state) (Guideline 14 acts of commission) Furthermore, a State must not neglect to take "necessary measures stemming from its legal obligations" (Guideline 15 acts of omission)

Thus, the State will also be held accountable to ensure that private enterprises or individuals, including international companies and organizations, do not deny individuals the full enjoyment of their economic, social and cultural rights Clearly, this is relevant to the process of privatization

1 4 2 Issues related to privatization

In the transition from a socialist to a market economy in Bosnia and Herzegovina, the rights of individuals cannot be ignored if the privatization process and laws are to be consistent with international standards and obligations of the State The transition has brought with it diminishing employment in the state sector, rapidly increasing and open unemployment, a "black market" economy, possibilities for corruption and discrimination in employment The major post-war demographic shifts, combined with administrative obstacles and problems of access to documentation (e g , workbooks, pension and social security records) changes in ownership and illegal privatization, have resulted in great difficulties in the exercise of workers' rights

The propensity for discrimination in this context is seen throughout BiH, particularly on grounds of ethnic or national origin, and political affiliation Minority groups and pensioners are often victims

Among the human rights standards which should be considered here are the ICESCR (articles on non-discrimination and equality, technical and vocational guidance and training and policies aimed at achieving steady economic development, and social security), the European Convention (Article 1 of Protocol 1), and the Maastricht Guidelines It should

Tako, mastrihtski vodiči traže da se obrati pažnja na specifične grupe, čija je ekonomska, socijalna i kulturna prava mnogo lakše povrijediti [15]

Među važnim sredstvima i odgovorima, mastrihtski vodič insistira na

- pristupu "efikasnim sudskim ili drugim odgovarajucim sredstvima" (Vodič 22),
- adekvatnoj odšteti za žrtve, npr kompenzaciji, rehabilitaciji i garancijama o neponavljanju (Vodič 23),
- stavljanju naglaska na ulogu domacih institucija, npr ombudsmena i komisija za ljudska prava, kao odgovora na povrede ekonomskih, socijalnih i kulturnih prava (Vodič 25),
- direktnom inkorporiranju međunarodnih instrumenata ili njihovoj primjeni u domacim pravnim sistemima (Vodič 26), i
- dokumentovanju i pracenju povreda od strane svih relevantnih aktera, uključujuci i nevladine organizacije, domace vlade i međunarodne organizacije (Vodič 32)

1 4 Obaveze s obzirom na povrede od strane nedržavnih činilaca

1 4 1 U vezi propusta vršenja revnog kontroliranja ponašanja nedržavnih aktera (iz mastrihskih vodiča)

Kako je naznačeno gore u diskusiji mastrihtskih vodiča, države se mogu smatrati odgovornim za kršenje ekonomskih, socijalnih i kulturnih prava koje se vrši od strane nedržavnih aktera ili entiteta (Vodič 18) Obaveza države da pruži zaštitu prava pojedinaca podrazumijeva obavezu da regulira sva tijela pod svojom kontrolom (državna i ne-državna) (Vodič 14 akti činjenja) Osim toga, država ne smije propustiti poduzimanje "neophodnih mjera koje proističu iz njenih pravnih obaveza" (Vodič 15 akti propuštanja)

Tako ce se država takođe smatrati odgovornom da osigura da privatna preduzeca ili pojedinci, uključujuci medjunarodne kompanije i organizacije, ne liše pojedince uživanja u potpunosti njihovih ekonomskih, socijalnih i kulturnih prava Jasno je da je ovo relevantno za proces privatizacije

1 4 2 Pitanja u vezi privatizacije

U tranziciji sa socijalističke na tržišnu ekonomiju u Bosni i Hercegovini, prava pojedinaca ne mogu biti ignorisana ako proces privatizacije i zakoni moraju biti usklađeni sa međunarodnim standardima i obavezama države Tranzicija donosi

[15] ibid , str 726

be clear from the discussions above that the State may not avoid responsibility for violations of rights by private employers or companies

The Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina was imposed by the High Representative in July 1998 The Law establishes the entities' right to legislate ownership changes in businesses and banks that are not privately owned as well as the entities' duty to cooperate in these matters with one another Entity legislation must be based on principles of non-discrimination, transparency, and accountability (Article 3) However, there is no dedicated forum or system for handling individual complaints of discrimination in the privatization process A Privatization Monitoring Commission, also established by the Office of the High Representative, is mandated to monitor the aforementioned principles in the distribution of privatization vouchers, but we note that a more systematic and thorough policy is required for ensuring that rights are protected and State obligations respected

1 5 International Labor Organization its role and enforcement mechanisms

The International Labor Organization (ILO) was established in 1919, and became a part of the United Nations system after the Second World War As a specialized UN agency, the ILO deals with [16]

- the formulation of international policies and programs to promote basic human rights, improve working and living conditions, and enhance employment opportunities,
- the creation of international labor standards with a system to supervise their application to serve as guidelines for national authorities to incorporate these standards into domestic legislation and practice,
- assisting countries in implementing these standards

The main body of the ILO is the General Labor Conference, sitting in Geneva, which adopts conventions and recommendations Once adopted, they are forwarded to Member States for their ratification and accession Thus by ratifying the ILO Convention, Member States are bound to implement its provisions Recommendations are not subject to ratification and consequently, do not have the same binding force as conventions Usually, recommendations are adopted simultaneously with the ratification of the Convention dealing with the same subject

Regarding the Conventions they have ratified, each Member State must periodically submit a report on their national laws and the measures taken to conform with the ILO's standards The reports are examined by the Committee of Experts, which consists of some twenty independent experts in the field of employment as well as in law and social security

The measures taken by Member States in implementing the Conventions are, naturally, of critical importance in gauging compliance with ILO standards Member States often rely

[16] Information Leaflet The ILO What it Does, www ilo org/public/english/235press/leaflet/page4 htm

smanjeno zapošljavanja u državnom sektoru, rapidno povecanu i otvorenu nezaposlenost, ekonomiju "crnog tržišta", mogucnosti korupcije i diskriminacije u zapošljavanju Velike poslijeratne demografske promjene kombinirane sa administrativnim prepirekama i problemima pristupa dokumentaciji (npr radne knjižice, penzioni i arhivi socijalnog osiguranja), promjene u vlasništvu i nelegalna privatizacija, rezultirali su u velikim poteškocama u vršenju prava radnika

Sklonost diskriminaciji u ovom kontekstu je vidljiva u cijeloj BiH, osobito zasnovanoj na etničkom ili nacionalnom porijeklu i političkoj pripadnosti Manjinske grupe i penzioneri su često žrtve

Među standardima ljudskih prava koji bi se ovde trebali razmotriti su ICESCR (članovi o nediskriminaciji i jednakosti, tehničkom i profesionalnom vodstvu i obuci i politici usmjerenoj ka postizanju trajnog ekonomskog razvoja, i socijalnoj sigurnosti), Evropska konvencija (Član 1 Protokola 1), i mastrihtski vodiči Trebalo bi biti jasno iz gornje diskusije da država ne može izbjeci odgovornost za povrede prava od strane privatnih poslodavaca ili kompanija

Okvirni zakon o privatizaciji poduzeca i banaka u Bosni i Hercegovini je nametnut od strane Visokog predstavnika u julu 1998 godine Zakon uspostavlja pravo entiteta da donesu zakone o promjeni vlasništva u ne-privatnim preduzecima i bankama, te dužnost da sarađuju jedan sa drugim po ovom pitanju Entitetski propisi moraju biti zasnovani na principima nediskriminacije, transparentnosti i odgovornosti (clan 3) Međutim, ne postoji poseban forum ili sistem za rješavanje pojedinačnih žalbi o diskriminaciji u procesu privatizacije Komisija za pracenje privatizacije, takođe uspostavljena od strane Ureda Visokog predstavnika, ima mandat da prati ranije pomenute principe u distribuciji privatizacijskih voučera, ali primjecujemo da je potrebna sistematičnija i korijenitija politika kako bi se osigurala zaštita prava i poštivanje državnih obaveza

1 5 Međunarodna organizacija rada njena uloga i mehanizmi provođenja

Međunarodna organizacija rada (MOR) je osnovana 1919 godine mirovnim ugovorom u Parizu Poslije II svjetskog rata MOR je postala dio sistema Ujedinjenih naroda Kao specijalizovana agencija UN-a, MOR se bavi [16]

- oblikovanjem međunarodne politike i programa koji promoviraju osnovna ljudska prava, zalažu se za poboljšanje radnih i životnih uslova, i unapređivanju mogucnosti za zapošljavanje,
- kreiranjem međunarodnih radnih standarda što je zasnovano na posebnom sistemu nadgledanja žalbi, a sve da bi se stvorila uputstva za vlasti država članica da bi ovi standardi postali sastavni dio prakse država i njenog zakonodavstva,
- pomaže zemljama članicama da se ovi standardi pretoče u praksu

[16] Informacijski letak MOR Čime se bavi, www ilo org/public/english/235press/leaflet/page4 htm

on ILO Conventions when amending current labor laws or drafting new legislation Even in countries that have not ratified the Conventions, the ILO standards frequently serve as guidelines or more specifically as models for new legislation as well as other international human rights documents In this way, international human rights standards are further incorporated into domestic laws

1 6 Reporting requirements and enforcement mechanisms

Various supervisory procedures have been adopted for the oversight of international treaties as well as to assist in the development of national policies that better protect human rights Among them are mechanisms that serve an advisory function and others that serve a corrective function (i e , regarding compliance and prevention) The ILO introduced the most common supervisory procedure the reporting system,[17] which eventually was adopted by most human rights treaties Reporting makes use of independent experts who review and assess progress made and difficulties encountered by states in the implementation of international instruments [18] The state is ultimately responsible for establishing legal mechanisms directed towards the correction of violations, such as monitoring, investigating, conduct of judicial processes, as well as providing legal remedies for victims of violations As one noted expert pointed out

> It should be understood [however], that international supervisory procedures and control mechanisms can never be considered as substitutes for national mechanisms and national measures with the aim of giving effect to human rights standards Human rights have to be implemented first and foremost at national and local levels [19]

1 6 1 Reporting mechanisms for the key international instruments on economic, social and cultural rights

In accordance with the specified articles, the following bodies receive submissions from States parties on the measures they have adopted and progress made in observing the rights contained within the respective treaty

- ICESCR (Article 16) **Committee on Economic, Cultural and Social Rights**
- Women's Convention (Article 18) **Committee on the Elimination of Discrimination Against Women**
- Race Convention (Article 9) **Committee on the Elimination of Racial Discrimination**

[17] "The International System of Human Rights An Overview," Theo Van Boven, *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments*, UN (1997), HR/PUB/91/1 (Rev 1), p 11-12
[18] Ibid
[19] Ibid , p 16

Glavni organ MOR-a je Opšta konferencija rada, sa sjedištem u Ženevi, koja donosi konvencije i preporuke MOR-a Poslije donošenja, iste se proslijeđuju zemljama članicama radi njihovog izjašnjenja o eventualnoj ratifikaciji odnosno prihvatanju Dakle, obaveza za zemlju članicu u pogledu primjene konvencije nastaje ratifikacijom konvencije Preporuke nisu podložne ratifikaciji i ne obavezuju istom snagom kao konvencije Vrlo često one su prihvacene istovremeno sa ratifikacijom konvencije koja se bavi istom temom

Svaka država članica periodično šalje izvještaje o zakonima koji se primjenjuje u zemlji i mjerama koje je preduzela radi usklađivanja sa standardima MOR-a Izvještaje pregleda Komitet eksperata, sastavljen od oko dvadeset nezavisnih, uvaženih stručnjaka na polju prava i socijalne sigurnosti, koji su istovremeno i specijalisti u radnim odnosima

Mjere koje poduzima država članica u cilju primjene konvencija su, naravno, od suštinskog značaja u ocjenjivanju pridržavanja standarda MOR-a Zemlje članice se često oslanjaju na konvencije MOR-a kod izrade novog radnog zakonodavstva ili pak kod izmjene postojeceg Također, standardi sluze kao vodici ili cak kao modeli za izradu nacionalnih zakonodavstava kao i drugih medjunarodnih dokumenata o ljudskim pravima, čak i ako te zemlje nisu ratifikovale konvencije Na ovaj način su standardi medjunarodnih ljudskih prava dalje inkorporirani u domace zakonodavstvo

1 6 Standardi izvještavanja i mehanizmi sprovođenja

Usvojene su različite procedure nadgledanja međunarodnih ugovora kako bi se pomoglo u razvoju nacionalnih politika koje bi bolje štitile ljudska prava Među njima su mehanizmi koji imaju savjetničku funkciju i drugi koji imaju korektivnu funkciju (tj u vezi pridržavanja i spriječavanja) MOR je uveo najčešcu proceduru nadgledanja sistem izvještavanja[17], koji je konačno usvojen u vecini ugovora o ljudskim pravima Za izvještavanje se koriste nezavisni eksperti koji pregledaju i ocjenjuju postignuti progres i teškoce na koje nailaze države u implementaciji međunarodnih instrumenata [18] Država je konačno odgovorna za uspostavu pravnih mehanizama usmjerenih ka korekciji povreda, kao što su pracenje, istraživanje, vođenje sudskih procesa, kao i obezbjeđenje pravnih siedstava za žrtve povreda Kao što je jedan znameniti ekspert naglasio

> Tieba, međutim, razumjeti da međunarodne procedure nadgledanja i kontrolni mehanizmi nikada ne mogu biti smatrani zamjenom za domace mehanizme i mjere sa ciljem davanja efekta standardima ljudskih prava Ljudska prava moraju biti implementirana prije svega na nacionalnom i lokalnom nivou [19]

---

[17] Međunarodni sistem o Ljudskim pravima Pregled, "Theo Van Boven, *Priručnik o izvještavanju o ljudskim pravima prema sest glavnih međunarodnih instrumenata o ljudskim pravima* UN (1997), HR/PUB/91/1
(Rev 1), str , 11-12
[18] ibid
[19] ibid , sti 16

- Children's Convention (Article 44) **Committee on the Rights of the Child**

1 6 2 Complaint procedures under the ILO Conventions[20]

The International Labor Organization (ILO) complaint procedures offer an effective mechanism for trade unions or employers' associations and governments to pursue human rights protections against states which have ratified the ILO Conventions They are not, however, available to individuals or general NGOs without consultative status with the ILO Four different kinds of complaints may be used

1 "representation" (under Article 24 of the ILO Constitution) – which must be submitted by an "industrial association of employers or workers" and concern a member state of the ILO which "has failed to secure the effective observance of any Convention to which it is a party",

2 "complaint" (under Article 26 of the ILO Constitution) – which must allege that a country is not "securing the effective observance of a Convention it has ratified",

3 special procedures for freedom of association – protecting trade union rights, and

4 special surveys on discrimination – to survey the situation in an individual country based on criteria from e g , the ILO Convention No 111 on Discrimination, but not concerning "individual cases unrelated to broader issues of policy", the State must first consent to the survey

2 Protected rights in labor relations

(as framed by the provisions of the ICESCR)

2 1 Prohibition of discrimination (Article 2 (2))

2 2 Equal rights for men and women (Article 3)

2 3 Right to work (Article 6)

2 4 Right to just and favorable working conditions (Article 7)

2 5 Right to form and join the trade unions (Article 8)

2 6 Right to social security and social insurance (Article 9)

2 7 Protection of family (Article 10)

[20] *From* "Human Rights Complaint Procedures of the International Labour Organization", by Lee Swepston in *Guide to International Human Rights Practice* edited by Hurst Hannum (Univ of Pennsylvania Press 1992), pp 99-116

1 6 1 Mehanizmi izvještavanja za ključne međunarodne instrumente o ekonomskim, socijalnim i kulturnim pravima

U skladu sa specifiranim članovima, slijedeca tijela primaju izvještaje država stranaka o mjerama koje su usvojile i o progresu koji su postigle u poštivanju prava sadržanih u odgovarajucim ugovorima

- ICESCR (Član 16) **Komitet za ekonomska, socijalna i kulturna prava**
- Konvencija o ženama (Član 18) **Komitet o eliminaciji diskriminacije žena**
- Konvencija o rasnoj diskriminaciji (Član 9) **Komitet o eliminaciji rasne diskriminacije**
- Konvencija o pravima djeteta (Član 44) **Komitet za prava djeteta**

1 6 2 Procedure podnošenja žalbi prema MOR konvencijama[20]

Prema Međunarodnoj organizaciji rada u vezi sa procedurama podnošenja žalbi nude se efektivni mehanizmi za unije sindikata ili poslodavaca i vlada u cilju zaštite ljudskih prava protiv država koje su ratifikovale Konvencije MOR Međutim one nisu na raspolaganju pojedincima ili glavnim NVO bez konsultacija sa MORom Mogu se koristiti četiri različite vrste žalbi

1 "zastupanje" - (prema lanu 24 Ustava MOR) žalbe koje moraju podnositi industrijska udruženja poslodavaca ili radnika", a tiču se države članice MORa koja "nije osigurala efektivno pridržavanje Konvenvije čija je ona stranka "

2 "žalba" (prema lanu 26 Ustava MOR) u kojoj mora biti navedeno da nije postojalo "efektivno pridržavanje Konvencije koju je država ratificirala "

3 posebne procedure za slobodu udruženja- zaštita prava sindikata, i

4 Posebne ankete u vezi sa diskriminacijom u cilju sagledavanja situacije u zemljama pojedinačno, a zasnovano na kriterijima iz npr MOR Konvencije br 111 o diskriminaciji, a ne tiče se "pojedinačnih slučajeva koji nisu vezani za šira pitanja iz oblasti politike", Država prvo mora pristati na anketu

2 Zaštićena prava iz radnih odnosa

(kako je definirano odredbama ICESCR)

2 1 Zabrana diskriminacije (član 2(2))

2 2 Jednaka prava za muškarce i žene (član 3)

[20] iz *Human Rights Complaint Procedures of the International Labor Organization*, Lee Swepston, u vodiču za primjenu Međunarodnih ljudskih prava, priredio Hurst Hannum (Pennsylvania University Press, 1992) str 99-116

2 8 Right to sufficient standard of living (Article 11)

2 9 Obligation to submission of reports (Article 16)

2 1 Prohibition of discrimination

2 1 1 International Covenant on Economic, Social and Cultural Rights

Article 2
(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

This Article requires Member States to

- ensure immediate implementation, including explicit guarantees,
- eliminate *de jure* discrimination by abolishing any discriminatory law or practice relating to the exercise of rights from the Covenant
- prohibit discrimination by individuals and organizations in all areas of public life

2 1 2 ILO Convention No 111 on Discrimination

Under Article 1 of ILO Convention No 111, the term "discrimination" includes

(a) any distinction, exclusion or preference based on race, color, sex, religion, political opinion national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation,

(b) such other distinction exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies

This definition contains three elements [21]

- a factual element (the existence of a distinction, an exclusion or a preference, without specifying whether this arises from an act or an omission) which constitutes a difference in treatment,

[21] *Ethnic Minorities in Central and Eastern Europe Guidelines and Recommendations Promoting their Employment*, ILO-CEET Report No 19 (March 1997), p 10

2 3 Pravo na rad (član 6)

2 4 Pravo na pravedne i povoljne uslove rada (član 7)

2 5 Pravo na formiranje i udruživanje u sindikat (član 8)

2 6 Pravo na socijalnu sigurnost i socijalno osiguranje (član 9)

2 7 Zaštita porodice (član 10)

2 8 Pravo na dovoljan standard življenja (član 11)

2 9 Obaveza podnošenja izvještaja (član 16)

2 1 Zabrana diskriminacije

2 1 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

Član 2
Države stranke ovog Pakta obavezuju se da ce garantovati da se prava proglašena u ovom Paktu vrše bez diskriminacije bilo koje vrste na osnovu rase, boje kože, pola, jezika, vjere, političkog ili drugog mišljenja, nacionalnog ili socijalnog porijekla, imovine, roda, ili bilo koje druge okolnosti

Ovaj član zahtijeva od država članica da

- osiguraju trenutnu primjenu uz eksplicitne garancije
- eliminišu *de iure* diskriminacije, ukidajuci svaki diskriminirajuci zakon ili praksu koji se odnose na uživanje prava iz Pakta
- zabrani pojedincima i tijelima provođenje diskriminacije na bilo kojem polju javnog života

2 1 2 MOR Konvencija br 111 o diskriminaciji

Prema članu 1 Konvencije izraz diskriminacija podrazumijeva

a) svako pravljenje razlike isključenje ili davanje prvenstva zasnovanog na rasi,boji polu vjeri, političkom mišljenju, nacionalnom ili socijalnom porijeklu, koji idu za tim da unište ili naruše jednakost mogucnosti ili postupanja u pogledu zapošljavanja ili zanimanja,

b) svako drugo pravljenje razlike, isključenje ili davanje prvenstva, koje ide za tim da uništi ili naruši jednakost mogucnosti ili postupanja u pogledu upošljavanja ili zanimanja, koje ce moci poimenice naznačiti

- a ground on which the difference of treatment is based,
- the objective result of this difference in treatment (the nullification or impairment of equality of opportunity or treatment)

The ILO emphasizes that this definition of discrimination applies to "any" distinction, exclusion or preference, whether as part of a law or the result of practice Further, the definition refers to the "effect" of such distinctions, exclusions or preferences on equality of opportunity or treatment Thus, it also includes indirect discrimination, "which may be the result of measures or practices unrelated to any discriminatory intent but which, in the circumstances in which they apply, result nonetheless in inequality of opportunity or treatment on the basis of some prohibited characteristic

Paragraph 2 of the same Article provides for certain distinctions or preferences which are not deemed to be discrimination These include [22]

- measures based on the inherent requirements of a particular job (Article 1(2)),
- measures intended for the protection of the security of the State (Article 4),
- measures designed for protection or assistance (Article 5), including measures of protection and assistance provided for in other Conventions or Recommendations adopted by the ILO (para 1), and special measures, defined as non-discriminatory after consultation with representative employers' and workers' organizations, which are designed to meet the particular needs of persons recognized to require special protection or assistance (para 2)

This latter point refers to "affirmative action" or positive measures, which are thus explicitly allowed under the ILO Convention on Discrimination

Article 2 of Convention No 111 binds States parties to take positive action to promote equality of opportunity and treatment, by "methods appropriate to national conditions and practices "

2 1 3 Women's Convention

Article 2
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to the end, undertake (inter alia)

(a) to embody the principle of equality of men and women in appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle,

[22] Ibid , p 13

zainteresovana država članica nakon konsultovanja predstavničkih organizacija poslodavaca i radnika, ako one postoje, i drugih odgovarajućih organa

Ova definicija sadrži tri elementa[21]

- faktički element (postojanje razlikovanja, isključivanja ili davanja prednosti bez specificiranja da li ovo proističe iz činjenja ili propuštanja) koji predstavlja razliku u tretmanu,
- osnova na kojoj se razlika u tretmanu bazira,
- objektivni rezultat ove razlike u tretmanu (uništenje ili sprječavanje jednakosti uslova ili tretmana)

MOR naglašava da se ova definicija diskriminacije odnosi na "bilo kakvo" razlikovanje, isključivanje ili davanje prednosti, bilo kao dio zakona ili rezultat prakse Dalje, definicija se odnosi na "efekat" koji takvo razlikovanje, isključivanje ili davanje prednosti ima na jednakost uslova ili tretmana Time, ona takođe uključuje indirektnu diskriminaciju, "koja može biti rezultat mjera ili prakse koji nisu u svezi ni sa kakvom diskriminatornom namjerom, vec koji, u uslovima u kojima se primjenjuju, rezultiraju u nejednakosti uslova ili tretmana na osnovu nekih zabranjenih karakteristika

Stav 2 istog člana navodi neka razlikovanja ili davanja prvenstva, koji se ne smatraju diskriminacijom, a to su [22]

- mjere zasnovane na potrebnim kvalifikacijama za određeni posao (Član 1 (2)),
- mjere namijenjene za zaštitu sigurnosti države (Član 4),
- mjere predviđene za zaštitu ili pomoc (Član 5), uključujuci mjere zaštite i pomoci naznačenim u drugim Konvencijama i Preporukama usvojenim od strane MOR-a (stav 1), te specijalne mjere, definirane kao nediskriminirajuce nakon konsultacija sa predstavničkim organizacijama poslodavaca i radnika, koje su kreirane u svrhu odgovora na posebne potrebe osoba za koje je utvrđeno da im je potrebna posebna zaštita ili pomoc (stav 2)

Ovaj posljednji stavak se odnosi na "afirmativnu akciju" ili pozitivne mjere, koje su time eksplicitno dopuštena prema Konvenciji MOR-a o diskriminaciji

Član 2 Konvencije br 111 obavezuje države da poduzmu pozitivne mjere u cilju promoviranja jednakih uslova i tretmana, "metodama prikladnim njihovim domacim uvjetima i praksi "

---

[21] *Etnicke manjine u centralnoj i istočnoj Evropi Vodici i preporuke koji promoviraju njihovo zaposljanvanje* ILO-CEET Izvještaj br 19 (mart 1997), str 10

[22] ibid , str 13

(b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women,

(c) to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination

(d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation,

(e) to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise,

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women

2 1 4 Convention on the Elimination of Racial Discrimination

Article 1

(1) In this Convention the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life

Article 5

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights

e) economic, social and cultural rights, in particular

i the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration,

ii the right to form and join trade unions

2 2 Equal rights of women and men

2 2 1 International Covenant on Economic, Social and Cultural Rights

2 1 3 Konvencija o ženama

Član 2

Države stranke osuđuju diskriminaciju žena u svim oblicima, saglasne su da provode, svim odgovarajucim sredstvima koja im stoje na raspolaganju i bez odgađanja, politiku otklanjanja diskriminacije žena i radi toga se obavezuju da (inter alia)

(a) Unesu princip ravnopravnosti muškaraca i žena u odgovarajuce zakone, ako to vec nisu učinile, te osiguraju, zakonskim ili drugim odgovarajucim mjerama praktičnu primjenu tog principa,

(b) Usvoje odgovarajuce zakonske i druge mjere, uključujuci sankcije kada je to potrebno, kojima se zabranjuju svi oblici diskriminacije žena,

(c) Uvedu pravnu zaštitu prava žena na ravnopravnoj osnovi sa muškarcima i preko nadležnih nacionalnih sudova i drugih državnih institucija osiguraju uspješnu zaštitu žena od svakog postupka diskriminacije,

(d) Da se uzdrže od svakog postupka ili prakse diskriminacije žena i osiguraju da državni organi i institucije postupaju u skladu sa ovom obavezom,

(e) Preduzmu sve potrebne mjere radi otklanjanja diskriminacije žena od bilo kojeg lica, organizacije ili preduzeca,

(f) Preduzmu sve odgovarajuce mjere, uključujuci i zakonodavne radi izmjene ili ukidanja postojecih zakona, propisa, običaja i prakse, koji predstavljaju diskriminaciju žena

2 1 4 Konvencija o eliminaciji rasne diskriminacije

Član 1

(1) Prema ovoj konvenciji, izraz "rasna diskriminacija" znaci bilo kakvo pravljenje razlike, isključenje, ograničenje ili davanje prednosti zasnovano na rasi boji, porijeklu, nacionalnoj ili etnickoj pripadnosti koja ima za cilj uništenje ili povredu priznavanja, uživanja u pravima pod jednakim uslovima, ljudskih prava i osnovnih sloboda u politickoj socijalnoj, kulturnoj ili bilo kojoj drugoj oblasti javnog života

Član 5

države stranke obavezuju se da zabrane i da ukinu rasnu diskriminaciju u svim njenim oblicima i da garantuju pravo svakome na jednakost pred zakonom bez razlike na rasu, boju, nacionalno ili etničko porijeklo, naročito u pogledu uživanja slijedecih prava

e) ekonomska, socijalna i kulturna prava, posebno

Article 3
The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant

The State is, thus, obliged to

- guarantee for both men and women, protection of the Covenant's rights on an equal basis, and
- undertake special measures to ensure full implementation of this equality

Article 3 and Article 2(2) together ensure a significant legal protection against all forms of discrimination, in aspiration of realization of economic, social and cultural rights

Bosnians tend to recall prewar society as having provided significant opportunities for equality between the sexes However, even where equal opportunities supposedly existed, there was often a "glass ceiling" -- areas (e g , politics, management positions) which, although they appeared open to all persons, in fact were inaccessible even to qualified women. And, as a recent ILO study found "opportunities for men and women in the [post-war] labor market are starkly differentiated and seem to reflect pre-war gender-typing of occupation Women for example, are virtually excluded from construction related jobs, which is where the bulk of current job vacancies is to be found "[23]

The disintegration of the pre-war system and, ironically, the hard march towards privatization and "democratization", have in some cases stripped away gender equities that did exist before the war, and also exposed some of the legal shortcomings of pre-war equal opportunity Even where women are relatively well represented in the workforce, if this practice is not protected by law, experience has shown that under economic pressure, women will be the first fired and the last re-hired

What's more, despite the legal structure of equality (e g , as in Article 3), in practice human rights are not always applied equally Even where the laws appear to be neutral on their face, they may be discriminatory in practice For example, there may be no express wage difference for men and women according to law Nonetheless, income differentials existed in pre-war Bosnia, determined by the gender-segregated nature of the workforce in which the majority of workers in lesser paid (or unpaid) occupations were women [24]

2 2 2 Women's Convention

Article 3
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation to ensure the full development and advancement of women, for

[23] *Post-conflict BiH Integrating women's special situation and gender perspectives in the skills training and employment promotion programmes*, by Martha Walsh (ILO, Geneva, June 1997) p ix
[24] Ibid , p 8

i pravo na rad, na slobodu izbora poziva, na pravične i zadovoljavajuce uslove rada, na zaštitu od nezaposlenosti, na jednaku zaradu za jednak rad, na pravičnu i zadovoljavajucu nagradu,
ii pravo na osnivanje sindikata i učlanjivanje u njih

2 2 Jednaka prava za muškarce i žene

2 2 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

Član 3
Države stranke ovog Pakta obavezuju se osigurati jednako pravo muškaraca i žena da uživaju sva ekonomska, socijalna i kulturna prava predviđena ovim Paktom

Država je, dakle, obavezna

- garantovati jednak set prava koja su zaštićena Paktom i za muškarce i za žene, i
- preduzeti, ako je to potrebno, i posebne mjere koje ce osigurati da ova jednakost bude u potpunosti primijenjena

Zapravo, zajedno član 3 i član 2 stav 2 u cjelini obezbjeđuju značajnu pravnu zaštitu protiv svih oblika diskriminacije u nastojanju ostvarivanja ekonomskih, socijalnih i kulturnih prava

Bosanci su skloni da se predratnog društva prisjecaju kao društva koje je pružalo značajne mogucnosti za jednakost među polovima Međutim, čak i tamo gdje su jednake mogucnosti prividno postojale, često su postojale oblasti sa "staklenim plafonom" (npr politika, upravljačke pozicije), koje su iako se činilo da su otvorene svim licima, u stvari bile nepristupačne čak i kvalifikovanim ženama I, kao što je u nedavnoj studiji Međunarodne radničke organizacije utvrđeno "Mogucnosti za muškarce i žene na (poslijeratnom) tržištu rada se potpuno razlikuju i reflektuju predratno tipiziranje zanimanja prema polu Žene su, na primjer, praktično isključene iz poslova u vezi sa izgradnjom, gdje se sada može naci najviše slobodnih radnih mjesta "[23]

Dezintegracija predratnog sistema i, ironično, čvrsti marš prema privatizaciji i "demokratizaciji", ogolili su u nekim slučajevima jednakost polova koja je postojala prije rata i razotkrili su neke pravne nedostatke predratnih jednakih mogucnosti Čak i tamo gdje su žene bile relativno dobro predstavljene kao radna snaga, ako ta praksa nije bila zakonom zaštićena, iskustvo je pokazalo da su usljed ekonomskog pritiska žene bile prve kod otpuštanja, a posljednje kod ponovnog zapošljavanja

[23] BiH nakon konflikta Integracija naročitih situacija žena i perspektive polova u programima stručnog usavršavanja i unapređenja zapošljavanja, Martha Walsh (Međunarodna organizacija rada Geneva, juni 1997) str ix

the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on basis of equality with men

Article 4
(1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be consideration discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standard these measures shall be discontinued when the objective of equality of opportunity and treatment have been achieved

(2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory

Article 11
(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular

(a) the right to work as an inalienable right of all human beings

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment,

(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the valuation of the quality of work,

2 2 3 ILO Convention No 100 on Equal Remuneration *and ILO Conventions 156, 182, 184*

Under Article 1(b) of Convention No 100, the term "equal remuneration of men and women workers for work of equal value" is explained as referring to rates of remuneration established without discrimination based on sex

There are many ILO conventions and recommendations dealing with issues of women workers, such as guarantees for equal opportunity and treatment in training, employment, and promotion These conventions ensure to women workers identical conditions as those for men in terms of remuneration, prerequisites, social security, as well as health insurance

Other conventions provide additional protection for women in the spirit of affirmative action, i e , addressing and correcting past or existing patterns of discrimination, such as provisions relating to the night work of women, as well as other measures relating to health issues Among these are

Upikos pravnoj strukturi jednakosti ljudskih prava (npr kao u članu 3), ona se u praksi ne primjenjuju uvijek jednako Čak i tamo gdje se zakoni čine na površini neutralnim, oni mogu biti diskriminatorski u praksi Na primjer, možda prema zakonu ne postoji izričita razlika u plaći za muškarce i žene Ipak, postojale su razlike u prihodima u predratnoj Bosni, a bile su određene polnom segregacijom radne snage u kojoj su većinu radnika koji su radili u manje plaćenim (ili neplaćenim) zanimanjima činile žene [24]

2 2 2 Konvencija o ženama

Član 3

Države stranke preduzimaju u svim oblastima, posebno političkoj, društvenoj, ekonomskoj i kulturnoj, sve odgovarajuće mjere, uključujući zakonodavne, da bi osigurale potpun razvoj i napredak žena, kako bi im se garantovalo ostvarenje i uživanje prava čovjeka i osnovnih sloboda, ravnopravno sa muškarcima

Član 4

(1) Usvajanje posebnih privremenih mjera od država članica, kojima se ubrzava ostvarenje ravnopravnosti muškaraca i žena ***de facto****, ne smatra se diskriminacijom kako je definisana u ovoj Konvenciji, ali posljedice ne smiju ni na koji način biti nejednaka ili različita mjerila, ove mjere ce prestati važiti kada se ostvari cilj da se svima pruže* jednake mogucnosti i tretman

(2) Usvajanje posebnih mjera od država članica, uključujuci i mjere sadržane u ovoj Konvenciji kojima je različiti cilj zaštita majčinstva, ne smatra se diskriminacijom

Član 11

Države stranke preduzimaju sve odgovarajuce mjere radi eliminisanja diskriminacije žena u oblasti zapošljavanja kako bi se na osnovu ravnopravnosti muškaraca i žena osigurala jednaka prava, posebno

(a) pravo na rad kao neotuđivo pravo svih ljudi,

(b) pravo na jednake mogucnosti zapošljavanja, uključujuci i primjenu jednakih kriterija pri izboru kandidata za radno mjesto,

(c) pravo na jednaku naknadu uključujuci beneficije, te na jednak tretman za jednak rad i jednak tretman pri ocjeni kvaliteta rada ,

2 2 3 MOR Konvencija br 100 o jednakosti nagrađivanja i *MOR Konvencije 156, 182, 184*

[24] ibid , str 8

- **Convention No 156** concerning Equal Opportunities and Equal Treatment for Men and Women Workers Workers with Family Responsibilities (1981),

- **Convention No 175**, concerning Part-Time Workers (1994), in terms of access to work employment, working conditions and social security,

- **Convention No 177**, concerning Home Work (1996), which aims at improving the situation of those who work in the home (household), considering the fact that this labor is largely unrecognized in labor statistics and unprotected by national legislation

2 3 Right to work

2 3 1 International Covenant on Economic, Social and Cultural Rights

Article 6
(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right

(2) The steps to be taken by a State Party to the present Covenant to achieve full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual

The state has a duty to ensure to every individual

- the right to earn a living for basic necessities, with work freely chosen or accepted, and

- protection and the full realization of this right

Freely chosen work is a fundamental right of every person The exercise of the right to work provides one with a sense of dignity and self-respect, as well as autonomy, in being able to provide the basic necessities for oneself and one's family What's more, this right has a direct impact on the ability to enjoy other rights, such as the right to education and health insurance

2 3 2 European Convention prohibition against compulsory labor

Article 4
(2) No one shall be required to perform forced or compulsory labor

Prema Članu 1(b) Konvencije br 100, termin "jednako nagrađivanje muškaraca i žena radnika za rad iste vrijednosti" se tumači kao visina nagrađivanja bez diskriminacije zasnovane na polu

Postoji veoma mnogo konvencija kao i preporuka MOR-a koje se bave pitanjima žena radnika, kao što su garancije za jednake mogucnosti i tretman kod pružanja obuke, zapošljavanja i napredovanja u poslu Te konvencije obezbjeđuju ženama radnicama identične uslove kao kod muškaraca za određivanje naknade za rad, beneficije, socijalno osiguranje kao i zdravstvenu zaštitu

Druge konvencije predviđaju dodatnu zaštitu žena u duhu afirmativne akcije, tj odgovaranje na i korigovanje prošlih ili postojecih vrsta diskriminacije, kao što su odredbe koje se odnose na nocni rad žena, te i druge mjere koje se odnose na zdravstvena pitanja Među tim konvencijama su i

- **Konvencija br 156** koja se odnosi na jednaku mogucnost i tretman za muškarce i žene radnike radnike sa porodičnim obavezama (1981),
- **Konvencija br 175** koja obezbjeđuje zaštitu radnika koji rade skraceno radno vrijeme (1994), u smislu mogucnosti za zaposlenje, radnih uslova i socijalne sigurnosti,
- **Konvencija br 177** koja se odnosi na kucni rad (1996), sa ciljem zaštite radnika koji rade kod kuce (domaca radinost), obzirom na činjenicu da taj rad nije priznat u radnim statistikama, niti zaštiten od strane nacionalnih zakonodavstava,

2 3 Pravo na rad

2 3 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

Član 6

(1) Države stranke ovog Pakta priznaju pravo na rad koje obuhvata pravo svakoga na mogucnost da zaradi dovoljno za život slobodno izabranim ili prihvacenim radom i preduzet ce odgovarajuce mjere da zaštite to pravo

(2) Mjere koje ce država stranka ovog Pakta preduzeti u cilju punog ostvarenja ovog prava obuhvatit ce tehničko i stručno usmjeravanje i obrazovanje kao i programe, politiku i metode nastave podesne za postizanje stalnog ekonomskog, socijalnog i kulturnog razvoja, kao i pune produktivne zaposlenosti u uslovima koji osiguravaju pojedincu osnovne političke i ekonomske slobode "

Država je obavezna da svakom čovjeku osigura

- pravo da slobodno izabranim ili prihvacenim radom zaradi dovoljno za život, i

Although there is no definition in the European Convention case-law for the term "forced or compulsory labor", the European Commission has looked to ILO Convention No 105 for guidance Convention No 105 on the Abolition of Forced Labor contains five categories describing prohibited forced labor [25]

i political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system,

ii mobilising and using labor for purposes of economic development,

iii labor discipline,

iv punishment for having participated in strikes, and

v racial, social or religious discrimination

The European Commission considers the following elements of forced labor [26]

- that the work or service is performed against the individual's will,
- that the requirement that the work or service be performed is unjust or oppressive, or the work or service itself involves avoidable hardship

2 3 3 Women's Convention

Article 11(1)(c)
(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining

2 3 4 ILO Convention No 29 on Forced Labor

Like Convention No 105 (as noted above in the context of the discussion on the European Convention Article 4), this Convention prohibits forced or compulsory labor in most forms However, certain exceptions are allowed, such as military service, the labor of a convict under appropriate supervision, and in certain emergencies such as war, fire, earthquake, epidemics

[25] Donna Gomien David Harris, Leo Zwaak, *Law and practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe (1996), p 121
[26] Ibid

- preduzme sve potrebne mjere da zaštiti i omogući puno ostvarenje ovog prava

Slobodno odabran rad je fundamentalno pravo svake osobe Vršenje prava na rad daje čovjeku osjecaj dostojanstva i samopoštovanja, kao i autonomiju, omogucavajuci mu da obezbijedi osnovne potrebe za sebe i svoju porodicu Šta više, ovo pravo direktno utiče na sposobnost uživanja drugih prava, kao nšto je pravo na obrazovanje i zdravstveno osiguranje

2 3 2 Evropska konvencija zabrana prisilnog rada

Član 4
(2) Niko se ne smije siliti na prisilan ili obavezan rad

Iako u Evropskoj konvenciji ne postoji definicija termina "prisilni ili obavezan rad", Evropska komisija je koristila MOR Konvenciju br 105 kao vodič Konvencija br 105 o ukidanju prisilnog rada sadrži pet kategorija kojima se opisuje prisilni rad [25]

i politička prisila ili obrazovanje ili kao kazna za zastupanje ili izražavanje političkih pogleda ili pogleda ideološki suprotstavljenih etabiliranom političkom, socijalnom ili ekonomskom sistemu,

ii mobiliziranje i korištenje rada u svrhe ekonomskog razvoja,

iii radna disciplina,

iv kazna za učestvovanje u štrajkovima, i

v rasna, socijalna ili vjerska diskriminacija

Evropska komisija uzima u obzir slijedece elemente prisilnog rada [26]

- da se rad ili usluga vrši protiv volje pojedinca,
- da je zahtjev za vršenje posla ili usluge nepravedan ili represivan, ili posao ili usluga sama po sebi sadrži tegobe koje bi se mogle izbjeci

2 3 3 Konvencija o ženama

Član 11(1)(c)
Države stranke preduzimaju sve odgovarajuce mjere radi eliminisanja diskriminacije žena u oblasti zapošljavanja kako bi se na osnovu ravnopravnosti muškaraca i žena osigurala jednaka prava, posebno

[25] Donna Gomien, David Harris, Leo Zwaak, Pravo i praksa Evropske konvencije o ljudskim pravima i Evropske socijalne povelje, Vijeće Evrope (1996) str 121
[26] ibid

2 4 Right to just and favorable conditions of work

2 4 1 International Covenant on Economic, Social and Cultural Rights

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular

(a) Remuneration which provides all workers as a minimum with

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work, and

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant,

(b) Safe and healthy working conditions,

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence,

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

The state obligations in conformity with this article are

- to ensure minimum remuneration for workers, providing guarantees for a decent life, which means fair wages and equal remuneration for work of equal value, without distinctions of any kind,
- to guarantee to women working conditions not inferior to those enjoyed by men, with equal pay for equal work,
- to ensure safe and healthy working conditions,
- to ensure limitation of working hours in a progressive sense,
- to ensure minimum standards and working conditions below which workers should not accept employment, and measures which would guarantee the exercise of all these rights

This Article closely connected with a number of ILO Conventions, including Convention No 100 on Equal Remuneration and Convention No 131 on Minimum Wage-Fixing

(c) pravo na slobodan izbor profesije i zaposlenja, pravo na unapriđenje, sigurnost zaposlenja i sva prava i uslove koji proističu iz rada te pravo na stručno osposobljavanje i prekvalifikaciju

2 3 4 MOR Konvencija bi 29 o prinudnom radu

Kao i Konvencija br 105 (kako je rečeno gore u kontekstu razmatranja Evropske konvencije Član 4), ova konvencija zabranjuje prisilan ili prinudni rad u vecini oblika Međutim, dozvoljena su određena odstupanja, kao što su vojna služba, rad osuđenika koji mora biti pod odieđenim nadzorom, vanredne situacije kao što su rat, požar, zemljotres, epidemije

2 4 Pravo na pravedne i povoljne uslove rada

2 4 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

Član 7
Države stranke ovog Pakta priznaju pravo svakoga da uživa pravedne i povoljne uslove radi kojih posebno osiguravaju

a) naknadu koja kao minimum osigurava svim radnicima

(i) pravičnu placu i jednaku naknadu za rad jednake vrijednosti bez ikakvog razlikovanja, posebno da se ženama garantuju uslovi rada koji nisu niži od onih za muškarce, uz jedneku placu za jednak rad,
(ii) pristojan život za njih i njihove porodice u skladu sa odredbama ovog Pakta,

b) sigurne i zdrave uslove rada,

c) jednaku mogucnost za svakoga da bude unapriđen u svom poslu na odgovarajuci stepen, uzimajuci isključivo navršene godine rada i sposobnosti,

d) odmor slobodno vrijeme, razumno ograničenje radnog vremena i povremene placene dopuste, kao i naknadu za javne praznike

Obaveze države prema ovom članu su da

- obezbijedi minimum place za zaposlene koja pruža garancije za pristojan život, što podrazumijeva pravičnu placu i jednaku naknadu za rad jednake vrijednosti bez ikakvog razlikovanja,,
- garantuje ženama uslove rada koji nisu niži od onih za muškarce uz jednaku placu za jednak rad,
- obezbijedi sigurne i zdrave uslove rada,

The measures foreseen by Article 7 include shortening the working week, and ensuring that workers can enjoy reasonable time for holiday State Parties must set minimum working standards and conditions, the lack or violation of which should be regulated with penalties and remedies imposed by the government

2 4 2 Women's Convention

Article 11
(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular

(f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction

2 4 3 ILO

The ILO has many conventions and recommendations relating to just and favorable conditions of work – too numerous to examine in this manual Specifically, they address such issues as equal remuneration and non-discrimination, minimum wage, labor contracts, hours of work, night work, paid leave, and occupational safety and health

2 5 Right to form and join trade unions

2 5 1 International Covenant on Economic, Social and Cultural Rights

Article 8
(1) The State Parties to the present Covenant undertake to ensure

(a) The right of everyone to form trade unions and join the trade union of his choice subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests No restrictions may be placed on the exercise of this right other then those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedom of others,

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others,

- obezbijedi skracenje radne sedmice u progresivnom smislu,
- obezbijedi minimalne standarde rada i uslova rada ispod kojih radnici ne bi trebali prihvatiti rad uz mjere koje ce obezbijediti garantovanje uživanja svih ovih prava

Ovaj član je, također, u uskoj vezi sa velikom brojem usvojenih Konvencija Međunarodne organizacije rada, uključujuci i Konvenciju o minimalno utvrđenoj fiksnoj plati br 131, i Konvenciju o jednakoj plati br 100

Mjere predviđene Članom 7 uključuju skracenje radnih sati, te obezbjeđenje razumnog vremena za odmor koji bi radnici mogli uživati Države stranke moraju utvrditi minimum radnih standarda i uvjeta, čiji bi se nedostatak ili povreda trebala regulirati kaznama i sredstvima nametnutim od strane vlade

2 4 2 Konvencija o ženama

Član 11
(1) Države stranke preduzimaju sve odgovarajuće mjere radi eliminisanja diskriminacije žena u oblasti zapošljavanja kako bi se na osnovu ravnopravnosti muškaraca i žena osigurala jednaka prava, posebno

(f) pravo na zdravstvenu zaštitu i zaštitu na radu, uključujuci i zaštitu bioloških i reproduktivnih funkcija žena

2 4 3 MOR

MOR ima mnogo Konvencija i Preporuka koje se tiču pravednih i povoljnih uslova rada – i previše da bi sve bile razmotrene u ovom priručniku Specifično, one se bave pitanjima kao što su jednako nagrađivanje i nediskriminacija, minimalna plata, ugovor o radu radni sati, nocni rad, placeno odsustvo, i profesionalna sigurnost i zdravlje

2 5 Pravo na formiranje i udruživanje u sindikat

2 5 1 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

Član 8
(1) Države stranke ovog Pakta obavezuju se osigurati

(a) Pravo svakoga da, u cilju unapređenja i zaštite svojih ekonomskih i socijalnih interesa, osniva sindikate i stupa u sindikat po svom izboru, zavisno jedino od pravila odnosne organizacije Ovom se pravu ne mogu postavljati nikakva ograničenja sem onih koja su propisana zakonom i koja su potrebna u demokratskom društvu i interesu državne sigurnosti ili javnog poretka ili za zaštitu prava i sloboda drugih

> *(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country*

In accordance with this Article, the State is obligated to guarantee

- the right to organize and become a member of trade unions of one's choice,
- the right of trade unions to establish federations or confederations,
- the right to strike, in conformity with the laws of the particular country

The right to organize and join trade unions is closely related to freedom of association, a basic right protected throughout international human rights law These rights, along with the right to strike, are fundamental to the full exercise of the rights within the Covenant on Economic and Social Rights

2 5 2 ILO Convention No 87 on Freedom of Association and the Right to Organize and Convention No 98 on Collective Bargaining

Convention No 87 on Freedom of Association and the Right to Organize

This Convention provides for the rights of all workers and employees to form and to associate in any trade union organization of their choice and without interference from employers It also protects the operation of trade unions free from interference by state authorities

Signatories of this Convention thereby "undertake to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise" (Article 11)

Convention No 98 on the Right to Organize and Bargain Collectively

This Convention protects the rights of trade union members It provides that trade unions should be free of and protected from interference by agents or members of other unions in their establishment, function or administration

Acts of interference, in the meaning of this article, are

> *acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations* (Article 2(2))

Article 3 envisages the creation of appropriate bodies as mechanisms to oversee compliance with the right to organize

(b) pravo sindikata da osnivaju nacionalne federacije ili konfederacije i pravo ovih da osnivaju međunarodne sindikalne organizacije ili da stupe u njih

(c) pravo sindikata da djeluje slobodno i jedino uz ograničenja koja propisuju zakoni i koja su potrebna u demokratskom društvu u interesu državne sigurnosti ili javnog poretka, ili za zaštitu prava i sloboda drugih,

(d) pravo na štrajk, uz uslov da se to pravo vrši u skladu sa zakonima odnosne zemlje

Ovim članom država se obavezuje garantovati

- pravo na organizovanje i udruživanje u sindikate po svom izboru,
- pravo sindikata na osnivanje federacije ili konfederacije,
- pravo na štrajk u skladu sa zakonima odnosne zemlje

Pravo formiranja i učlanjenja u sindikate je u uskoj vezi sa slobodom udruživanja, osnovnim pravom koje je zaštiteno u svim međunarodnim propisima o ljudskim pravima Ova prava, zajedno sa pravom na štrajk, su osnovna prava potrebna da bi se u potpunosti mogla uživati prava u sklopu Pakta o ekonomskim i socijalnim pravima

2 5 2 MOR Konvencija br 87 o slobodi udruživanja i pravu organizovanja i Konvencija br 98 o kolektivnom pregovaranju

Konvencija br 87 o slobodi udruživanja i pravu organizovanja

Ova Konvencija osiguava prava svih radnika i zaposlenih lica da formiraju i udruže se u bilo kakve sindikate po njihovom izboru i bez ometanja od strane poslodavaca Ona, takođe štiti rad sindikata od ometanja od strane državnih vlasti

Potpisnici ove Konvencije time se "obavezuju da preduzmu sve potrebne i pogodne mjere da bi trudbenicima i radnicima obezbijedili slobodno vršenje sindikalnih prava" (Član 11)

Konvencija br 98 o pravima radnika na organizovanje i kolektivne pregovore

Ova Konvencija štiti prava članova sindikata Ona propisuje da sindikati trebaju biti slobodni i zaštiteni od ometanja od strane agenata ili članova drugih udruženja u njihovom uspostavljanju, funkcioniranju ili administraciji

Akti ometanja u značenju ovog člana su

akti koji idu za tim da izazovu stvaranje organizacije radnika kojima gospodare poslodavac ili organizacije poslodavaca ili izdržavanja

With the goal of advancing procedures for voluntary negotiations between employers or their organizations and employees' organizations through collective bargaining, Article 4 provides that measures be taken to develop the necessary systems

2 6 Right to social security and social insurance

2 6 1 International Covenant on Economic, Social and Cultural Rights

Few states provide adequate legal safeguards for social security and social insurance particularly with respect to age, health, or disability At the same time, many countries which do provide such protections are beginning to transfer responsibility for these matters from the state to the private sector These issues raise serious concerns for the full exercise of the rights contained in the Covenant

Article 9
The State Parties to this Covenant recognize the right of everyone to social security including social insurance

Many states do not ensure adequate protection in conformity with this Article, the purpose of which is to bind Member States to ensure to individuals

- social security and social insurance,
- insurance with regard to different circumstances, such as age and health, so that each individual can enjoy a decent life

2 6 2 Women's Convention

Article 11
(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular

(e) the right to social security, particularly in cases of retirement, unemployment sickness, invalidity [sic] and old age and other incapacity to work as well as the right to paid leave,

(2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities

organizacija radnika finansijskim ili drugim sredstvima, sa namjerom, da se ove organizacije stave pod kontrolu poslodavca ili organizacije poslodavaca (Član 2(2))

Član 3 predviđa stvaranje odgovarajućih tijela kao mehanizama za nadgledanje poštivanja prava na organizovanje

Sa ciljem unapriđenja procedura za dobrovoljne pregovore između poslodavaca ili njihovih organizacija i organizacija radnika putem kolektivnih pregovora, Član 4 nalaže poduzimanje mjera kako bi se razvili neophodni sistemi

2 6 Pravo na socijalnu sigurnost i socijalno osiguranje

2 6 1 Pakt o ekonomskim i socijalnim pravima

Malo država obezbjeđuje pravne garancije za socijalnu sigurnost i socijalno siguranje, posebno koje se tiče godina starosti, zdravlja ili invalidnosti U isto vrijeme, mnoge zemlje koje obezbjeđuju ovakve zaštite počinju prebacivati odgovornost za ova pitanja sa državnog na privatni sektor Ova pitanja podstiču ozbiljnu zabrinutost u vezi punog vršenja prava sadržanih u Paktu

Član 9
Države stranke ovoga Pakta priznaju pravo svakoga na socijalnu sigurnost, uključujući socijalno osiguranje

Veliki broj država ne obezbjeđuje adekvatnu zaštitu u skladu sa ovim članom, te se ovim želi obavezati svaka država članica da obezbijedi svima

- socijalnu sigurnost i socijalno osiguranje,
- osiguranje s obzirom na različite okolnosti, kao npr godine starosti, zdravlje i sl kako bi svima bilo omogućeno da uživaju pristojne uvjete života

2 6 2 Konvencija o ženama

Član 11
(1) Države stranke preduzimaju sve odgovarajuće mjere radi eliminisanja diskriminacije žena u oblasti zapošljavanja kako bi se na osnovu ravnopravnosti muškaraca i žena osigurala jednaka prava, posebno

(e) pravo na socijalnu zaštitu, posebno u slučaju odlaska u penziju nezaposlenosti, bolesti invalidnosti, starosti i druge nesposobnosti za rad, te pravo na plaćeni odmor,

(2) Radi spriječavanja diskriminacije žena zbog stupanja u brak ili majčinstva i osiguranja njihovog stvarnog prava na rad države stranke preduzimaju odgovarajuće mjere u cilju

2 7 Rights of pregnant women

2 7 1 International Covenant on Economic Social and Cultural Rights

Article 10
The States Parties to this Covenant recognize that
(2) Special protection should be accorded to mothers during a reasonable period before and after the childbirth During such a period working mothers should be accorded paid leave or leave with adequate social security benefits

Article 10 deals with the family, in particular, mothers and children It binds Member States to

- provide protection and assistance to the family,
- provide special protection to mothers before and after childbirth,

2 7 2 Women's Convention

Article 4
(2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory

Article 11
(2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status,

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment seniority or social allowances,

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities,

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them

(c) podsticanja osiguranja potrebnih pomocnih javnih službi kako bi se roditeljima omogucilo da usklade porodične obaveze sa obavezama na radnom mjestu i sudjelovanjem u društvenom životu, posebno podsticanjem osnivanja i razvoja mreže ustanova za brigu o djeci

2 7 Prava porodilja

2 7 1 Pakt o ekonomskim i socijalnim pravima

Član 10
Države stranke ovog Pakta priznaju da
(2) Treba pružiti posebnu zaštitu majkama kroz razumno vrijeme prije i poslije poroda djeteta Za to vrijeme treba majkama koje rade obezbijediti plaćeni dopust ili dopust sa odgovarajucim povlasticama socijalnog osiguranja

Član 10 je u cijelosti posvecen zaštiti porodice, posebno majke i djece Njime se obavezuje država članica da

- pruži značajnu zaštitu i pomoc porodici,
- pruži posebnu zaštitu majkama prije i poslije poroda,

2 7 2 Konvencija o ženama

Član 4
(2) Usvajanje posebnih mjera od država članica, uključujuci i mjere sadržane u ovoj Konvenciji kojima je cilj zaštita majčinstva, ne smatra se diskriminacijom

Član 11
(2) Radi spriječavanja diskriminacije žena zbog stupanja u brak ili majčinstva i osiguranja njihovog stvarnog prava na rad, države stranke preduzimaju odgovarajuce mjere u cilju

(a) zabrane pod prijetnjom preduzimanja sankcija, davanja otkaza zbog trudnoce ili porodiljskog dopusta i diskriminacije pri otpuštanj sa posla zbog bračnog stanja,

(b) uvođenja placenog porodiljskog dopusta ili sličnih socijalnih beneficija, bez gubljenja prava na ranije radno mjesto, primanja po osnovu staža i socijalna primanja,

(c) podsticanje osiguranja potrebnih pomocnih javnih službi kako bi se roditeljima omogucilo da usklade porodične obaveze sa obavezama na radnom mjestu i sudjelovanjem u društvenom životu, posebno podsticanjem osnivanja i razvoja mreže ustanova za brigu o djeci,

(3) Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised repealed or extended as necessary

2 8 Rights of children

2 8 1 International Covenant on Economic Social and Cultural Rights

Article 10
The States Parties to this Covenant recognize that
(3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions Children and young persons should be protected from economic and social exploitation Their employment in work harmful to morals or health or dangerous to life or likely to hamper their normal development should be punished by law States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law

Recognizing the great propensity for and the existence of exploitation of children in the workplace, this part of Article 10 obligates States to

- take all measures to protect and assist children in the areas of economics and employment free of discrimination on any grounds,
- regulate the age below which paid employment of children is prohibited and punishable by law,
- sanction the employment of children in conditions which may be morally or physically harmful, likely to hamper their normal development, or life threatening

2 8 2 International Convention on the Rights of the Child

The International Convention on the Rights of the Child provides the most extensive protection of children's rights

Article 32
(1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development

(2) States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article To this end and having regard to the relevant provisions of other international instruments, States Parties shall in particular

(d) osiguranja posebne zaštite žena za vrijeme trudnoce na onim radnim mjestima za koja je dokazano da su štetna za trudnice

(3) Mjere zakonske zaštite koje se odnose na pitanja obuhvacena u ovom članu preispituju se periodično u svjetlu naučnih i tehnoloških saznanja i prema potrebi revidiraju, ukidaju ili produžavaju

2 8 Prava djece

2 8 1 Pakt o ekonomskim i socijalnim pravima

Član 10
Države stranke ovog Pakta priznaju da
(3) treba poduzeti posebne mjere zaštite i pomoci u korist sve djece i omladine bez ikakve diskriminacije po porijeklu ili drugim okolnostima Djecu i mlade treba zaštititi od ekonomskog i socijalnog izrabljivanja Njihovo zaposlenje na poslovima koji su štetni za njihov moral ili zdravlje ili opasni po život ili mogu škoditi normalnom razvoju treba da bude kažnjivo po zakonu Države treba također da odrede dobnu granicu ispod koje ce placeni dječiji rad biti zakonom zabranjen i kažnjiv

Priznajuci veliku sklonost ka i postojanje eksploatacije djece na radnom mjestu, ovaj dio člana 10 obavezuje države da

- poduzmu sve mjere za zaštitu i pomoc djeci u oblasti ekonomije i zapošljavanja, bez diskriminacije po bilo kojoj osnovi,
- utvrde godine ispod kojih ce placeno zapošljavanje djece biti zabranjeno i kažnjivo zakonom,
- sankcioniraju zapošljavanje djece u uslovima koji bi mogli biti moralno ili fizički štetni koji bi mogli ugroziti njihov normalni razvoj, ili njihov život

2 8 2 Konvencija o pravima djeteta

Konvencija o pravima djece osigurava najopsežniju zaštitu prava djece

Član 32
(1)Države članice priznaju pravo djeteta na zaštitu od ekonomske eksploatacije i rada na poslu koji može biti opasan ili ometati obrazovanje djeteta ili štetiti zdravlju djeteta odnosno njegovom fizičkom, mentalnom duhovnom moralnom ili socijalnom razvoju

(2) Države članice preduzimaju zakonske, administrativne, socijalne i obrazovne mjere za primjenu odredbi ovog člana Radi toga, a imajuci na umu odgovarajuce odredbe drugih međunarodnih instrumenata, države članice posebno

> *(a) provide for a minimum age or minimum ages for admission to employment*
>
> *(b) provide for appropriate regulation of the hours and conditions of employment and*
>
> *(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article*

At its fifth session in January 1994, the Committee on the Rights of the Child, which supervises compliance with the Children's Convention adopted a set of recommendations concerning economic exploitation of children, in which it stated, *inter alia*

> (iii) In accordance with Article 32 of the Convention on the Rights of the Child, every child has the right to be protected from economic exploitation Taking into consideration the best interests of the child, State Parties must formulate standards or revise legislation in force with a view to ensuring the legal protection of the child from any form of exploitation States Parties are invited to take all legislative, administrative and other measures aimed at ensuring the protection of the child, taking account of all forms of employment, including employment within the family and in the agricultural sector and informal employment [27]

Special attention is also given to the protection of girls from sexual exploitation in the work place The **Declaration and Platform for Action of the Fourth World Conference on Women** (Beijing, 1995) emphasized particular discriminatory forms of children work, which are particularly harmful to girls

> In many cases, girls start to undertake heavy domestic chores at a very early age and are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and an early drop-out from schooling [28]

The Beijing Platform further indicates that child labor is one reason why out of 130 million children without access to primary education in 1990, 81 million were girls [29] The Committee for the Rights of the Child expressed its concern with respect to these issues in numerous comments on initial reports, stating among other things

> The problems of the exploitation of child labor, in particular the use of young girls as domestic workers, and child prostitution also require special attention [30]

---

[27] Implementation Handbook for the Convention on the Rights of the Child, UNICEF (1998), p 435
[28] Fourth World Conference on Women Platform for Action and the Beijing Declaration (1995), para 263
[29] Implementation Handbook on the Children's Convention, p 433
[30] Ibid , p 434

(a) određuju minimalnu starost za zapošljavanje,

(b) osiguravaju regulisanje radnog vremena i uslova rada,

(c) određuju odgovarajuce kazne ili druge sankcije da bi se osigurala uspješna primjena odredaba ovog člana

Komitet za zaštitu prava djeteta, koji nadgleda poštivanje Konvencije o pravima djeteta, je na svojoj petoj sjednici u januaru 1994 usvojio "Preporuke koje se tiču ekonomske eksploatacije djece" u kojima je, između ostalog, rekao

> (iii) U skladu sa članom 32 Konvencije o pravima djeteta, svako dijete ima pravo biti zašticeno od ekonomske eksploatacije Uzimajuci u obzir najbolje interese djeteta, države članice moraju formulisati standarde ili izmijeniti zakone koji su na snazi u pogledu osigurnja pravne zaštite djeteta od bilo kakvog oblika eksploatacije Države članice se pozivaju da preduzmu sve zakonodavne, administrativne i druge mjere usmjerene ka osiguranju zaštite djeteta, uzimajuci u obzir sve oblike zapošljavanja, uključujuci zapošljavanje unutar porodice i u poljoprivrednom sektoru kao i neformalno zapošljavanje [27]

Posebna pažnja se, također, posvecuje i zaštiti djevojčica od seksualne eksploatacije na radnom mjestu **Deklaracija i Platforma za akciju Četvrte svjetske konferencije o ženama** (Peking, 1995) ističe naročite diskriminatorske oblike rada djece koji naročito štetno utiču na djevojčice

> U mnogim slučajevima djevojčice preuzimaju teške kucne poslove još dok su jako mlade i od njih se očekuje da izvršavaju i školske i kucne obaveze, što često za iezultat ima slabo obrazovanje i rano napuštanje školovanja [28]

U Platformi se, dalje, ističe da je rad djece jedan od razloga zbog kojeg je među 130 miliona djece koja 1990 nisu imala pristup osnovnom obrazovanju, 81 milion djevojčica [29] U brojnim komentarim inicijalnih izvještaja, Komitet za piava djeteta je iziazio svoju zabrinutost ovim pitanjima, pa je izmežu ostalog rekao

> Problemi eksploatacije dječjeg rada, naročito korištenja djevojčica za rad u domacinstvima i korištenje dječje prostitucije, također zahtijevaju posebnu pažnju [30]

---

[27] *Implementation Handbook for the Convention on the Rights of the Child* UNICEF str 435
[28] Cetvrta svjetska konferencija o ženama Platforma za akciju i pekinška deklaiacija (1995), stav 263
[29] *Implemntation Handbook on the Children's Convention* str 433
[30] ibid str 434

2 8 3 ILO Convention No 138 on Minimum Age for Employment

According to the ILO, there are at least 120 million children between the ages of 5 and 14 working worldwide The ILO specifically emphasizes the "invisibility" of these children laborers as one of the primary reasons that society and governments are not more active in preventing the most harmful forms of children's work

The ILO has adopted a number of conventions dealing with child labor, but the most recent and the most comprehensive is the Convention on Minimum Age (No 138, 1973) The Committee for the Rights of the Child, which supervises the Children's Convention especially recognizes Convention No 138 as setting the basic standards and urges all states which have not yet done so, to ratify it as soon as possible

This Convention seeks to abolish child labor (Article 1), and prescribes a minimum age for employment, which must be no younger than the age of completion of compulsory education, but should not be below 15 years (Article 2(3))

Convention No 138 applies to all economic sectors, whether or not children are paid for their work

In exceptional circumstances, Convention No 138 (Art 2(3)) provides for Member States to set the minimum working age at 14, subject to consultation with respective employers' and workers' organizations, if the state's educational and economic capacities are underdeveloped It also recommends that Member States legally sanction employment at age 16, provided that the health, security and moral conditions of working youth are fully protected, and that they receive proper training in the respective field, i e , vocational training

3 The European Social Charter

> Civil and political rights and socio-economic rights must not constitute two distinct groups, for it must not be forgotten that it was their antagonism which gave rise to violently opposing doctrines All these rights are equal and indivisible It is impossible to choose between them. If a single right is abolished, the others are suppressed at the same time Democracy cannot be based on half measures [31]

The European Social Charter and Additional Protocol 1 are incorporated into the FBiH legal system in accordance with the Annex of the FBiH Constitution (Instruments for the Protection of Human Rights which have the Legal Force of Constitutional Provisions) [32]

---

[31] Polys Modinos, former Deputy General Secretary of the Council of Europe, at the first session of the Committee of Independent Experts of the European Social Charter, 16 December 1966, *from Human Rights every day The Impact of the Council of Europe s work in the field of human rights*, Human Rights Information Centre, Strasbourg (1996), p 20

[32] The FBiH Constitution incorporates the 1961 European Social Charter As the Social Charter was revised in 1996, this discussion refers to the revised version To our knowledge, the 1996 revised Social Charter is not available in bosnian, therefore the Appendix contains the 1996 revised version in english and the 1961 version in bosnian The reader will note differences between the two versions

2 8 3 Konvencija br 138 o minimalnim godinama za zapošljavanje

Prema podacima MOR-a, u svijetu ima najmanje 120 miliona djece koja rade i to u dobi od 5 do 14 godina MOR naročito ističe "nevidljivost ugrožene djece, što je jedan od osnovnih razloga zbog kojih moderna društva i vlade nisu aktivnije u obuzdavanju najštetnijih oblika dječjeg rada

MOR je donijela brojne konvencije koje se tiču dječjeg rada, ali najskoriji i najopsežniji dokument koji se time bavi je Konvencija o minimalnim godinama za zapošljavanje iz 1973 (br 138) ("Konvencija br 138") Komitet za prava djeteta, koji nadgleda sprovođenje Konvencije o pravima djeteta, naročito ističe Konvenciju br 138 kao relevantan standard, te podstiče sve one države koje je još nisu ratifikovale, da to što prije učine

Ova Konvencija teži da ukine dječiji rad (Član 1), te propisuje minimalne godine za zapošljavanje, koje ne smiju biti ispod godina predviđenih za završetak obaveznog obrazovanja, ali ni ispod 15 godina starosti (Član 2(3))

Konvencija br 138 se odnosi na sve ekonomske sektore, bilo da su djeca placena za svoj rad ili ne

U izuzetnim slučajevima, Konvencija br 138 (Član 2 (3)) mogucnost za države članice da, ukoliko se radi o državama čije su obrazovne i privredne mogucnosti nedovoljno razvijene, mogu poslije konsultacija sa zainteresovanim organizacijama poslodavaca i radnika precizirati minimalne godine starosti od 14 godina Ona takođe preporučuje da države članice pravno sankcioniraju zapošljavanje sa 16 godina starosti, pod uslovom da su zdravlje, sigurnost i moralni uslovi radne omladine u potpunosti zašticeni i da su dobili odgovarajucu specifičnu nastavu, odnosno stručno osposobljavanje u odgovarajucoj grani djelatnosti

3 Evropska socijalna povelja

> Građanska i politička prava i socio-ekonomska prava ne smiju se svrstavati u dvije različite grupe, jer se ne smije zaboraviti da je upravo njihova suprotstavljenost doprinijela porastu žestoko suprotstavljenih doktrina Sva ova prava su jednaka i nedjeljiva Nemoguce se opredjeliti za jedna ili druga Ukoliko dođe do ukidanja samo jednog od njih, u isto vrijeme dolazi do uskracivanja i drugih prava Demokratija se ne može zasnivati na polovičnim mjerama [31]

[31] Polys Modinos bivši zamjenik Generalnog sekretara Savjeta Evrope, na prvoj sjednici Komiteta nezavisnih eksperata Evropske socijalne povelje, 16 Decembra 1996 Iz Human Rights every day, Efekti rada Vijeca Evrope na polju ljudskih prava, Informacioni centar za ljudska prava, Strazburg (1996), str 20

The European Social Charter, issued by the Council of Europe, was conceived as a social counterpart to the European Convention, which protects only civil and political rights Both documents together provide protection for the majority of human rights, as set forth in the Universal Declaration on Human Rights At the regional level, the European Social Charter is a counterpart to the International Covenant on Economic Social and Cultural Rights Its goal is to improve the overall standard of living in Europe, and to encourage social welfare

Under normal circumstances, the European Social Charter can be ratified only by states which are members of the Council of Europe By accepting the Charter, the state undertakes to consider Part I of [the] Charter as a declaration of the aims which it will pursue by all appropriate means " (Article 20(1)(a)) Part I contains 19 enumerated rights and principles which the state thereby accepts to "effectively realize" In contrast to this political obligation, Article 20 also contains a legal obligation on the state to accept at least 10 of 19 articles or 45 numbered paragraphs forming Part II In addition, in order to achieve the purpose of the Charter, Member States must "consider themselves bound" by at least five of seven of the articles which constitute the nucleus of the rights These seven articles are

Article 1	the right to work and prohibition of discrimination
Article 5	the right to organize
Article 6	the right to bargain collectively
Article 12	the right to social security
Article 13	the right to social and medical assistance
Article 16	the right of the family to social, legal and economic protection
Article 19	the right of migrant workers and their families to protection and assistance

Implementation of economic and social rights often requires positive intervention of the State, which depends on economic assets Because of disparate economic and social progress in the member countries of the Council of Europe, and because of the significant resources that would be needed for implementation, it is clear that there was never the intent that Members States accept all articles of the Charter

Supervision of the Charter's implementation is based on the submission of regular Charter implementation reports by the parties The reports are first studied by the Committee of Independent Experts, elected by the Committee of Ministers with the assistance of one representative of the International Labor Organization, acting as observer The Committee of Independent Experts issues a legal of compliance of the country's legislation with the Charter's provisions

Evropska socijalna povelja i Dopunski protokol 1 se primjenjuje na pravni sistem FBiH, shodno Aneksu Ustava FBiH (instrumenti za zaštitu ljudskih prava koji imaju pravnu snagu ustavnih odredaba) [32]

Evropska socijalna povelja je donesena u okviru Vijeca Evrope zamišljena kao pandan Evropskoj konvenciji o ljudskim i osnovnim slobodama na socijalnom polju, buduci da Evropska konvencija štiti samo građanska i politička prava Oba ova dokumenta zajedno pružaju pojedincima zaštitu najveceg broja ljudskih prava utvrđenih u Univerzalnoj deklaraciji o ljudskim pravima Evropska socijalna povelja je na regionalnom nivou pandan Međunarodnom paktu o ekonomskim i socijalnim pravima Njen cilj je da unaprijedi standard života u Eviopi, te da podstiče socijalno blagostanje ljudi

Evropsku socijalnu povelju mogu ratifikovati samo države članice Vijeca Evrope Prilikom prihvatanja Povelje država se, u skladu sa članom 20, mora "obavezati da ce smatrati Dio I Povelje deklaracijom o ciljevima kojima ce težiti svim odgovarajucim sredstvima " Dio I sadrži 19 nabrojanih prava, te se tako država obavezuje da ce ta prava "moci biti efektivno realizovana" Nasuprot ovoj, političkoj obavezi, u članu 20 je sadržana i čisto pravna obaveza, a to je obaveza države da prihvati najmanje deset od devetnaest članova članova koji čine Dio II ili 45 od 72 "numerisana stava" od kojih se ovi članovi sastoje Osim toga, da bi se ostvarila svrha Povelje, države članice moraju u cijelosti prihvatiti najmanje pet od sedam najvažnijih članova, koji čine "tvrdo jezgro" prava To su

član 1 pravo na rad i zabranu diskriminacije

član 5 pravo na organizovanje

član 6 pravo na kolektivno pregovaranje

član 12 pravo na socijalnu sigurnost

član 13 pravo na socijalnu i medicinsku pomoc

član 16 pravo porodice na socijalnu, pravnu i ekonomsku zaštitu

član 19 pravo radnika migranata i njihovih porodica na zaštitu i pomoc

Izvišavanje brojnih ekonomskih i socijalnih prava zahtijeva pozitivne intervencije dižave, a te intervencije zavise od raspoloživosti ekonomskih sredstava Očigledno je da nikada nije postojala namjera da države članice prihvate sve članove Povelje, buduci da je ekonomski i socijalni napredak u zemljama članicama Vijeca Evrope bio i suviše različit, a bila bi potrebna značajna sredstva za implementaciju

Sistem nadzora nad primjenom odredbi Povelje zasniva se na prijemu redovnih izvještaja, koje strane ugovornice podnose a u vezi sa sprovođenjem Povelje U prvom

[32] Ustav FbiH posebno inkorporira Evropsku socijalnu povelju 1961 Međutim, kako je Socijalna povelja prerađena 1996, ova diskusija se odnosi na prerađenu verziju Po našem saznanju, Socijalna povelja koja je revidirana 1996 nije još prevedena na bosanski Zbog toga dodatak sadrži revidiranu verziju povelje 1996 ne engleskom i 1961 Povelju na bosanskom Čitalac će znati razliku između ove dvije verzije

3 1 Protected rights

The rights guaranteed by the European Social Charter can be classified in three categories

3 1 1 Individual rights in labor relations

a) the right to work, including the prohibition of discrimination and the right to vocational guidance and training,

b) protection in the workplace the right to just conditions of work and remuneration, including the right of women and men to equal pay for equal work,

c) right to organize, to bargain collectively and workers' right to information and consultation, as well as the right to participate in the determination and improvement of working conditions and working environment,

d) special protection for certain categories of workers children and young persons, women, persons with disabilities and migrant workers

3 1 2 Social protections for the population as a whole

a) the right to health protection,

b) the right to social security,

c) the right to social and medical assistance, and

d) the right to benefit from social welfare services

3 1 3 Special protections outside of the workplace

- including the rights of children and young persons, mothers, persons with disabilities, migrant workers and their families, as well as the elderly

The legal obligations related to these rights are detailed in the 19 articles of Part II of the Charter The conclusions of the Committee of Independent Experts ("Conclusions"), which discuss compliance with these obligations by State Parties, provide a more precise explanation of these obligations [33] For the purposes of this Manual, we shall discuss only the most significant rights

[33] Gomien et al, *Law and practice of the European Convention, supra* note 24, p 381

stadiju izvještaje razmatra Komitet nezavisnih eksperata, koje bira Komitet ministara, uz pomoc jednog predstavnika Međunarodne organizacije rada koji djeluje u statusu posmatrača Komitet daje pravnu ocjenu o usklađenosti zakonodavstva svake države sa odredbama Povelje

3 1 Zaštićena prava

Prava garantovana ovom Poveljom mogu se podijeliti u tri kategorije

3 1 1 Pojedinačna prava iz radnog odnosa

a) pravo na rad uključujući zabranu diskriminacije, te pravo na profesionalno usmjeravanje i profesionalno obučavanje,

b) zaštita u radnoj sredini pravo na ispravne radne uslove i pravičnu naknadu, uključujući pravo žena i muškaraca na jednaku platu za rad jednake vrijednosti,

c) pravo organizovanja, pravo kolektivnog pregovaranja i pravo radnika na informaciju i konsultaciju, kao i pravo participaciju u određivanju i unapređenju uslova rada i radne sredine,

d) posebna zaštita određenih kategorija radnika djece i mladih lica, žena, hendikepiranih lica i radnika migranata

3 1 2 Socijalna zaštita za svo stanovništvo

a) pravo na zdravstvenu zaštitu,

b) pravo na socijalnu sigurnost,

c) pravo na socijalnu i medicinsku pomoc, i

d) pravo na korištenje pomoci putem službi za socijalnu pomoc

3 1 3 Posebna zaštita izvan radne sredine

- uključujući prava djece i mladih lica, majki porodica, hendikepiranih lica, radnika migranata i njihovih porodica i starijih lica

Pravne obaveze koje su navedene u vezi sa zaštićenim pravima detaljno su navedene u devetnaest članova Dijela II Povelje Zaključci Komiteta nezavisnih eksperata Evropske socijalne povelje ("Zaključci"), u kojima se razmatra pridržavanje ovih obaveza od

3 2 Protection of employment rights

3 2 1 Right to work and the prohibition of discrimination

Article 1(1) States undertake to
accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment,

Given such an obligation, the Committee of Independent Experts ("Committee") demands that State Parties conduct a coherent economic policy, specifically directed towards achieving full employment [34]

Article 1(2)
[States] undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon,

This provision safeguards against the "coercion of any worker to carry out work against his wishes, and without his freely expressed consent," which would be contrary to the European Social Charter [35]

Although it is not explicitly stipulated in the text, Article 1(2) is significant because it establishes the State's obligation to eliminate all forms of employment discrimination This emanates not only from the duty that workers' right to earn their living be "effectively" protected, but also from the Charter's Preamble which states that the "enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin" [36]

The Committee dealt primarily with discrimination with regard to access to employment, but it also considered other types of work-related discrimination, including discrimination in remuneration[37] and sexual harassment [38] Though initially it mainly dealt with discrimination of women, the Committee today considers discrimination on all bases stated in the Preamble, such as membership or activity in trade unions, or religious affiliation For example, while considering the report of the Netherlands, the Committee expressed concern that a Dutch law requiring job applicants to declare their religion, could be in violation of Article 1(2) of the Charter, since it can be a factor in the candidate's being hired [39]

The obligations arising from this Article involve not only the prohibition of discrimination in domestic laws, but also that "positive, practical steps be taken" towards the elimination of existing discrimination [40]

---

[34] Ibid p 382
[35] Ibid
[36] Ibid note 19, p 383 (Committee Conclusion C III 8)
[37] Ibid note 20 (Committee Conclusion C XIII-1 44, Cyprus)
[38] Ibid , note 21 (Committee Conclusion C XIII-3, France)
[39] Ibid note 26 (Committee Conclusion C XIII-1 55, Holland)
[40] Ibid , note 30, p 384 (Committee Conclusion C I 16, Italy)

strane država članica, daju ovim obavezama preciznije značenje [33] Za potrebe ovog priručnika, obradit cemo samo najznačajnija prava

3 2 Zaštita prava iz radnog odnosa

3 2 1 Pravno na rad i zabrana diskriminacije

Članom 1(1) države su obavezne
prihvatiti kao jedan od svojih primarnih ciljeva i odgovornosti postizanje i očuvanje što je moguce višeg i stabilnijeg nivoa zaposlenosti, u svrhu postizanja pune zaposlenosti,

S obzirom na ovu obavezu Komitet nezavisnih eksperata ("Komitet") zahtijeva od država članica da imaju koherentnu ekonomsku politiku koja je naročito usmjerena na postizanje pune zaposlenosti [34]

Članom 1(2) Povelje države su obavezne
djelotvorno štititi pravo radnika da zarađuju za život slobodno izabranim zanimanjem

Ova odredba očigledno pruža garancije protiv prisilnog rada, pa je stoga "prisiljavanje bilo kojeg radnika da obavlja rad protivno svojim željama i bez njegovog slobodno izraženog pristanka, suprotna Povelji "[35]

Naročit značaj ovog stava člana 1 ogleda se u obavezi države da eliminiše sve oblike diskriminacije u zapošljavanju, mada to nije izričito rečeno u samom tekstu ovog člana Ova obaveza proizilazi ne samo iz zahtjeva da se pravo radnika da zarađuju za život štiti "djelotvorno" vec i iz Preambule Povelje u kojoj se kaže da "*uživanje socijalnih prava treba biti osigurano bez diskriminacije u pogledu rase boje, pola, vjere, političkog mišljenja, nacionalnog ili socijalnog porijekla*" [36]

Komitet se prvenstveno bavio diskriminacijom u pogledu pristupa zapošljavanju, ali je razmatrao i druge viste diskriminacije u vezi sa radom uključujuci diskriminaciju u placanju rada[37] i seksualno zlostavljanje [38] Iako se u početku uglavnom bavio diskriminacijom žena, Komitet danas razmatra i diskriminaciju po svim drugim osnovima navedenim u Preambuli, kao što je članstvo ili aktivnost u sindikatu ili diskriminaciju u pogledu vjere Tako je, na primjer, razmatrajuci izvještaj Nizozemske, Komitet izrazio bojazan da nizozemski zakon koji traži od kandidata da se izjasne o svojoj religiji stoji u suprotnosti sa Članom 1 (2) Povelje, buduci da može uticati na šanse kandidata [39]

---

[33] Gomien i drugi Zakon i praksa Evropske konvencije, supra nota 24, str 381
[34] ibid , str 382
[35] ibid
[36] ibid , nota 19, str 383, (Zaključci komiteta C III 8)
[37] ibid , nota 20 (Zaključci komiteta C XIII-1 44, Kipar)
[38] ibid , nota 21 (Zaključci komiteta C XIII-3, Francuska)
[39] ibid nota 26 (Zaključci komiteta C XIII-I 55 Holandija)

3 2 2 Right to just and equal remuneration for women and men

Article 4(1)
[States] undertake to recognise the right of workers to a remuneration such as will provide them and their families a decent standard of living,

After initial difficulties with implementation of this provision, the Committee adopted an approach that it called a "decency threshold," according to which wages significantly lower then the national average wage cannot be considered sufficient to ensure a decent standard of living in that country

In accordance with a Council of Europe study,[41] the Committee established the lowest permissible wage at 68% of the national average If the minimum wage is lower, it is considered not to provide for a "decent standard of living" as defined by Article 4 (1) of the Charter Thus, the Committee concluded that the United Kingdom violated the Charter during 1989-1990, since "at least 25% of all workers and at least 50% of all female workers earned less then 'the decency threshold' of £163 per week" [42]

Article 4(3)
[States] undertake to recognise the right of men and women workers to equal pay for work of equal value

This is a provision of great importance Discrimination based on gender can appear in two forms

- different wages between men and women for the same work, and
- unequal pay for work of equal value

By requiring "equal pay for work of equal value" instead of "equal pay for equal work", Article 4(3) prohibits both forms of discrimination [43] To fulfill its obligations under this Article, a State must, according to the Committee, fulfill two requirements [44]

i it must show that equal pay for equal work is guaranteed within its jurisdiction "by law and in fact" (this requirement concerns equal pay for the same work and is easier to observe), and

ii it must provide "evidence that it has taken adequate steps, the nature of which is left to the state's own judgment to equalize remuneration for work of comparable value" (this requirement concerns equal pay for work of equal value and raises complicated issues of job evaluation)

Article 4(4)
[States] undertake to recognise the right of all workers to a reasonable period of notice for termination of employment

---

[41] Ibid , note 58, p 387, Daloz, *Methods of defining 'decent remuneration"* (Council of Europe, 1977)
[42] Ibid , note 60, p 388 (Committee Conclusion C XII-1 92, UK)
[43] Ibid , p 389
[44] Ibid , note 66 (Committee Conclusion C III 26)

Međutim obaveze iz ovog člana ne podrazumijevaju samo zabranu diskriminacije u zakonu, već i *"preduzimanje pozitivnih, praktičnih koraka" radi eliminacije diskriminacije koja stvarno postoji* "[40]

3 2 2 Pravo na pravičnu naknadu i jednako nagrađivanje žena i muškaraca

Članom 4(1) Povelje, države su obavezane
priznati pravo radnika na naknadu koja će njima i njihovim porodicama omogućiti pristojan standard življenja

Nakon što je u početku imao teškoća u primjeni ove odredbe, Komitet se odlučio za pristup koji je nazvao "dostojan prag", po kojem se svaka zarada koja je pretjerano niža od državnog prosjeka ne može smatrati dovoljnom da obezbijedi pristojan standard življenja

Nakon studija koje su urađene u okviru Vijeca Evrope,[41] Komitet je odredio da najmanja dozvoljena zarada mora biti 68% od državnog prosjeka Ukoliko je minimalna zarada niža od toga, smatra se da ona ne pruža mogucnost za "dostojan standard življenja" kako je to definisano članom 4(1) Povelje Tako je komitet zaključio da je Ujedinjeno Kraljevstvo povrijedilo Povelju tokom 1989 –1990 godine, buduci da je "najmanje 25% svih radnika i najmanje 50% svih žena –radnika zarađivalo manje od "praga dostojnosti" od 163 funte sedmično" [42]

Član 4(3) Povelje obavezuje države da
priznaju pravo žena i muškaraca na jednako placanje za jednaku vrijednost rada

Ovo je, bez sumnje odredba od velike važnosti buduci da diskriminacija po osnovu pola može uzeti dva oblika

- razlike u placanju muškaraca i žena za isti rad, i
- nejednako placanje za rad jednake vrijednosti

Zahtijevajuci "jednako placanje za rad jednake vrijednosti" nasuprot "jednakoj placanju za jednak rad", član 4(3) zabranjuje oba oblika diskriminacije [43] Da bi ispunila obavezu iz ovog člana, država mora, prema stanovištu Komiteta, ispuniti dva zahtijeva [44]

i mora pokazati da je jednako placanje za jednak rad garantovano unutar njene jurisdikcije "u zakonu i u praksi" (ovaj zahtjev se tiče jednakog placanja istog rada i lakše ga je ispoštovati), i

ii mora pružiti "dokaze da je preduzela odgovarajuce korake, priroda kojih je ostavljena procjeni države u izjednačavanju naknade za rad čija se vrijednost

[40] ibid , nota 30, str 384 (Zaključak komiteta C I 16 Italija)
[41] ibid , nota 58, str 387, Daloz, *Metodi definisanja "pristojne naknade"* (Vijece Evrope 1997)
[42] ibid nota 60 str 388 (Zaključak komiteta C XII-1 92, UK)
[43] ibid str 389
[44] ibid , nota 66 (Zaključak komiteta C III 26)

What is meant by a "reasonable period of notice" can be seen in an example involving the United Kingdom Workers in the UK had a right to one week notice after four weeks of employment, two weeks notice after two years of work, and thereafter, workers had a right to an additional week's notice for each year of employment up to 12 years Thus, a worker with 12 or more years of employment, had a right to 12 weeks' dismissal notice The Committee concluded that this complied with Article 4(4) of the Charter, except for workers with less then two years of employment The Committee believed that, although very short notice can be justified in a probation period, after that the period of notice must be more than one week [45]

3 2 3 Right to organize and bargain collectively

The right to organize (Article 5) and the right to bargain collectively (Article 6) are among the key provisions of the Charter in the field of employment

> **Article 5**
> *With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organisations, [States] undertake that national law shall not be such as to impair, nor shall it be applied so as to impair, this freedom*

The Committee believes that this article produces both positive and negative obligations

- The negative aspect is that the State must not prohibit workers – as individuals or in groups, with the exception of members of the military – from forming and joining trade unions Nor can it suspend or dissolve a trade union The State also may not compel workers by law to join a trade union Thus, the freedom to organize and join unions includes the freedom not to form or join them as well

- The positive aspect of the obligation requires that the State take appropriate steps to guarantee the exercise of the right to organize, especially to guarantee the protection of workers' organizations from interference by employers It primarily implies interference in the form of discrimination of workers, e g , dismissal and promotion, because of their membership or active participation in trade unions [46]

Article 6 of the Charter relates to collective bargaining and binds the state "to promote joint consultation between workers and the employers", though it does not concern consultation between the State and employers and workers "Consultation" in the sense of this Article refers to consulting in all areas of common interest, including productivity, efficacy, industrial health, safety and welfare [47]

---

[45] Ibid , note 69 (Committee Conclusion C XII-1 107 UK)
[46] Ibid , p 391
[47] Ibid

može uporediti" (ovaj zahtjev se tiče jednakog placanja za rad jednake vrijednosti i postavlja komplikovana pitanja procjene vrijednosti rada)

Član 4(4) Povelje obavezuje države da
svim radnicima priznaju pravo na razuman period otkaznog roka u slučajevima prestanka zaposlenja

Šta Komitet smatra 'razumnim rokom" može se vidjeti kroz primjer Ujedinjenog Kraljevstva U dvanaestom izvještajnom ciklusu, radnici u Ujedinjenom Kraljevstvu su imalo pravo na jednu sedmicu otkaznog roka nakon četiri sedmice staža Nakon dvije godine rada, otkazni rok se povecavao na dvije sedmice Nakon toga, radnici su imali pravo na dodatnu sedmicu otkaznog roka za svaku dalju godinu zaposlenja do dvanaest godina Radnik sa 12 ili više godina staža imao je, tako, pravo na otkazni period od 12 sedmica Komitet je zaključio da je ovo u skladu sa članom 4(4) Povelje, osim za radnike koji imaju manje od dvije godine staža Komitet je smatrao da iako se vrlo kratak otkazni rok može pravdati u periodu probnog rada, nakon toga otkazni rok ipak treba biti duži od jedne sedmice [45]

3 2 3 Pravo organizovanja i kolektivnog pregovaranja

Pravo organizovanja (član 5) i pravo kolektivnog pregovaranja (član6) spadaju među ključne odredbe Povelje u oblasti radnih odnosa

Član 5
U svrhu osiguranja ili unapriđenja sloboda radnika i poslodavaca da osnuju lokalne, državne ili međunarodne organizacije za zaštitu svojih ekonomskih i socijalnih interesa i da se priključe tim organizacijama, stranke ugovornice se obavezuju da nacionalno zakonodavstvo nece biti takvo da naškodi, niti ce se primjenjivati tako da naškodi ovim slobodama

Po mišljenju Komiteta, ovaj član za državu proizvodi i pozitivne i negativne obaveze

- Negativna obaveza je da država ne smije zabraniti radnicima ili grupama radnika, osim pripadnicima vojnih snaga, formiranje ili pridruživanje sindikatima, niti može suspendovati ili raspustiti sindikat Država također ne smije zakonom prisiljavati radnike da se pridruže sindikatu, tako da sloboda formiranja i pridruživanja sindikatima podrazumijeva i slobodu da se ne formiraju sindikati ili da se ne bude njihov član

- Pozitivna obaveza države je da preduzme odgovarajuce korake radi garantovanja vršenja prava organizovanja, a naročito garantovanja zaštite radničkih organizacija od miješanja od strane poslodavaca Tu se prvenstveno misli na miješanje u obliku diskriminacije radnika u zapošljavanju, otpuštanju, napredovanju itd zbog njihovog članstva ili aktivnog rada u sindikatima [46]

[45] ibid , nota 69 (Zaključak komiteta C XII-1 107 UK)
[46] ibid , str 391

An important part of Article 6 is paragraph 4, which binds the State to

> *recognise the right of workers and employers to collective action in cases of conflict of interest, including the right to strike*

From the point of view of worker rights, Article 6(4) is a milestone in international labor law, as it is the first time that a multilateral treaty recognized the right to strike A strike is included among the forms of collective action workers can take

The Committee has considered various restrictions on the right to strike, concluding that prohibiting strikes because they were not organized by a trade union is contrary to Article 6(4) [48] Imposing arbitration as a tactic by authorities to end a strike is also contrary to this Article [49]

3 2 4 Special safeguards for children and young persons

Article 7 of the Charter contains ten paragraphs relating to the protection of children and young persons in the field of employment

The minimum age for employment is set at 15, the objective being that work must not hinder children's right to education Accordingly, the Committee of Independent Experts have interpreted this issue such that school age children should not work more than half their school vacation, and the number of hours per day at a job during the school term must be strictly limited

Other provisions provide guarantees for just wages and remuneration to young workers and apprentices

3 2 5 The right of employed women to protection

> **Article 8(1)** of the Charter binds States to ensure for women,
> *either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least fourteen weeks,*

This Article actually imposes two obligations upon the State first, to guarantee by law that employed women get at least 14 weeks pregnancy leave, and second, to provide them with adequate money to take that leave

The Committee insisted that the right to a minimum [14] weeks leave must be guaranteed by law, which would make pregnancy leave compulsory for women, for a "minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks" [50]

---

[48] Ibid note 92, p 393 (Committee Conclusion C II 28, Germany)
[49] Ibid , note 94 (Committee Conclusion C XII-1 130, Norway)
[50] Ibid , note 106, p 396 (Committee Conclusion C XII 152, UK)

Član 6 Povelje odnosi se na kolektivno pregovaranje i obavezuje državu "da unapređuje zajedničko dogovaranje između radnika i poslodavaca" i ne odnosi se na dogovaranje između vlade s jedne i poslodavaca i radnika s druge strane "Dogovaranje" u smislu ovog člana znači dogovaranje u svim sektorima od zajedničkog interesa, uključujući produktivnost, efikasnost, industrijsko zdravlje, sigurnost i blagostanje [47]

Važan stav ovog člana je stav 4, po kojem država mora

> *priznati pravo radnika i poslodavaca na kolektivne akcije u slučajevima sukoba interesa, uključujući i pravo na štrajk*

Sa stanovišta radnika, član 6(4) je zaštitni znak međunarodnog radnog prava, jer je njime prvi put pravo na štrajk izričito priznato multilateralnim ugovorom Štrajk je naveden kao jedan od oblika kolektivne akcije za koju se radnici mogu odlučiti

Komitet je ispitivao nekoliko vrsta ogrničenja prava na štrajk, pa je zaključio da je zabrana štrajka zbog toga što ga nije organizovao sindikat, suprotna članu 6(4) [48] Isto tako, u suprotnosti sa ovim članom je i prekid štrajka od strane vlasti nametanjem arbitraže [49]

3 2 4 Posebna zaštita djece i maloljetnika

Član 7 Povelje ima deset stavova koji se tiču zaštite djece i maloljetnika u oblasti zapošljavanja

Minimalna starosna dob za zapošljavanje maloljetnika je 15 godina Rad ne smije djeci uskratiti pravo na obrazovanje, te shodno tome Komitet nezavisnih eksperata je ovo pitanje protumačio tako što djeca školske dobi ne bi trebalo da rade više od polovine školskog raspusta, a broj sati koje dnevno mogu provesti na poslu za vrijeme trajanja školske godine mora biti strogo limitiran

Ostale odredbe pružaju garanciju za pravičnu platu i naknadu mladim radnicima i pripravnicima

3 2 5 Pravo zaposlenih žena na zaštitu

Član 8(1) Povelje obavezuje države da
ženama obezbijede bilo putem placenog odsustva, putem odgovarajucih naknada iz socijalnog osiguranja ili naknada iz državnih fondova odsustvo prije i nakon poroda do ukupno najmanje 14 sedmica

---

[47] ibid
[48] ibid nota 92, str 393 (Zaključak komiteta C II 28, Njemačka)
[49] ibid , nota 94 (Zaključak komiteta C XII-1 130, Norveška)

of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks" [50]

As far as the second obligation is concerned, the Committee considered remuneration during maternity leave at 80% of the normal wage to be sufficient [51]

Article 8 makes it unlawful to dismiss a woman from her job during the maternity leave It also enables a nursing mother to be absent from work for "sufficient time for this purpose"

Article 8(4) binds the State to regulate the work of pregnant women on night shifts and Article 8(5) concerns a prohibition on pregnant or nursing women working in underground mining and all other work supposedly "unsuitable [for them] by reason of its dangerousness, unhealthy, or arduous nature " This paternalistic approach to so-called protections, unfortunately prevails in the attitudes of many and in some cases, in legislation A more appropriate approach would be that "the hazards associated with night work and work underground should be dealt with on a basis of health and safety, with provisions applying equally to both sexes "[52] Before the Social Charter was revised in 1996, the United Kingdom and Spain denounced Article 8(4) as out-dated and discriminatory, and pointed out that it could reduce opportunities for female employment in some industries This remains a concern despite the revision

IV. HOW TO PREPARE A DISCRIMINATION CLAIM USING INTERNATIONAL HUMAN RIGHTS STANDARDS IN DOMESTIC COURTS

1 Definition of Discrimination

The prohibition against discrimination and inequality before the law are general principles and central norms regarding the protection of human rights in all international instruments, for example

- Universal Declaration on Human Rights (Articles 1, 2, and 7),
- International Covenant on Civil and Political Rights (Articles 2, 3, 14, 23, 26),
- International Covenant on Economic, Social and Cultural Rights (Articles 2, 3, 7, and 10),
- Convention on the Elimination of All Forms of Racial Discrimination (Articles 1, 2, 4, and 5),

[50] Ibid note 106, p 396 (Committee Conclusion C XII 152, UK)
[51] Ibid note 107, (Committee Conclusion C III 49, Italy)
[52] Ibid

Ovo državi namece dvije obaveze prvo, da zakonom predvidi da zaposlena žena ima najmanje 14 sedmica porodiljskog odsustva, a druga je da one imaju dovoljno sredstava da to odsustvo uzmu

Komitet je insistirao da pravo na odsustvo od najmanje četrnaest sedmica mora biti garantovano zakonom, koji bi porodiljsko odustvo učinio obaveznim za žene "u minimalnom periodu prekida rada, koji se mora uzeti nakon porođaja i koji se rauzmno utvrđuje na šest sedmica" [50]

Što se tiče druge obaveze, Komitet je naknadu za porodiljsko odsustvo od 80% od normalne zarade smatrao dovoljnom [51]

Ovim članom se, također, onemogucava otpuštanje žena sa posla za vrijeme trudnoce, kao i omogucavanje majci-dojilji odsustvovanje sa posla u vremenu dovoljnom za tu svrhu

Član 8(4) obavezuje državu da reguliše rad trudnih žena u nocnim smjenama, a clan 8(5) se tice zabrane rada trudnih žena kao i žena koje su u postporođajnom periodu i periodu dojenja, u podzemnim rudnicima kao i drugim sektorima koji su za žene neodgovarajuci zbog opasnosti, nezdravih uslova ili teške prirode Ovakav očinski pristup takozvanim zaštitama, nažalost, prevladava kod mnogih, a u nekim slučajevima čak i u propisima Mnogo adekvatniji pristup bio bi da se "rizik koji je vezan za nocni rad i rad pod zemljom procjenjuje na osnovu zdravlja i sigurnosti, pri čemu bi se propisi jednako primjenjivali na pripadnike oba pola"[52] Prije nego je Socijalna povelja revidirana 1996, Ujedinjeno Kraljevstvo i Španija su denuncirali Član 8 (4) kao zastarjeo i diskriminirajuci i upozorili da on može umanjiti mogucnosti za zapošljavanje žena u nekim industrijskim granama Zabrinutost još uvijek postoji i poslije izvršene revizije

IV KAKO PRIPREMITI ŽALBU O DISKRIMINACIJI KORISTECI MEĐUNARODNE STANDARDE ZA LJUDSKA PRAVA U DOMACIM SUDOVIMA

1 Definicija Diskriminacije

Zabrana diskriminacije i jednakost pred zakonom bez diskriminacije su opci principi i centralne norme u vezi sa zaštitom ljudskih prava u svim velikim međunarodnim instrumentima, kao što su

- Univerzalna deklaracija o ljudskim pravima (članovi 1, 2 i 7),

[50] ibid , nota 106, str 396 (Zaključak komiteta C XII 152 UK)
[51] ibid nota 107, (Zaključak komiteta C III 49, Italija)
[52] ibid

- Convention on the Elimination of All Forms of Discrimination Against Women (Articles 1, 2, and 4), and

- European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14)

Although there is no precise definition for discrimination, guidance can be found in the Conventions relating to racial discrimination and discrimination against women The essence of the definition is the same discrimination is "any distinction, exclusion, restriction or preference" which is based on impermissible grounds and has the "purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life " Pursuant to the **International Covenant for Civil and Political Rights**, there is a free-standing right not to be discriminated against under **Article 26**

> *All persons are equal before the law and are entitled without any discrimination to equal protection of the law In this respect the law shall prohibit any discrimination to equal protection of the law In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex language, religion political or other opinion, national or social origin, property, birth, or any other status*

The International Covenant on Economic, Social and Cultural Rights forthrightly prohibits discrimination in **Article 2 (2)**

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*

This Article requires States parties to ensure immediate implementation and to include explicit guarantees on their behalf Having adopted the Covenant, States must eliminate *de jure* discrimination by abolishing, without delay, all discriminatory laws, regulations or practises affecting the exercise of economic, social and cultural rights This Article also requires States parties to prohibit individuals and organizations from discrimination in any field of public life

The right not to be discriminated against is an autonomous right This right prohibits discrimination in any field regulated by State authorities Therefore, legislation adopted by a State party must comply with the requirements set forth in the international instruments

The Constitution of Bosnia and Herzegovina prohibits discrimination by Article 2 (4)

> *The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or*

- Međunarodni pakt o građanskim i političkim pravima (članovi 2, 3, 14, 23 i 26),
- Međunarodni pakt o ekonomskim i socijalnim i kulturnim pravima (članovi 2, 3, 7 i 10),
- Konvencija o eliminaciji svih oblika rasne diskriminacije (članovi 1, 2, 4 i 5),
- Konvencija o eliminaciji svih oblika diskriminacije žena (članovi 1, 2 i 4), i
- Evropska konvencija o zaštiti ljudskih prava i osnovnih sloboda (Član 14)

Ne postoji precizna definicija diskriminacije, ali ovaj pojam se može graditi na osnovu opisa u spomenutim ugovorima, kao što su Konvencija o rasnoj diskriminaciji i Konvencija o diskriminaciji žena Iako se prvi instrument odnosi na rasnu diskriminaciju, a drugi na diskriminaciju žena, srž opisa je istovjetna diskriminacija je 'svako razlikovanje, isključivanje, ograničavanje ili davanje prvenstva" koje se zasniva na nekom od nedozvoljenih razloga i koje "ima za cilj ili posljedicu onemogucavanje ili ugrožavanje priznavanja, uživanja ili vršenja, pod jednakim uslovima, ljudskih prava i osnovnih sloboda" na politickom, ekonomskom, socijalnom, kulturnom ili drugim poljima javnog života Prema **Članu 26 Međunarodnog pakta o građanskim i političkim pravima** propisano je pravo protiv diskriminacije

> *Sva lica su jednaka pred zakonom i imaju pravo na jednaku zaštitu zakona bez ikakve diskriminacije U tom pogledu zakonom se zabranjuje diskriminacija jednake zastite pred zakonom Zakonom se zabranjuje bilo kakav oblik diskriminacije, a svim licima se garantuje jednaka i efikasna zaštita protiv diskriminacije po bilo kom osnovu kao što su rasa, boja, pol, jezik, vjera, političko ili drugo ubjeđenje, nacionalno ili socijalno porijeklo, imovina, rođenje ili bilo koji drugi status*

Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima zabranjuje diskriminaciju u **članu 2(2)**

> *Države stranke ovog Pakta obavezuju se da ce garantovati da se prava proglašena u ovom Paktu vrše bez diskriminacije bilo koje vrste na osnovu rase, boje kože, pola, jezika, vjere, političkog ili drugog mišljenja nacionalnog ili socijalnog porijekla, imovine, rodjenja ili bilo koje druge okolnosti*

Ovaj član zahtijeva od država članica da osiguraju trenutnu primjenu i ukljue eksplicitne garancije u ime država članica Prihvatanjem Pakta, države moraju eliminisati *de jure* diskriminaciju, ukidajuci bez ikakvog odgađanja svaki diskriminirajuci zakon, odredbu ili praksu koji se odnose na uživanje ekonomskih, socijalnih i kulturnih prava Ovaj član takođei zahtijeva od država članica da zabrane pojedincima i tijelima provođenje diskriminacije na bilo kojem polju javnog života

other opinion, national or social origin, association with a national minority, property, birth or other status

Similar provisions of autonomous nature can be found in both the Constitution of the Federation BiH (Article 2 (1) (d)) and the Constitution of the RS (Article 10)

2 Distinction Versus Discrimination

2 1 The basis of discrimination

- Innate characteristics (e g , race, color, sex, national or social origin, birth), which essentially means attributes which are not gained by their own will and which make the individual a member of a wider group against which discrimination is actually directed

- Gained characteristics (e g , political and other affiliations, and property), meaning those characteristics for which there is the possibility that one can change them by his or her own will

2 2 Permissible distinctions

Distinctions can be permissible, provided

- they are objective,

- they are reasonable,

- they pursue a legitimate aim,

- there is a proportional relationship between the aim sought and the means used to attain it

However, the immediate aim cannot justify a prohibited distinction Discrimination is very often hidden behind provisions that appear neutral or objective because they apply to everyone In assessing such measures, one should constantly bear in mind that the equality cannot only be formal but must also be real, meaning that equal standards cannot apply to unequal situations

Contrary to the impermissible distinction (also known as discrimination), permissible distinctions are not only accepted, but are also in some cases required by human rights provisions For instance, Article 6 of the International Covenant on Civil and Political Rights, and in many national laws, prohibits the execution of the death penalty against a a pregnant woman or a juvenile Citizenship is also a permissible distinction, though it is an attribute gained not by one's own will, but by origin or birth Distinctions on the basis of personal characteristics are also permissible, regardless of whether they are innate or gained If someone is favored because of his/her talent, intelligence, education, and if these

Pravo na nediskriminaciju, kako je definisano u navedenim dokumentima je, dakle, samostalno pravo Ovakvim formulisanjem se diskriminacija zabranjuje u u svakoj oblasti koju država uređuje Dakle, ako je država prihvatila navedene instrumente, onda mora poštovati zahtjeve postavljene u njima

Ustavom Bosne i Hercegovine, članom 2 (4), diskriminacija je zabranjena na sljedeći način

> *Uživanje prava i sloboda predviđenih u ovom članu ili u međunarodnim sporazumima navedenim u Aneksu I ovog Ustava, osigurano je svim licima u Bosni i Hercegovini bez diskriminacije po bilo kojem osnovu kao što je pol, rasa, boja, jezik, vjera, političko i drugo mišljenje, nacionalno ili socijalno porijeklo, povezanost sa nacionalnom manjinom, imovina, rođenje ili neki drugi status*

Slične odredbe, koje su također autonomne prirode, nalazimo i u ustavima Federacije BiH (čl 2 (1) (d)) i Republike Srpske (čl 10)

2 Razlikovanje nasuprot diskriminaciji

2 1 Osnov diskriminacije može biti

- Po urođenim obilježjima (rasa, boja, pol, nacionalno i socijalno porijeklo, rođenje itd), dakle po osobinama ljudskog bica koje ono uglavnom ne stiče svojom voljom i koje ga čine pripadnikom neke šire grupe protiv koje je diskriminacija zapravo i upravljena

- Po stečenim obilježjima (politička i druga uvjerenja ili imovina), dakle ona obilježja za koja postoji mogucnost da ih čovjek svojom voljom izmijeni

2 2 Dopušteno razlikovanje

Razlikovanje može biti dopušteno

- ako je objektivno,
- ako je razumno,
- ako ima legitiman cilj, i
- ako postoji proporcionalna veza između cilja koji se želi postici i sredstava koja se upotrebljavaju u tu svrhu

Međutim neposredni cilj ne može opravdati zabranjenu razliku Diskriminacija se često krije iza odredaba koje izgledaju objektivne jer jednako važe za sve U procjeni ovakvih mjera treba stalno imati na umu da jednakost ne može biti samo formalna, nego mora

attributes are required in given circumstances, or if someone is neglected in certain situations because of his/her criminal record, generally it could not be asserted that this constitutes discrimination

The International Covenant on Economic, Social and Cultural Rights contains provisions prescribing "special measures" or providing "special protection" to mothers before and after childbirth, as well as protecting children from economic exploitation

Some international documents explicitly provide for preferential categories under certain conditions For example, the **Convention on the Elimination of All Forms of Racial Discrimination** prescribes in **Article 2(2)**

> *States Parties shall when the circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved*

This Article, thus, instigates the states to undertake the measures which would enable the discriminated groups or individuals to achieve the same level of development and to fully and equally enjoy all human rights and fundamental freedoms These measures, among other things, include giving preference to these groups or individuals, but only until the stated aims are realized This is called positive discrimination or affirmative action

2 3 Direct discrimination

Discrimination is "direct" when there is no doubt as to why an unjustifiable distinction or preference between individuals or groups is made Claims that legally sanctioned distinctions or decisions of state organs are not discriminatory because they lack discriminatory intent or are not based on prohibited grounds can nonetheless be questioned when the effect is discriminatory

In some cases this issue is very simple, because the dispute between the State and the individual can be reduced to the question of whether or not the treatment of the individual was based upon one of the prohibited grounds This can be illustrated by a case of the European Court of Human Rights in which the applicant, a Jehovah's Witness, claimed that the Austrian courts refused her custody of her children solely because of her religious affiliation The government, on the other hand, claimed that the decision was based on protecting the interests of the child After reconsidering the case and the decisions of the Austrian courts, the European Court concluded that the final decision had taken into account the applicant's religious affiliation, meaning that she had been discriminated against [53] This was clearly an example of direct discrimination

[53] Hoffmann judgment of 23 June 1993 Series A no 255-C, *from* Gomien et al, *Law and Practice of the European Convention, supra* note 24, p 352-353

biti i stvarna, što znači da se ne mogu primjenjivati jednaka mjerila na nejednake situacije

Za razliku od nedopuštenog razlikovanja (poznatog i kao diskriminacija), dopuštena razlikovanja su ne samo dozvoljena, nego su nekada čak i propisana normama o ljudskim pravima Na primjer, član 6 Međunarodnog pakta o građanskim i političkim pravima kao i mnogi nacionalni zakoni, zabranjuje izvršenje smrtne kazne nad maloljetnim licem ili trudnom ženom Državljanstvo je, takodjer, dopušteni način razlikovanja, iako je ono osobina koja se stiče bez sopstvenog uticaja, porijeklom ili rođenjem U dopušteno razlikovanje također spada i razlikovanje zbog čovjekovih ličnih osobina, bez obzira jesu li one urođene ili stečene Ako neko dobija prednost zato što je talentovan, inteligentan, obrazovan itd , a te osobine su potrebne u datim okolnostima, ili ako je neko zapostavljen u određenim situacijama zato što je krivično kažnjavan, onda se ne bi moglo reci da se radi o diskriminaciji

Međunarodni pakt o ekonomskim i socijalnim pravima ima odredbe kojma propisuje preduzimanje "specijalnih mjera" ili pružanje "specijalne zaštite" majkama prije i nakon rađanja djeteta, te djeci i mladima radi zaštite od ekonomske eksploatacije

Neki međunarodni dokumenti izričito predviđaju davanje prednosti određenim kategorijama pod određenim uslovima Tako npr **Konvencija o ukidanju svih oblika rasne diskriminacije u članu 2(2)** propisuje

> *Države stranke preduzet ce ako okolnosti to zahtijevaju, na socijalnom, ekonomskom kulturnom i ostalim poljima, posebne i konkretne mjere za odgovarajuce osiguranje razvoja ili zaštite određenih rasnih grupa ili pojedinaca koji pripadaju tim grupama, u svrhu garantovanja, punog i jednakog uživanja ljudskih prava i osnovnih sloboda Te mjere ne mogu ni u kom slučaju imati za rezultat održavanje nejednakih ili posebnih prava za rasne grupe nakon što su postignuti ciljevi zbog kojih su te mjere bile preduzete*

Ovaj član, dakle predviđa i potiče države da preduzimaju mjere kojima ce grupama ili pojedincima koji su bili u nepovoljnom položaju u odnosu na druge omogućiti da dostignu isti nivo razvoja i da u potpunosti jednako uživaju sva ljudska prava i osnovne slobode Te mjere, između ostalog, podrazumijevaju i davanje prednosti tim grupama ili pojedincima ali samo do postizanja navedenih ciljeva Ovo se naziva pozitivnom diskriminacijom ili afirmativnom akcijom

2 3 Direktna diskriminacija

Kod direktne diskriminacije nema nikakve sumnje zbog čega država pravi razlilku među ljudima ili grupama Tvidnje da pravno sankcionirana razlikovanja ili odluke državnih organa nisu diskriminatorni, budući da im nedostaje diskriminatorna namjera ili budući da nisu bazirani na zabranjenim osnovama, mogu ipak biti dovedene u pitanje ako je njihov efekat diskriminirajuci

However, there are cases when it is not easy to determine the real reasons for differential treatment In these cases, particularly where a statute or policy may appear non-discriminatory on its face, one must clearly prove the existence of a motive hidden behind the official explanation, proof of which may be found in the disparate impact of the provision itself This is often very difficult to prove

2 3 1 How to prove discrimination

i Show there has been a difference in treatment

The standard for proving direct discrimination involves comparing "like with like", e g , the treatment of a man with a treatment of a woman, the treatment of a member of one political party with the treatment of a member of a different political party, the treatment of a member of one ethnic group with the treatment of another ethnic group Indirect discrimination may take a similar form, although the concern is with the disparate impact of a provision on comparable groups, i e , comparing like effect to like effect

The circumstances in which the alleged discrimination occurred must then be considered in an analogous position Thus, the person who claims that s/he was discriminated against must show that his/her situation (or the situation of people like him/her) is similar or comparable to that of others from the group with which he/she identifies and who enjoy more favorable treatment

One must then, prove the existence of the preferential treatment, which usually is not difficult Preferential treatment occurs, for example, where an obligation exists to provide services free of charge, or other actions of the State or its bodies which are harmful to an individual However, different treatment can occur also in the denial of opportunities otherwise provided to all persons

ii Show this difference in treatment had an adverse effect on the individual

Where a difference in treatment is found, one must also show that they have suffered some harm or that there has been a loss as a result For example, has the individual been denied a right because of the different treatment, or been prevented from exercising a guaranteed right?

iii Show that this adverse distinction was not based on reasonable and objective criteria, but was due to a prohibited characteristic

As discussed above, certain allowable distinctions may not rise to the level of prohibited discrimination, e g , being fired for being less efficient at one's job than a similarly situated individual Thus, a person claiming discrimination must show that they were differently treated because of a prohibited characteristic (e g , ethnicity, political affiliation, gender) They must also show that there was no other objective and reasonable basis for the difference in treatment

U nekim slučajevima, ovo pitanje je vrlo jednostavno, jer se spor između države i pojedinca svodi na pitanje da li je različit tretman pojedinca zaista zasnovan na nekom od zabranjenih osnova Primjer za ovo može biti predmet sa Evropskog suda o ljudskim pravima, u kojem je aplikantica, inače Jehovin svjedok, tvrdila da je odluka austrijskih sudova da joj ne dodijele starateljstvo nad djetetom donesena isključivo zbog njenog religijskog opredjeljenja Vlada je, međutim, tvrdila da je takva odluka donesena isključivo imajući u vidu interese djeteta Nakon razmatranja predmeta i odluka austrijskih sudova, Evropski sud je zaključio da je konačna odluka bila donesena imajući u vidu religijsko opredjeljenje aplikantice, te da je stoga aplikantica bila diskriminirana [53] Ovo je očit primjer direktne diskriminacije

Međutim, ima slučajeva kada nije jednostavno razriješiti spor oko stvarnog razloga različitog tretmana U tim slučajevima, posebno u slucajevima gdje se statut i politika čine nediskriminatornim, neophodno je jasno dokazati da u pozadini neke službene odluke postoji neki skriveni motiv, dokaz koji se može pronaci u neproporcionalnosti posljedica same odredbe To je često vrlo teško dokazati

2 3 1 Kako dokazati diskriminaciju

i Pokazati da postoji razlika u tretmanu

Osnova za dokazivanje direktne diskriminacije je poređenje "sličnog sa sličnim", npr tretiranje muškarca sa tretiranjem žene, tretiranje člana jedne političke stranke sa tretiranjem člana druge političke stranke, tertiranje člana jedne etničke grupe sa tretiranjem člana druge etničke grupe Indirektna diskriminacija moze imati slican oblik, iako je interes vezan za neproporcionalnost posljedica odredbe na uporedne grupe, i e poredjenje efekta slicnog sa efektom života

Okolnosti u kojima se desila navodna diskrimminacija moraju se, zatim, posmatrati u analognoj situaciji Dakle, onaj ko tvrdi da je diskriminiran mora pokazati da je njegova/njena situacija (ili situacija ljudi poput njega/nje) slična ili analogna situaciji ljudi u grupi s kojom se identifikuje, a koji uživaju povoljniji tretman

Zatim treba dokazati postojanje različitog tretmana, što u najvecem broju slučajeva nije teško Različit tretman se može ogledati, npr u obavezi pružanja besplatnih usluga, ili nekim drugim djelovanjima države i njenih organa koja idu na štetu nekog lica Međutim, različit tretman može postojati i kao uskracivanje mogucnosti koje su date drugima

ii Pokazati da je ova razlika u tretmanu imala nepovoljan učinak na pojedinca

Ako postoji razlika u tretiranju, mora se pokazati da je zbog toga pretrpljena neka steta ili da li je bilo gubitaka kao posljedica tog različitog tretiranja Na primjer, da li je neko zbog različitog tretiranja izgubio neko pravo ili je spriječen u ostvarivanju nekog garantovanog prava?

[53] Presuda u slučaju Hoffmann od 23 juna 1993, Serija A br 255-C, od Gomien i drugih, Pravo i praksa Evropske konvencije, supra nota 24, str 352-353

2 4 Indirect discrimination

Even where reasonable and objective grounds for the difference in treatment exist, the act may have involved indirect discrimination Indirect discrimination results from legislation or practice that does not in itself include the prohibited grounds for discrimination, but produces nonetheless disproportionate or harmful consequences for members of certain groups Thus instead of comparing "like with like", one must look at the substantive effect of a policy or decision If a policy or decision has the effect of preventing more members of one group from exercising their rights than members of another group, the result is a "disparate impact"

An example of indirect discrimination is a job advertisement that excludes single parents as potential candidates Such a case would indirectly discriminate against women Although it would exclude men who are also single parents, there would be more women than men who would be affected Thus, the indirect consequence would be a discriminatory one against women

This form of indirect discrimination should not be confused with another form which can arise when an individual suffers the violation of a right because of the activities of someone with whom he/she is associated (e g the dismissal of or failure to hire a spouse because of the political activities or ethnic group of his/her mate)

V. ANALYSIS OF DOMESTIC LEGISLATION FROM THE PERSPECTIVE OF INTERNATIONAL HUMAN RIGHTS STANDARDS

1 Introduction

In this section, we analyze the compatibility of these domestic laws with international human rights and employment standards

1 1 Labor laws

The situation of employment in Bosnia and Herzegovina is quite complicated given the lack of a law at the national level, and the existence of distinct entity level labor laws in the FBiH and in the RS

A new Federation labor law has been in process and its final passage has been expected since summer 1998 For this reason, we review the provisions of this new law in this manual In the RS, the Law on Labor Relations is in force (the most recent, amended version is from November 1997 – *Official Gazette of Republika Srpska* No 36/97)

iii Pokazati da ova negativna razlika nije zasnovana na razumnim i objektivnim kriterijima, vec je rezultat zabranjenih obilježja

Kao sto je vec spomenuto, određene prihvatljive razlike ne dosežu nivo zabranjene diskriminacije kao što je npr biti otpušten zbog manje sposobnosti na poslu, u odnosu na drugog uporedbenog pojedinca u sličnoj situaciji Stoga osoba koja tvrdi da je diskriminirana mora pokazati da se prema njoj drugačije ponaša zbog zabranjenih obilježja (npr etničkog porijekla, političkog opredjeljenja, pola) Takode mora pokazati da nije postojala nikakva objektivna i razumna osnova za različit tretman

2 4 Indirektna diskriminacija

Čak i kad postoje razumni i objektivni temelji za različit tretman, to moze uključivati indirektnu diskriminaciju Indirektna diskriminacija je rezultat zakona ili prakse koji sami po sebi ne uključuju zabranjenu diskriminaciju, ali imaju disproporcionalne ili štetne posljedice na pripadnike određenih grupa Dakle, umjesto poređenja "sličnog sa sličnim", moraju se pogledati suštinske posljedice određene odluke ili politike Ako politika ili odluka imaju za efekat sprječavanje više pripadnika jedne grupe da vrše svoje pravo nego pripadnika druge grupe, rezultat je "neproporcionalnost posljedica"

Očigledan primjer indirektne diskriminacije bio bi npr oglas za radno mjesto u kojem bi stajalo da se kao kandidati isključuju samohrani roditelji Ovdje bi se vrlo lako moglo raditi o diskriminaciji žena, buduci da bi takav uslov indirektno više štetio ženama Iako se na takav oglas ne bi mogli prijaviti ni muškarci koji su samohrani roditelji, ima mnogo više samohranih majki nego samohranih očeva koji bi bili isključeni Dakle, indirektna posljedica bi bila diskriminacija zena

Ovu vrstu indirektne diskriminacije ne treba miješati sa drugom formom koja postoji kada je pravo pojedinca prekršeno zbog aktivnosti nekoga s kim je taj pojedinac povezan (npr otkaz jednom supružniku zbog političkih aktivnosti drugog i sl)

V ANALIZA DOMACEG ZAKONODAVSTVA SA ASPEKTA MEĐUNARODNIH STANDARDA ZA ZAŠTITU LJUDSKIH PRAVA

1 Uvod

U ovom dijelu materijala želimo analizirati usklađenost spomenutih domacih zakona sa međunarodnim standardima u oblasti radnih odnosa

Regardless of the protections provided in the labor laws themselves, these protections often go unimplemented in practice, in large part because of dysfunctional enforcement mechanisms at all levels of government For example, court cases can drag on for years (e g , in the Federation some courts have claimed they cannot decide cases because there is no labor law in place), administrative bodies for complaints or other worker rights (e g , Workers' Councils) are often politically controlled, and disciplinary decisions go unimplemented Furthermore, the lack of a law on the state level to regulate labor relations along with the implementing instruments in administrative and judicial arenas throughout the entire territory is a significant deficiency in human rights protection

1 2 Privatization and labor relations

There is also the problem of privatization and ensuring that socially-owned enterprises properly transfer the rights and benefits accrued by employees to the new private owners As mentioned above there is no dedicated system or clear and effective mechanism by which an employee of a former socially-owned enterprise can pursue a claim against the new private owner(s) This is a serious problem for the many workers currently involved in labor disputes The absence of such a mechanism impacts on rights accrued over many years of work, since it allows the new employer to disregard the years prior to the transfer of ownership In accordance with the European Convention for Human Rights, the State has the obligation to ensure a fair hearing in the civil rights of its citizens, including in the context of labor relations (Article 6) [54] Among the solutions to this problem currently under discussion is the proposal that the Entities assume the liability for employment claims against the socially-owned companies While this would facilitate the privatization of enterprises that might otherwise be bankrupted by outstanding employment-related claims, undoubtedly the Entities will also have problems finding the necessary resources [55] The Framework Agreement on Privatization of Enterprises and Banks in Bosnia and Herzegovina requires both Entities to adopt non-discriminatory legislation in the process of privatization (Article 3)

2 Prohibition of discrimination

In the sections above, we presented the international standards for the protection of human rights The prohibition of discrimination is one of the most important, as evidenced by its inclusion in most if not all international documents

2 1 Federation BiH

In the proposed draft of the Federation labor law, the prohibition of discrimination is incorporated in **Article 5** as follows

> *A person seeking employment, as well as a person who becomes employed, shall not be discriminated against on the grounds of race, color, sex, language religion, political or other opinion, national or social origin,*

[54] OSCE Human Rights Department, Briefing Paper on Privatization in Bosnia and Herzegovina (22 March 1999), p 5
[55] Ibid

1 1 Zakoni o radu

Situacija u BiH je, kada su u pitanju radni odnosi, prilično komplikovana s obzirom da ne postoji zakon na nivou BiH, vec Zakon o radu za područje FBiH, te Zakon o radnim odnosima Republike Srpske

U FBiH u toku je proces donošenja novog Zakona o radu, čije se konačno donošenje očekuje još od ljeta 1998 godine, pa cemo zbog toga odredbe ovog zakona i razmatrati u ovom priručniku U Republici Srpskoj je na snazi Zakon o radnim odnosima (najnovija, dopunjena verzija je iz novembra 1997 godine – Službeni Glasnik Republike Srpske br 35/97)

Čitajuci tekst zakona oba entiteta, te posmatrajuci njihovu primjenu kroz praksu, moglo bi se reci da se bez obzira na snagu pružene zaštite ljudskih prava u ovim zakonima, ta zaštita u stvarnosti ne vidi, jer zapravo ne funkcionišu državni organi koji bi trebali da sprovode ove zakone na svojim razinama Tako, na primjer, sudski slučajevi mogu trajati godinama (na primjer, u Federaciji neki sudovi tvrde da ne mogu riješiti slučajeve zbog toga što nije donešen zakon o radu), administrativna tijela za žalbe ili druga prava radnika (na primjer, radnička vijeca) su često politički kontrolirana, a disciplinarne odluke se ne sprovode_Nadalje, kao značajan nedostatak za zaštitu ljudskih prava u ovoj oblasti uopšte je, zapravo, nedostatak Zakona o radu na nivou države Bosne i Hercegovine, čije bi se odredbe odnosile na cijelu teritoriju, a kojim bi se regulisali osnovni postulati iz ove oblasti, kao i pratecí instrumentarij kojim bi se osiguralo sprovođenje ovog zakona i to kako za organe uprave, tako i za sudske organe

1 2 Privatizacija i radni odnosi

Također, u procesu privatizacije problem je u pružanju mogucnosti radnicima, da u tranziciji drustvenih preduzeca u privatna, se izvrsi i pravilan transfer svih njihovih prava koja su do tada stekli Kao što je spomenuto, ne postoji, poseban, jasan i efikasan sistem zaštite, po kojem osoba zaposlena u bivšem društvenom preduzecu moze podici tužbu protiv novog privatnog vlasnika Ovo predstavlja ozbiljan problem za mnoge radnike trenutno umiješane u radne sporove Nepostojanje takvog mehanizma utiče na prava stečena tokom dugog niza godina rada i omogucava novom poslodavcu da zanemari godine rada prije transfera vlasništva U skladu sa Evropskom konvencijom o ljudskim pravima, država je dužna da omoguci pravednu istragu u vezi sa građanskim pravima, uključujuci u kontekst i radne odnose (clan 6)[54] Medu rješenjima ovog problema o kojem se trenutno raspravlja nalazi se i prijedlog da entiteti preuzmu odgovornost za tužbe o zapošljavanju protiv društvenih preduzeca Iako bi ovo olakšalo privatizaciju preduzeca koja bi u protivnom pala pod stečaj zbog tužbi u vezi sa zaposlenjem, entiteti bi bez sumnje imali problema u pronalaženju potrebnih resursa[55] Okvirni sporazum o privatizaciji preduzeca i banaka u Bosni i Hercegovini zahtijeva od oba entiteta da usvoje nediskriminatornu regulativu u procesu privatizacije (clan 3)

[54] OSCE ov odjel za ljudska prava, informacije o privatizaciji u BiH (22 03 1999), str 5
[55] ibid

> *property birth or other status, membership or non-membership in a political party, membership or non-membership in a trade union, and physical or mental disability*

The intent of this article is to provide protection against a broad spectrum of forms of discrimination However, it should be noted that several significant attributes are missing from this article Perhaps the most critical – particularly in BiH today – is age, which could lead one to conclude that discrimination on this ground would be tolerated Also absent is an express prohibition of discrimination on the basis of marital status

In applying Article 5, attention should be given to Article 35, which prohibits women from working the "night shift " As discussed under Article 8(4) of the European Social Charter, this sort of prohibition is discriminatory

Article 35 applies only to women in industry, and does not affect women performing managerial or technical work, in health or social services, or to employers whose only employees are family members The prohibition of women working at night can be overcome in the so-called interests of the Federation, subject to consent of the Federation Labor Minister, after consultation with trade unions and employers What's more, women can be ordered to work the night shift without their consent, if it is deemed necessary due to *force majeure*, or to prevent rapid deterioration of raw materials In such cases, relevant organs of the cantons e g , the Cantonal Labor Inspector, must also be notified within 24 hours of its imposition If the Labor Inspector establishes that such night work is not essential i e , that neither *force majeure* nor damage to raw materials is threatened, the night work must be prohibited

Article 35 appears to be modeled on ILO Convention No 89 concerning Night Work of Employed Women in Industry, in which one can find the same elements, with one exception Article 35 uses the term "industry" in so general a sense Since the majority of women in the FBiH work in the textile industry, which is a 24-hour industry, the application of this Article either renders the work of many women illegal, or the functioning of the textile industry greatly compromised

Indeed, Article 35 directly discriminates against women, violating not only international standards, but also Article 5 of the FBiH Labor Law itself We consider ILO Convention No 89 to contain discriminatory provisions as well (notably Article 3)

Further discrimination on the basis of sex is found in **Article 52** of the FBiH Labor Law

> *Women can not be ordered to, nor hired for, specifically hard physical work underground work or work under water, or any other work that, considering their psycho-physical characteristics, endangers their life and health*
>
> *The prohibition in paragraph 1 of this Article does not refer to women performing managerial labor, work in health and social assistance, students interns and volunteers who, during education or vocational training, must spend time in underground mines as well as to women who must enter underground mines in the execution of non-physical work*

2 Zabrana Diskriminacije

U dosadašnjem tekstu smo detaljno obradili ovaj, jedan od najznačajnijih međunarodnih standarda za zaštitu ljudskih prava Zabrana diskriminacije je jedan od najvaznijih sto je vidljivo iz njegove zastupljenosti u vecini ako ne i u svim međunarodnim dokumentima

2 1 Federacija BiH

U predloženom tekstu Zakona o radu FBiH, ovaj standard je inkorporiran u **član 5**, kojim se kaže

> *Lice koje traži zaposlenje,kao i lice koje se zaposli, ne može biti stavljeno u nepovoljniji položaj zbog rase, boje kože, pola, jezika, vjere, političkog ili drugog mišljenja, nacionalnog ili socijalnog porijekla, imovnog stanja, rođenja ili kakve druge okolnosti, članstva ili nečlanstva u političkoj stranci, članstva ili nečlanstva u sindikatu, te tjelesnih i duševnih poteškoca*

Ovako formulisanom odredbom se željelo pružiti zaštitu od diskriminacije u širokom spektru Ipak, potrebno je primijetiti da jedno, danas u Bosni i Hercegovini vjerovatno najznačajnije, svojstvo nije obuhvaceno ovim članom, a to je starosna dob, što bi moglo dovesti do zaključka da diskriminacija po ovom osnovu nije zabranjena Takođe, ne postoji ni izričita zabrana diskriminacije na osnovu bračnog stanja

U primjeni člana 5, treba obratiti pažnju na član 35 koji zabranjuje nocni rad žena Kako je objašnjeno i u članu 8(4) Evropske socijalne povelje, ova vrsta zabrane je diskriminirajuca

Član 35 se odnosi samo na žene u industriji, te se ne odnosi na žene koje obavljaju menadžerski ili tehnički posao, na žene u zdravstvu i socijalnim službama, ili na poslodavce čiji su jedini zaposlenici članovi porodice Zabrana nocnog rada žena se može prevazici u takozvanom interesu Federacije, uz uslov saglasnosti federalnog ministra rada, a nakon konsultacija sa sindikatima i poslodavcima Štaviše, ženama se može narediti rad u nocnim smjenama bez njihove saglasnosti, ako se to bude smatralo neophodno iz razloga više sile, ili radi spriječavanja iapidnog propadanja sirovinskih materijala U takvim slučajevima, relevantni organi kantona, na primjer kantonalni inspektor rada, takođe mora biti obaviješten najkasnije 24 sata od donošenja naredbe Ako inspektor rada utvrdi da takav nocni rad nije neophodan, odnosno da ne postoji opasnost ni od više sile niti opasnost od oštecenja sirovina, nocni rad se mora zabraniti

Zaista čitajuci Konvenciju MOR-a br 89 o nocnom radu žena zaposlenih u industriji naci ce se elementi koji su ugrađeni u član 35, ali sa jednim nedostatkom U Članu 35 suviše je generalno naveden pojam "industrija" Ovo iz razloga što je kod nas mahom najviše žena zaposleno u npr tekstilnoj industriji, koja radi 24 sata dnevno, čime primjenom ovog člana rad mnogih žena postaje nelegalan, ili se uveliko ugrožava funkcioniranje tekstilne industrije

The legal restriction in paragraph 1 on women performing "any other work" that because of certain "psycho-physical characteristics" specific to them, "endangers their life and health" is overbroad and raises a number of questions In general, restrictions that apply to one sex and not the other are subject to strict scrutiny, and are likely to fail the non-discrimination "test" Initial consideration must be given to precisely what psycho-social characteristics of women (different from men) are at issue, and how the work endangers women's life and health (different from that of men) Then too, what specific types of work are included, and who shall specify it? If such restrictions are aimed at protecting women in pregnancy, for example, then they run up against international standards which state that, while special protections of pregnant women are allowed, special restrictions on the rights of women on the grounds of marriage or maternity are not (*see, in particular, Article 11 of the Women s Convention*)

In addition quite significantly, there is no obligation anywhere in the Labor Law that non-discriminatory provisions be incorporated into administrative procedures and collective contracts Such measures are absolutely essential given the current situation in BiH, and the necessity of bringing domestic laws into compliance with international human rights standards

2 2 Republika Srpska

The RS Constitution guarantees protection from discrimination **Article 10** states

> *Citizens of the Republika Srpska shall be equal in their freedoms, rights and duties they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language national origin, religion social origin, birth, education, property status, political and other beliefs social status and other personal attributes*

However, this important non-discrimination provision is not included in the RS Employment Law, which is among its major failings Even more significantly, the Law gives to certain categories of persons preferences in employment over others For example, **Article 9** provides that priority in employment is enjoyed (in the following order) by

1) family of deceased members of the RS army, if no other member of the household is employed,
2) disabled war veterans – according to disability,
3) demobilized RS soldiers,
4) individuals officially listed as unemployed for at least two years, if their prior employment was terminated through no fault of their own

This provision of the Law is discriminatory in that it gives preference to one group of citizens over others (soldiers, who with few exceptions are men), and it is not possible to establish a legitimate purpose for the distinctions Nor are the distinctions justified by or proportional to the intended purpose This provision restricts the right to work guaranteed by both international standards and the provisions of the RS Constitution

Može se zaključiti da u smislu međunarodnih standarda, kao i člana 5 Zakona o radu FBiH, član 35 direktno diskriminira žene Mi smatramo da i Konvencija MOR-a br 89, o zabrani noćnog rada za žene, takođe, sadrži diskriminirajuće odredbe (posebno njen član 3)

Dalja diskriminacija na osnovi pola je sadržana u članu 52 Zakona o radu FBiH

> *Ženi se ne može naročito, niti se žena može rasporediti da obavlja naročito teške fizičke poslove, radove pod zemljom ili pod vodom, te druge poslove koji, s obzirom na njene psihofizičke osobine, ugrožavaju njen život i zdravlje*
>
> *Izuzetno, zabrana rada iz stava 1 Ovog člana ne odnosi se na žene koje obavljaju rukovodeće poslove i poslove zdravstvene i socijalne zaštite, studente, pripravnike i volontere koji tokom školovanja ili stručnog osposobljavanja moraju dio vremena provesti u podzemnim dijelovima rudnika te na žene koje povremeno moraju ulaziti u podzemne dijelove rudnika radi obavljanja poslova koji nisu fizičke prirode*

Zakonska formulacija da se ženama uskraćuje bavljenje "i drugim poslovima koji s obzirom na njene psihofizičke osobine, ugrožavaju njen život i zdravlje", je preširoka i namece brojna pitanja Općenito, restrikcije koje se odnose na pripadnike jednog pola a ne i drugog podliježu striktnom razmatranju i vrlo vjerovatno neće proći "test" nediskriminacije Početna razmatranja moraju ići u pravcu preciznog utvrđivanja koje tačne psihičko-socijalne osobine žene (različite od onih kod muškaraca) su u pitanju i kako rad ugrožava ženin život i zdravlje (drugačije nego kod muškaraca) Zatim, koji specifični tipovi rada su uključeni i od strane koga će biti utvrđeni Ako su ovakve formulacije usmjerene ka zaštiti žena tokom trudnoće, na primjer, onda su one protivne međunarodnim standardima koji kažu da, dok su posebne zaštite za trudnice dopuštene, posebne restrikcije za žene na osnovu braka ili materinstva nisu (*vidi posebno Član 11 Konvencije o ženama*)

Također, što je veoma značajno, nigdje u zakonu ne postoji obaveza da se anti-diskriminacione odredbe eksplicitno uključe u pravilnike o radu i kolektivne ugovore, što je neophodno u smislu trenutnog životnog okruženja i potrebe usklađivanja domaćih zakona sa međunarodnim standardima o ljudskim pravima

2 2 Republika Srpska

Ustav RS je predvidio zaštitu od svih oblika diskriminacije i to u **članu 10** koji glasi

> *Građani Republike su ravnopravni u slobodama pravima i dužnostima jednaki su pred zakonom i uživaju istu pravnu zaštitu bez obzira na rasu, pol jezik, nacionalnu pripadnost, vjeroispovjest, socijalno porijeklo, rođenje, obrazovanje, imovno stanje, političko i drugo uvjerenje, društveni položaj ili drugo lično svojstvo*

Međutim, ovaj standard nije predviđen u Zakonu o radnim odnosima što je njegov veliki nedostatak Što je još značajnije, Zakon daje prednost u zapošljavanju određenim

Article 8(3) of the Labor Law also allows for preferences on prohibited grounds (sex) It deals with employment without application to the Employment Bureau, and also renders broad possibilities for abuse and discrimination

> *Employment without applying to the Employment Bureau can be established by a family member of an RS Army soldier who was killed, or of a military conscript while he serves in war units or other operational and mobile RS Army services, if no other person from that household is employed*

3 Right to work

3 1 Federation BiH

3 1 1 The Law on Labor Relations

The right to work is a fundamental right of every individual

Articles 14, 15, 16 and 17 of the proposed Federation Labor Law regulate the form and terms of the employment contract, minimum age requirements, as well as the possibility for foreign citizens to enter into an employment contract

The proposed Labor Law specifically provides for protection of juveniles in several articles It is clear from the specific need for protection of this category of persons and given the many conventions on this subject (discussed in sections above), that there is an intent to bind states to institute legal provisions ensuring the most effective protection to juveniles For example, **Article 7(2)** states that

> *An employee older then 15 and younger then 18 years of age (hereafter "juvenile") enjoys special protection*

Article 15 paragraphs 1 and 2 provide that

> *An employment contract can be made by an individual of at least 15 years of age, whose general health is confirmed by a competent health institution*
>
> *A juvenile can not enter into an employment contract for work which might endanger his health, morals or development*

Further protection for juveniles with respect to work is found in **Article 51**, which states

> *A juvenile may not be deployed to specifically hard physical work, underground work or work under water, nor to any other work which, considering his psycho-physical characteristics, might have a damaging or a high risk affect on his life, health, development and morals*
>
> *The Federation Minister shall, by special regulation, specify the work in paragraph 1 of this Article*

kategorijama lica i to u **članu 9** koji glasi pravo prvenstva u zapošljavanju pod jednakim opštim uslovima imaju

1 *član porodice poginulog pripadnika oružanih snaga RS, ako u porodičnom domaćinstvu nema drugih zaposlenih članova,*
2 *ratni vojni invalid-prema grupi invalidnosti,*
3 *demobilisani pripadnik oružanih snaga RS,*
4 *lice koje se najmanje dve godine nalazi na evidenciji nezaposlenih, ako mu je ranijі radni odnos prestao bez njegove krivice*

Ova odredba Zakona je diskriminatorska, jer favorizuje jednu grupu građana u odnosu na ostale, a nije moguce vidjeti da iza ovakvog razlikovanja stoji legitiman cilja, kao ni da je razlikovanje opravdano i proporcionalnu cilju koji se želi postici Ovom odredbom se ograničava pravo na rad i slobodu rada koji je garantovano međunarodnim standardima i odredbama Ustava RS

Široke mogucnosti zloupotrebe i diskriminacije ostavlja i **član 8(3)** koji, takođe, dopušta razlikovanje na zabranjenoj osnovi (pol), a tretira mogucnost zasnivanja radnog odnosa bez prijavljivanja Zavodu za zapošljavanje

Bez prijavljivanja Zavodu za zapošljavanje radni odnos može zasnovati i član porodičnog domaćinstva poginulog borca Vojske RS, vojnog obveznika za vrijeme dok se on nalazi u ratnim jedinicama i drugim operativnim i mobilnim službama u sastavu Vojske RS, u koliko u porodičnom domaćinstvu nema zaposlenih radnika

3 Pravo na rad

3 1 Federacija BiH

3 1 1 Zakon o radu

Pravo na rad, je fundamentalno pravo svakog čovjeka

Članovima 14, 15, 16, 17 predloženog federalnog Zakona o radu, zapravo se reguliše način i uslovi zaključenja ugovora o radu, minimalne godine za zaključenje ugovora o radu (15 godina), kao i mogucnost za zaključenje ugovora o radu za strane državljane pod uslovima utvrđenim zakonom

Također, predloženim Zakonom o radu sa više članova posebno je zaštićena kategorija maloljetnika Imajuci u vidu posebnu potrebu zaštite ove kategorije lica, kao i donešene brojne Konvencije u tom smislu, o čemu smo u ranijem tekstu više govorili, žele se obavezati države za uvođenje zakonskih odredaba, kako bi se maloljetnim licima pružila što efikasnija zaštita Na primjer, **Član 7(2)** kaže da

Zaposleni stariji od 15, a mlađi od 18 godina (u daljem tekstu maloljetnik) uživa posebnu zaštitu

The Cantonal Labor Inspector shall prohibit juvenile work in the context of paragraph 1 of this article

The proposed Labor Law defines several forms of employment

a) permanent or unlimited employment,
b) employment for finite periods of time (limited employment),
c) probationary employment,
d) volunteer employment, and
e) apprenticeships

Articles 18 19 and 20 of the Federation Labor Law regulate work under probation, as well as the establishment of permanent and limited (finite) employment The Law, generally, gives priority to the indefinite or permanent employment contract Limited employment contracts can be made only where provided for in the law, and by collective contract Such contracts end by expiration of the term specified therein

It is interesting to note that the proposed Labor Law contains no prohibition of forced labor This is especially important considering the express prohibition of compulsory labor within the European Convention (Article 4), which takes precedence over all domestic laws in BiH, in accordance with the BiH Constitution Furthermore, ILO Convention No 29 also explicitly prohibits forced or compulsory labor in any form. Thus, the lack of any provision related to this matter constitutes a significant failure of the proposed Federation Labor Law

Article 103 of the proposed Federation Labor Law is relevant for protection of workers

The employee who considers one of his employment rights to have been violated by the employer may within 15 days from the day of delivery of the decision violating his right, i e , from the day he found out about the violation of the right, request from the employer the realization of that right

If the employer does not comply with the request within 15 days from submission of the employee s request, the employee may in the following 15 days request from a competent organ protection from the violation

Procedures for peaceful resolution of labor disputes can be provided for in a collective agreement and the company's by-laws in accordance with the law, with a 15 day period for submission to the court starting from the day of the completion of administrative proceedings

Failure by the employee to claim compensation or other financial remuneration from the employer within the periods set in paragraphs 1-3 of this article, cannot result in the loss of the right to make a claim

Though the last paragraph safeguards the right to compensation, the 15 day limit within which an employee must make his or her claim creates an unnecessary burden on the

Član 15 stavovi 1 i 2 koji glase

Ugovor o radu može da zaključi lice koje je navršilo 15 godina života i koje ima opcu zdravstvenu sposobnost utvrđenu od nadležne zdravstvene ustanove

Maloljetnik ne može zaključiti ugovor o radu za obavljanje poslova koji mogu ugroziti njegovo zdravlje, moral ili razvoj

Posebna zaštita maloljetnika (u smislu poslova koji maloljetnici mogu obavljati) nalazi se u **članu 51** koji glasi

Maloljetnik ne može da radi na naročito teškim fizičkim poslovima, radovima pod zemljom ili pod vodom, ni na ostalim poslovima koji bi mogli štetno i sa povecanim rizikom da utječu na njegov život i zdravlje razvoj i moral, s obzirom na njegove psihofizičke osobine

Federalni ministar posebnim propisom utvrdit ce poslove iz stava 1 ovog člana

Inspektori rada kantona ce zabraniti rad maloljetnika na poslovima u smislu stava 1 ovog člana

Predloženim Zakonom o radu se definiše više oblika rada i to

a) stalno zaposlenje ili rad na neodređeno vrijeme,
b) rad na određeno vrijeme,
c) probni rad,
d) volonterski rad, i
e) iad pripravnika

Članovi 18, 19 i 20 federalnog Zakona o radu regulišu probni rad, te mogucnost zasnivanja radnog odnosa na neodređeno i određeno vrijeme Zakonom je, uopšte govoreci data prednost zaključivanja ugovora o radu na neodređeno vrijeme, a ugovor o radu na određeno vrijeme može se zaključiti samo u slučaju kada je to ovim zakonom i kolektivnim ugovorom predviđeno, te ugovor prestaje istekom roka koji je utvrđen tim ugovorm

Međutim, interesantno je istaci da u postojecem prijedlogu Zakona o radu ne postoji odredba kojom bi se zabianio prisilni rad Ovo je posebno važno imajuci u vidu izričitu zabranu piisilnog rada u okviru Evropske konvencije (Član 4), koja je nadređena svim drugim domacim zakonima, u skladu sa Ustavom BiH Osim toga, Konvencija MOR-a br 29 takođe izriičito zabranjuje prinudni ili obavezni rad u bilo kojoj formi Stoga, je neunošenje odredbe o zabrani prislinog rada, predstavlja značajan propust predloženog teksta Zakona o radu Federacije

Za zaštitu prava radnika značajan je **član 103** koji glasi

individual Individuals may not be immediately aware of the law and the administrative appeals procedure, understand it, or have access to legal advice For example, though an aggrieved employee may submit an appeal to the employer, the employee must be aware that if the employer does not comply after 15 days, he or she may take the complaint to the next level, but must do so within 15 days or lose that right We believe the 15 day periods are too short, and constitute a limitation on the right to make a claim for protection from violations

3 1 2 FBiH Criminal Code

Workers' rights are further protected under the new Federation Criminal Code, which contains a section on Criminal Acts Against Labor Relations (Section XIX) The law makes it a crime punishable by fines or prison, *inter alia*, to violate an individual's right to equality in employment (Article 206), to obstruct a person's right to just and safe working conditions (Articles 207 and 212), and to violate their right to social insurance (Article 209) and to prohibit fraud and false claims (Article 210)

Notably, under the present FBiH Criminal Code, it is also a crime to fail to implement a court's order reinstating an employee (Article 211) Another provision would make it a crime to obstruct others from submitting a complaint or taking other legal measures in the pursuit of their labor rights (Article 198, Section XVIII, Criminal Acts Against Freedoms and Rights of Citizens) The penalty increases where an official is found to have misused his or her position of authority in such an act

3 2 Republika Srpska

The RS Constitution provides in Article 39 that

> *Everyone shall have the right to work and to freedom of work*
>
> *Forced labor shall be prohibited*
>
> *Everyone shall be free to choose their vocation and occupation and all work places and duties shall be accessible to everyone under the same conditions*

Despite these constitutional guarantees, the RS Labor Law provides no corresponding protections for any of these rights The RS Labor Law does limit child labor and specifies the minimum age for employment as 15 years of age (Article 5) **Article 37** provides that

> *An employee under 18 years of age can not be assigned to work which because of special working conditions, can be harmful to his health, nor to work overtime or night shifts*

We consider this protection to be non-comprehensive It is necessary to establish what specific conditions can have a detrimental impact on the health of a juvenile As it is, the present regulation is overbroad, thus providing inadequate protection

Zaposleni koji smatra da mu je poslodavac povrijedio neko pravo iz radnog odnosa može u roku od 15 dana od dana dostave odluke kojom je povrijeđeno njegovo pravo, odnosno od dana saznanja za povredu prava, zahtijevati od poslodavca ostvarivanje tog prava

Ako poslodavac u roku od 15 dana od dana dostavljanja zahtjeva zaposlenika iz stava 1 ovog člana ne udovolji tom zahtjevu, zaposlenik može u daljem roku od 15 da, a tražiti zaštitu povrijeđenog prava pred nadležnim organom

Kolektivnim ugovorom i pravilnikom o radu, u skladu sa zakonom, može se predvidjeti postupak mirnog rješavanja radnog spora, u kom slučaju rok od 15 dana za podnošenje zahtjeva sudu, teče od dana okončanja tog postupka

Propust zaposlenika da zahtijeva naknadu štete ili drugo novčano potraživanje iz radnog odnosa u rokovima iz stava 1 do 3 ovog člana, nema za posljedicu gubitak prava na to potraživanje

Iako je u posljednjem stavu navedeno da se ne gubi pravo na potraživanje prema poslodavcu propustom rokova iz stavova od 1 do 3 ovog člana, ne može se reci da se time radniku zaista pruža adekvatna mogucnost za zaštitu njegovih prava uz ovako kratke rokove Osoba ne mora odmah biti upoznata sa zakonom i administrativnom procedurom žalbe, razumjeti ih, ili imati pristup pravnom savjetniku Na primjer, iako zaposleni može podnijeti žalbu poslodavcu, on mora znati da ako poslodavac ne ispuni svoje obaveze nakon 15 dana, on može podnijeti žalbu višem nivou, ali u roku od 15 dana, jer u protivnom gubi to pravo Mi smatramo da su rokovi od 15 dana prekratki i da predstavljaju ograničenje traženja zaštite prava

3 1 2 Krivični zakon FBiH

Prava radnika su dalje zaštićena prema novom Krivičnom zakonu Federacije, koji sadrži odjeljak o Krivičnim djelima protiv radnih odnosa (odjeljak XIX) Zakon kažnjava krivična djela novčanim kaznama ili kaznama zatvora, između ostalog tu spadaju povreda prava u vezi sa jednakim zaposlenjem (član 206), sprječavanje prava na pravedne i sigurne uslova rada (član 207 i 212), i povreda prava u vezi sa socijalnim osiguranjem (član 209) i zloupotrebe prava iz socijalnog osiguranja (član 210)

Prema ovom zakonu neizvršavanje sudskih odluka o vracanju na rad zaposlenog smatra se krivičnim djelom (član 211) Prema drugoj odredbi krivično djelo je povreda prava na podnošenje pravnog sredstva radi ostvarivanja svog prava (član 198, dio XVIII, Krivična djela protiv sloboda i gradanskih prava) Kazna je još veca u slučajevima u kojima je službeno lice zloupotrijebilo svoj položaj za kriminalno djelo

3 2 Republika Srpska

Ustav RS u članu 39 predviđa

Svako ima pravo na rad i slobodu rada

Article 11 regulates the issue of probation, which is limited to 60 days Article 4 regulates permanent (undefined) and limited (defined) employment, thus balancing the rights, obligations and responsibilities of these categories of workers

4 Equal rights for men and women and the protection of the family

4 1 Federation BiH

The proposed Federation Labor Law raises concerns with regard to the equal protection of rights for men and women, and it appears not to be in compliance with international standards, particularly concerning the articles regulating maternity leave and remuneration

For example, **Article 55** states

> *During pregnancy, childbirth and childcare, the woman has the right to uninterrupted maternity leave for one year, while in the case of twins, third or any additional children, the woman has the right to uninterrupted maternity leave for 18 months*
>
> *On the basis of findings by an authorized physician, a woman may start her maternity leave 45 days, and not later then 28 days, prior to childbirth*
>
> *If a woman, through no fault of her own and on the basis of findings by an authorized physician, does not use the maternity leave 28 days prior to childbirth, she is entitled to use these days after the childbirth*
>
> *Exceptionally, on the basis of her written request a woman may take a shorter leave, but not shorter than 42 days after the childbirth*

Article 56 provides that

> *The father of the child, or the adoptive father is entitled to use the rights set out in Article 55 paragraphs 1,2,3 and 4 of this law, in cases of the mother's death, the mother abandoning the child, or if the mother is prevented from using these rights for legitimate reasons*

This implies that the father can make use of the rights in Article 55 only in the cases specified in Article 56 Thus, the law prevents fathers from using these rights for other reasons, including for personal preference of the parents This provision can be interpreted as discriminatory with regard to men. Men and women are put in an unequal position, thereby violating the international and constitutional standards prescribing equal rights for men and women

We note also the standards relating to equal remuneration of men and women for work of equal value The proposed Federation Labor Law contains not a single provision guaranteeing this right

Prinudni rad je zabranjen

Svako je slobodan u izboru zanimanja i zaposlenja i pod jednakim uslovima mu je dostupno radno mjesto i funkcija

Međutim, iako postoji ovakva ustavna odredba, radni zakon RS ne predviđa posebnu zaštitu ovog prava Zakon o radnim odnosima je ograničio rad djece i utvrdio minimalne godine starosti za zapošljavanje na 15 godina (član 5 Zakona) U **članu 37** Zakon je predviđeno

Radnik mlađi od 18 godina života ne može se rasporediti na poslove koji, zbog posebnih uslova rada, mogu štetno djelovati na njegovo zdravlje, niti raditi prekovremeno i nocu

Smatramo da ova zaštita ipak nije sveobuhvatna, potrebno je odrediti koji su to uslovi koji štetno djeluju na zdravlje maloljetnika jer dosadašnji propis dopušta veliku slobodu u tumačenjima, čime se ne pruža dovoljna zaštita

Članom 11 regulisano je pitanje probnog rada, koje je ograničeno na 60 dana Članom 4 regulišu se rad na određeno i neodređeno vrijeme, pa su ovim članom prava, obaveze i odgovornosti ovih kategorija radnika izjednačene

4 Jednaka prava za muškarce i žene i zaštita porodice

4 1 Federacija BiH

Predloženi tekst Zakona izaziva određenu zabrinutost u pogledu jednake zaštite prava muškaraca i žena, te se čini da u tom dijelu Zakon nije sasvim usaglašen sa međunarodnim standardima Ovo se naročito odnosi na članove kojima se reguliše pitanje porodiljskog odsustva, koji glase

Član 55

Za vrijeme trudnoce, porođaja i njege djeteta, žena ima pravo na porođajno odsustvo od jedne godine neprekidno, a za blizance, trece i svako sljedece dijete žena ima pravo na porođajno odsustvo od 18 mjeseci neprekidno

Na osnovu nalaza ovlaštenog lječnika žena može da otpočne porođajno odsustvo 45 dana prije porođaja, a obavezno 28 dana prije porođaja

Ako žena bez svoje krivice, na osnovu nalaza ovlaštenog lječnika, ne koristi porođajno odsustvo 28 dana prije porođaja, ima pravo da te dane iskoristi poslije porođaja

Izuzetno žena, na osnovu svog pismenog zahtjeva, može koristiti krace porođajno odsustvo, ali ne krace od 42 dana poslije porođaja

4 2 Republika Srpska

The RS employment legislation provides for the protection of women on maternity leave, with an equivalent compensation for that period The law establishes maternity leave of 12 months duration and the possibility for extension in special cases prescribed by law (Articles 30-35 of the RS Employment Law)

Article 33 prescribes that

> *On the basis of a proposal of the Center for Social Work, an authorized physician of a competent health institution can decide that the father of a child abandoned by the mother or whose mother died, or who, for other reasons is incapable of caring for the child (serious illness, imprisonment, etc), may use the rights granted to a mother by this law*

Consequently, as in the FBiH, rights of leave for childbirth are primarily given to mothers, and the possibilities for the father to use this right are limited, which constitute limitations on the equal rights of men and women

Neither the law in the FBiH, nor the law in RS contain a provision on equal remuneration of men and women for work of equal value, which is a significant failing in both laws

5 The Right to organize and associate in trade unions

The right to organize and associate in trade unions and the right to strike are fundamental rights of workers and other citizens, contained in most international conventions Article 11 of the European Convention protects freedom of association and specifically with respect to the right to form and join trade unions ILO Convention No 87 also prescribes this right

5 1 Federation BiH

In the proposed Federation Labor Law, these rights are safeguarded in Articles 9-11 The right to strike is regulated by Articles 128 and 129 as well

5 2 Republika Srpska

These rights are provided for in **Article 3** of the RS Employment Law as follows

> *Workers have the right to organize a trade union, which protects their rights and interests established by the law and the collective contract*
>
> *The enterprise is obliged to provide adequate conditions for participation in trade unions and their representatives in the protection of the rights of workers, in compliance with the law and the collective agreement*

Član 56

> *Otac djeteta, odnosno usvojilac može da koristi pravo iz člana 55 st 1,2,3, i 4 Ovog zakona u slučaju smrti majke, ako majka napusti dijete ili ako je iz opravdanih razloga spriječena da koristi to pravo*

Iz ovoga jasno proizilazi da otac, odnosno usvojilac djeteta može koristiti prava iz člana 55, samo u slučajevima određenim u zakonu članom 56 Ovim je zakon u potpunosti onemogucio očevima da u svakom slučaju kada to žele koriste prava iz člana 55, koje je izričito dato majkama Ova se odredba može tumačiti i kao diskriminatorska u odnosu na muškarce Ovakvim zakonskim rješenjem muškarci i žene su dovedeni u neravnopravan položaj, te je povrijeđen standard kojim je potrebno obezbijediti jednaka prava za muškarce i žene

U vezi sa ovim standardom možemo posmatrati i standard koji se odnosi na jednako nagrađivanje muđke i ženske radne snage za rad jednake vrijednosti Predloženi tekst Zakona nema niti jedne odredbe kojom propisuje poštovanje ovog standarda, što je značajan nedostatak

4 2 Republika Srpska

Radno zakonodavstvo Republike Srpske predviđa zaštitu žena radnica na porodiljskom odsustvu, uz predviđenu naknadu place za taj period Zakon određuje porodiljsko odsustvo u trajanju od 12 mjeseci i mogucnost da se takvo odsustvo i produži u posebnim slučajevima propisanim Zakonom (članovi 30-35 Zakona o radnim odnosima RS)

Dalje, **član 33** propisuje da

> *Ovlašceni doktor medicine nadležne zdravstvene ustanove na prijedlog centra za socijalni rad, može odlučiti da otac deteta kojeg je majka napustila ili čija je majka umrla, ili koja iz drugih razloga nije u mogucnosti da se brine o detetu (teža bolest, lišenje slobode i sl), koristi prava koja su ovim zakonom određena za majku deteta*

Dakle, kao i u FBiH, mogucnosti oca djeteta da koristi ovo pravo je ograničeno, što predstavlja ograničavanje standarda da žene i muškarci trebaju uživati jednaka prava

Kao ni Zakon u FBiH, tako ni zakon RS nema odredbe o jednakom nagrađivanju muškaraca i žena za rad jednake vrijednosti, što je značajan propust

5 Pravo na organizovanje i udruživanje u sindikat

Pravo na obrazovanje i udruživanje u sindikat, te pravo na štrajk su fundamentalna prava radnika i ostalih građana u okviru svih međunarodnih konvencija Ono je regulisano Konvencijom MOR-a br 87 i članom 11 Evropske konvencije

Trade union organizations are entered into the register of trade unions, prescribed and kept by the Ministry of Labor

The fundamental right of workers to strike is not guaranteed by the RS Labor Law, but is regulated under Article 37 of the General Collective Agreement

6 Status of workers on waiting

6 1 Federation BiH

The Status of workers put "on waiting" constitutes one of the biggest and most delicate problems in the FBiH, indeed in the entire territory of BiH The proposed Law deals with this issue in Article 143 This article stipulates that, upon the Law's entry into force, workers on waiting lists shall remain in that status a maximum of six months, and during which time they are entitled to financial compensation as determined by the employer Workers who are not reinstated or do not find other employment within that period, will lose their status as employees, in which case they are entitled to financial compensation Under certain circumstances, the employee can arrange with the employer some other kind of compensation

Given the very difficult economic situation in the country, it is difficult to expect that all companies will be able to provide financial compensation Though the possibility for some other form of compensation seems to be a positive step toward protecting workers' rights, there is a concern that the law as formulated creates the potential for abuse by employers who, can force employees to accept compensation in an inadequate form and amount Besides, this is a problem which leaves open the possibilities for discrimination of workers on various grounds

6 2 Republika Srpska

The Employment Law of the Republika Srpska also includes the institution of "on waiting" **Article 70** prescribes

> *A worker who was rendered superfluous by reduction in the volume of work, or by other economic problems of the company, institution or other legal or physical person employing workers, or by technological and organizational changes in adapting production to market conditions, can be put on temporary waiting by the executive manager, which cannot be shorter than six months nor longer then one year, and at least one year and at most 18 months for a worker sent for retraining or for additional training*
>
> *If by expiration of the deadlines in paragraph 1 of this Article, conditions for return of the worker to the appropriate position are not created, the worker ceases to enjoy the status of employee in accordance with the expiration of the deadlines in Article 58 of this Law*

5 1 Federacija BiH

U predloženom tekstu Zakona o radu ovo pravo se garantuje članovima 9-11 Pravo na štrajk je također uređeno članovima 128 i 129

5 2 Republika Srpska

U Zakonu o radnim odnosima RS ovo pravo je predviđeno u **članu 3** u kojem se kaže

> *Radnici imaju pravo da organizuju sindikat, koji štiti njihova prava i interese utvrđene zakonom i kolektivnim ugovorom*
>
> *Preduzece je dužno da obezbijedi odgovarajuce uslove za učešce sindikata i njegovih predstavnika u zaštiti prava radnika, u skladu sa zakonom i kolektivnim ugovorom*
>
> *Sindikalne organizacije upisuju se u registar sindikalnih organizacija koje propisuje i vodi ministarstvo nadležno za poslove rada*

Pravo na štrajk, koje je zajedno sa pravom na udruživanje u sindikat predstavlja fundamentalno pravo radnika, nije garantovano Zakonom, vec je regulisano je članom 37 Kolektivnog ugovora

6 Status radnika na čekanju

6 1 Federacija BiH

Status radnika koji su upuceni "na čekanje" predstavlja jedan od najvecih i najdelikatnijih problema u FBiH Ovim pitanjem prijedlog novog zakona se bavi u članu 143 Ovim članom se predviđa da ce nakon stupanja na sangu ovog Zakona, radnici koji su se zateklı na listama čekanja, ostati u tom statusu najduže 6 mjeseci, te da u tom periodu imaju pravo na naknadu place u visini koju odredi poslodavac Radnicima koji ne budu pozvani na rad u navedenom roku, prestat ce radnik odnos u kom slučaju imaju pravo na otpremninu, a izuzetno zaposlenik se može dogovoriti sa poslodavcem i o drugom vidu naknade

S obzirom na veoma tešku privrednu situaciju u zemlji teško je očekivati da ce sva preduzeca biti u mogucnosti da izvrše isplatu u novcu Iako se čini da je davanje mogucnosti da se naknada dadne i u nekom drugom obliku korak ka zaštiti radničkih prava, postoji bojazan da je ovakva zakonska formulacija ostavila prostora za zloupotrebu od strane poslodavaca, koji ucjenjivačkim tretmanom mogu prisiliti zaposlenike da prime naknadu u neadekvatnom obliku i visini Osim toga, ovo je problem u kojem ostaju otvorene mogucnosti za diskriminaciju radnika po raznim osnovima

During the time on waiting in the context of paragraph 1 of this Article, the worker is entitled to compensation in the amount of 70% percent of the salary earned in the month before the month when put on waiting, or in the amount of 70% of the average salary in the company for the same month The compensation is to be adjusted on a monthly basis with salaries in the company

During the termination period set in paragraph 2 of this Article the worker receives compensation in the amount of his/her regular salary if normally employed

In Article 38 of the General Collective Agreement, the general collective agreement establishes that the criteria for being put on waiting shall be determined by the employer and the trade union

When in accordance with the Labor Law, because of reduction in the volume of work, temporary economic problems of the employer, or technological or organizational changes, the need for a worker ceases to exist, the employer and trade union shall establish criteria for placing workers on waiting, subject to the following exceptions

- *the remoteness of worker's apartment from the work place,*
- *worker's disability and professional illness,*
- *pregnancy and maternity leave of the worker*

A worker who is rendered superfluous must be personally and immediately informed of his rights and the manner of their realization

Overall we note that the legal provisions that serve as a basis for placing workers "on waiting" are vague and allow for abuse and discrimination, as has occurred throughout both entities In addition, there are no procedures that would require executive managers or the company to re-instate an employee, after the circumstances for which he was put on waiting have ceased to exist Nor is there any provision in the RS law for the employee to receive compensation if removed from the waiting list

6 2 Republika Srpska

Zakon o radu Republike Srpske također predviđa institut "upucivanja na čekanje" **Član 70** propisuje

> *Radnika za čijim je radom prestala potreba zbog smanjenja obima rada ili zbog drugih ekonomskih teškoca preduzeca, ustanove ili drugog pravnog i fizičkog lica koje zapošljva radnike, kao i zbog tehnoloških i organizacionih promena preduzetih radi prilagođavanja proizvodnje uslovima tržišta, direktor može uputiti na privremeno čekanje koje ne može biti krace od šest meseci, niti duže od godinu dana, a za radnika upucenog na prekvalifikaciju ili dokvalifikaciju najmanje godinu dana, a najduže 18 meseci*
>
> *Ako se istekom roka iz stava 1 ovog člana ne steknu uslovi za raspored radnika na odgovarajuce radno mjesto, radniku prestaje radni odnos istekom otkaznog roka iz člana 58 ovog Zakona*
>
> *Za vreme čekanja u smislu stava 1 ovog člana radnik ima pravo na naknadu plate u visini 70% plate koju je ostvario u mesecu koji predhodi mesecu u kojem je upucen na čekanje, ili u visini 70 % prosečne plate ostvarene u preduzecu u istom mesecu, s tim što se naknada mesečno usklađuje sa kretanjem plata u preduzecu*
>
> *Za vreme otkaznog roka iz stava 2 ovog člana ostvaruje naknadu u visini plate koju bi ostvarivao da je bio na radu*

Opšti kolektivni ugovor predviđa da ce kriterije za upucivanje radnika na čekanje utvditi poslodavac i sindikat i to u članu 38

> *Kada, u skladu sa Zakonom o radnim odnosima, zbog smanjenja obima posla, privremenih ekonomskih teškoca poslodavca, tehnoloških promena i promena u organizaciji rada prestane potreba za radom radnika, poslodavac i sindikat utvrđuju kriterijume za upucivanje radnika na čekanje, s tim što se kao kriterijumi ne mogu utvrditi*
>
> - *udaljenost stana radnika od mjesta rada,*
> - *invalidnost i profesionalno oboljenje radnika,*
> - *trudnoca i porođajno odsustvo radnice*
>
> *Radnik za čijim je radom prestala potreba mora biti lično i neposredno upoznat sa svojim pravima i načinom ostvarivanja tih prava*

Ostaje, međutim, zabrinutost da je ovakvo određivanje principa na osnovu kojih se radnik upucuje na čekanje isuviše neodređeno i ostavlja mogucnost zloupotebe i diskriminacije, naročito imajuci u vidu brojne zloupotrebe i sve probleme koje je institut *čekanja* proizveo u FBiH Osim toga, nije predviđena procedura koja bi obavezala direktora ili samo preduzece da radnika, nakon prestanka okolnosti zbog kojih je upucen na čekanje, ponovo primi na posao, niti pravo na bilo kakvu otpremninu

DODACI

Previous Page Blank

2 International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966

Entry into force 3 January 1976 in accordance with Article 27

Preamble

The States Parties to the present Covenant

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom justice and peace in the world

Recognizing that these rights derive from the inherent dignity of the human person

Recognizing that, in accordance with the Universal Declaration of Human Rights the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic social and cultural rights as well as his civil and political rights

Considering the obligation of States under the Charter of the United Nations to promote universal respect for and observance of human rights and freedoms

Realizing that the individual, having duties to other individuals and to the community to which he belongs is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant

Agree upon the following Articles

Part I

Article 1

1 All peoples have the right of self determination By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development

2 All peoples may for their own ends freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co operation, based upon the principle of mutual benefit, and international law In no case may a people be deprived of its own means of subsistence

3 The States Parties to the present Covenant including those having responsibility for the administration of Non-Self-Governing and Trust Ter ritories shall promote the realization of the right of self-determination, and shall respect that right in conformity with the provisions of the Charter of the United Nations

Part II

Article 2

1 Each State Party to the present Covenant undertakes to take steps, in dividually and througn international assistance and co-operation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means in cluding particularly the adoption of legislative measures

2 The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised

2 16 MEĐUNARODNI PAKT O EKONOMSKIM, SOCIJALNIM I KULTURNIM PRAVIMA

Drzave stranke ovog Pakta,

Smatrajuci da je, u skladu sa nacelima proglasenim u Povelji Ujedinjenih naroda, priznanje prirođenog dostojanstva i jednakih i neotuđivih prava svih clanova ljudske zajednice osnov slobode, pravde i mira u svijetu,

Priznajuci da ta prava proizilaze iz prirođenog dostojanstva covjekove ličnosti,

Priznajuci da se, u skladu sa Univerzalnom deklaracijom o pravima covjeka, ideal slobodnih ljudskih bica, koja uzivaju slobodu od straha i oskudice, moze postici samo ako su stvoreni uslovi prema kojima svako moze uzivati svoja ekonomska, socijalna i kulturna prava jednako kao i svoja građanska i politicka prava,

Smatrajuci da je, prema Povelji Ujedinjenih naroda, duznost drzava da unapređuju opce i stvarno postovanje prava i sloboda covjeka,

Uzimajuci u obzir da je pojedinac, imajuci duznost prema drugim pojedincima i prema zajednici kojoj pripada, duzan nastojati da unaprijedi i postuje prava koja su priznata u ovom Paktu,

Dogovorile su se kako slijedi

DIO I

Član 1

1 Svi narodi imaju pravo na samoopredjeljenje Na osnovu tog prava oni slobodno određuju svoj politički status i svoj ekonomski, socijalni i kulturni razvoj

2 Svi narodi mogu za svoje vlastite ciljeve slobodno raspolagati svojim prirodnim bogatstvima i izvorima bez stete po obaveze koje proizilaze iz međunarodne saradnje zasnovane na nacelu uzajamne koristi i na međunarodnom pravu Ni u kom slučaju se ne može neki narod lišiti vlastitih sredstava opstanka

3 Drzave stranke ovog Pakta, ukljucujuci one koje su odgovorne za upravljanje nesamoupravnim i teritorijama pod starateljstvom, treba da unapređuju ostvarivanje prava na samoopredjeljenje i da postuju to pravo u skladu sa odredbama Povelje Ujedinjenih naroda

DIO II

Clan 2

1 Svaka drzava stranka ovog Pakta obavezuje se da pojedinacno i putem međunarodne pomoci i saradnje, prije svega ekonomske i tehnicke, do najvise mogucnosti svojih raspolozivih sredstava, radi na tome da se postepeno postigne puno ostvarenje prava koja su priznata u ovom Paktu, svim odgovarajucim sredstvima, ukljucujuci prije svega zakonodavne mjere

2 Drzave stranke ovog Pakta obavezuju se da ce garantovati da se prava proglasena u ovom Paktu vrse bez diskriminacije bilo koje vrste na osnovu rase, boje koze, pola, jezika, vjere, politickog ili drugog misljenja, nacionalnog ili socijalnog porijekla, imovine, roda ili bilo koje druge okolnosti

3 Zemlje u razvoju mogu, vodeci racuna o pravima covjeka i svojoj nacionalnoj privredi, odrediti u kojoj ce mjeri ekonomska prava koja su priznata ovim Paktom garantovati licima koja nisu njihovi drzavljani

Član 3

Drzave stranke ovog Pakta obavezuju se osigurati jednako pravo muskaraca i zena da uzivaju sva ekonomska, socijalna i kulturna prava predviđena ovim Paktom

Član 4

Drzave stranke ovog Pakta priznaju da, s obzirom na uzivanje prava koja daje drzava u skladu sa ovim Paktom, drzava moze podvrgnuti ta prava samo takvim ogranicenjima koja su određena zakonom i samo toliko koliko je to spojivo sa prirodom tih prava i isključivo u svrhu unapređivanja opceg blagostanja u demokratskom drustvu

Član 5

1 Nista se u ovom Paktu ne moze tumaciti kao da ukljucuje za neku drzavu, grupu ili pojedinca neko pravo da se upusti u neku djelatnost ili da izvrsi neku radnju usmjerenu na uništenje prava ili sloboda priznatih u ovom Paktu ili na njihovo ogranicenje u vecoj mjeri nego sto se predviđa u ovom Paktu

2 Ne dopusta se nikakvo ogranicenje ili ukidanje osnovnih prava covjeka koja su priznata ili postoje u nekoj zemlji prema zakonima, konvencijama, naredbama ili običajima, pod izgovorom da ovaj Pakt ne priznaje takva prava ili ih priznaje u manjem obimu

without discrimination of any kind as to race colour sex language religion political or other opinion national or social origin property birth or other status

3 Developing countries, with due regard to human rights and their national economy may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic social and cultural rights set forth in the present Covenant

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society

Article 5

1 Nothing in the present Covenant may be interpreted as implying for any State group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant

2 No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law conventions, regulations or customs shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent

Part III

Article 6

1 The States Parties to the present Covenant recognize the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right

2 The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular

a remuneration which provides all workers as a minimum with
  i fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work
  ii a decent living for themselves and their families in accordance with the provisions of the present Covenant
b safe and healthy working conditions
c equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence
d rest leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays

DIO III

Clan 6

1 Drzave stranke ovog Pakta priznaju pravo na rad koje obuhvata pravo svakoga na mogucnost da zaradi dovoljno za zivot slobodno izabranim ili prihvacenim radom, i preduzet ce odgovarajuce mjere da zastite to pravo

2 Mjere koje ce drzava stranka ovog Pakta preduzeti u cilju punog ostvarenja ovog prava obuhvatit ce tehnicko i strucno usmjeravanje i obrazovanje kao i programe, politiku i metode nastave podesne za postizanje stalnog ekonomskog, socijalnog i kulturnog razvoja, kao i pune produktivne zaposlenosti u uslovima koji osiguravaju pojedincu osnovne politicke i ekonomske slobode

Clan 7

Drzave stranke ovog Pakta priznaju pravo svakoga da uziva pravedne i povoljne uslove radi kojih posebno osiguravaju

a naknadu koja kao minimum osigurava svim radnicima

pravicnu placu i jednaku naknadu za rad jednake vrijednosti bez ikakvog razlikovanja, posebno da se zenama garantuju uslovi rada koji nisu nizi od onih za muskarce, uz jednaku placu za jednak rad,

pristojan zivot za njih i njihove porodice u skladu sa odredbama ovog pakta,

b sigurne i zdrave uslove rada,

c jednaku mogucnost za svakoga da bude unapredjen u svom poslu na odgovarajuci stepen, uzimajuci iskljucivo navrsene godine rada i sposobnosti,

d odmor, slobodno vrijeme, razumno ogranicenje radnog vremena i povremene placene dopuste, kao i naknadu za javne praznike

Član 8

1 Drzave stranke ovog Pakta obavezuju se osigurati

a pravo svakoga da, u cilju unapredjenja i zastite svojih ekonomskih i socijalnih interesa, osniva sindikate i stupa u sindikat po svom izboru, zavisno jedino od pravila odnosne organizacije Tom se pravu ne mogu postavljati nikakva ogranicenja sem onih koja su propisana zakonom i koja su potrebna u demokratskom drustvu i interesu drzavne sigurnosti ili javnog poretka ili za zastitu prava i sloboda drugih,

b pravo sindikata da osnivaju nacionalne federacije ili konfederacije i pravo ovih da osnivaju međunarodne sindikalne organizacije ili da stupe u njih,

c pravo sindikata da djeluje slobodno i jedino uz ogranicenja koja propisuju zakoni i koja su potrebna u demokratskom drustvu u intersu drzavne sigurnosti ili javnog poretka, ili za zastitu prava i sloboda drugih,

d pravo na strajk uz uslov da bude vrseno u skladu sa zakonima odnosne zemlje

2 Ovaj clan ne sprecava da se nametnu zakonska ogranicenja vrsenja tih prava pripadnicima oruzanih snaga, policije ili drzavne uprave

3 Nista u ovom clanu ne ovlašcuje drzave stranke Konvencije Međunarodne organizacije rada iz 1948 godine o slobodi sindikalnog udruzivanja i zastiti prava na udruzivanje

da preduzimu zakonodavne mjere koje bi bile na stetu garancija iz te Konvencije ili da primjene zakon na nacin koji bi bio na stetu tih garancija

Clan 9

Drzave stranke ovog Pakta priznaju pravo svakoga na socijalnu sigurnost ukljucujuci socijalno osiguranje

Clan 10

Drzave stranke ovog Pakta priznaju da

1 Treba pruziti najvecu mogucu zastitu i pomoc porodici koja je osnovna i prirodna drustvena jedinica, posebno za njeno osnivanje i dok je odgovorna za izdrzavanje i odgoj djece koja su joj na brizi Brak treba da se sklapa po slobodnoj volji buducih bracnih drugova

2 Treba pruziti posebnu zastitu majkama kroz razumno vrijeme prije i poslije poroda djeteta Za to vrijeme treba majkama koje rade obezbjediti placeni dopust ili dopust sa odgovarajucim povlasticama socijalnog osiguranja

3 Treba preduzeti posebne mjere zastite i pomoci u korist sve djece i omladine bez ikakve diskriminacije po porijeklu ili drugim okolnostima Djecu i mlade treba zastititi od ekonomskog i socijalnog izrabljivanja Njihovo zaposlenje na poslovima koji su stetni za njihov moral ili zdravlje ili opasni po zivot ili mogu skoditi normalnom razvoju treba da bude kaznjivo po zakonu Drzave treba također da odrede dobnu granicu ispod koje ce placeni djeciji rad biti zakonom zabranjen i kaznjiv

Clan 11

1 Drzave stranke ovog Pakta priznaju pravo svakoga na životni standard dovoljan za njega i njegovu porodicu, ukljucujuci primjerenu hranu, odjecu i stan, kao i na stalno poboljsanje zivotnih uslova Drzave ugovornice preduzet ce odgovarajuce mjere da osiguraju ostvarenje toga prava, priznajuci u tu svrhu bitnu vaznost međunarodne saradnje zasnovane na slobodnoj volji

2 Drzave stranke ovog Pakta, priznajuci osnovno pravo svakoga da bude zasticen od gladi, preduzet ce pojedinacno i putem međunarodne saradnje mjere, ukljucujuci konkretne programe, koje su potrebne

a da poboljsaju metode proizvodnje, ocuvanja i raspodjele hrane punom upotrebom tehnickog i naucnog znanja, sirenjem poznavanja nacela ishrane i razvijanjem ili reformom agrarnih sistema na takav nacin da se postigne najdjelotvorniji razvoj i iskoristavanje prirodnih izvora,

b da se prema potrebama osigura pravicna raspodjela svjetskih zaliha hrane, vodeci racuna o problemima zemalja uvoznica i izvoznica

Clan 12

1 Drzave stranke ovog Pakta priznaju pravo svakoga da uziva najvisu mogucu mjeru tjelesnog i psihickog zdravlja

2 Mjere koje ce drzave stranke ovog Pakta preduzeti da bi postigle puno ostvarenje toga prava treba da, kao potrebne, obuhvate

a za smanjenje postotka mrtvorodencadi i pomora djece te za zdrav razvitak djeteta,

Article 8

1 The States Parties to the present Covenant undertake to ensure

a the right of everyone to form trade unions and join the trade union of his choice subject only to the rules of the organization concerned for the promotion and protection of his economic and social interests No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others

b the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations

c the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others

d the right to strike provided that it is exercised in conformity with the laws of the particular country

103

2 This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State

3 Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice or apply the law in such a manner as would prejudice the guarantees provided for in that Convention

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security including social insurance

Article 10

The States Parties to the present Covenant recognize that

1 The widest possible protection and assistance should be accorded to the family which is the natural and fundamental group unit of society particularly for its establishment and while it is responsible for the care and education of dependent children Marriage must be entered into with the free consent of the intending spouses

2 Special protection should be accorded to mothers during a reasonable period before and after childbirth During such period working mothers should be accorded paid leave or leave with adequate social security benefits

3 Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions Children and young persons should be protected from economic and social exploitation Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law

Article 11

1 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family including adequate food clothing and housing, and to the continuous improvement of living conditions The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent

2 The States Parties to the present Covenant recognizing the fundamental right of everyone to be free from hunger shall take individually and through international co-operation the measures including specific programmes which are needed

b za poboljsanje svih vidova higijene okoline i industrijske higijene,

c za sprjecavanje, lijecenje i suzbijanje epidemijskih i drugih bolesti, kao i

d za stvaranje uslova koji bi svima osigurali ljekarske usluge i njegu u slucaju bolesti

Član 13

1 Drzave stranke ovog Pakta priznaju pravo svakoga na skolovanje One se slazu da skolovanje mora biti usmjereno prema punom razvoju ljudske licnosti i osjecaja njenog dostojanstva i da mora pojacati postovanje prava covjeka i osnovnih sloboda One se, nadalje, slazu da skolovanje treba da osposobi sve ljude da korisno djeluju u slobodnom drustvu, da unapređuju razumijevanje, trpeljivost i prijateljstvo među svim narodima i među svim rasnim, etnickim ili vjerskim grupama, i da potpomazu djelovanje Ujedinjenih naroda oko odrzavanja mira

2 Drzave stranke ovog Pakta priznaju da, radi postizanja punog ostvarenja tog prava

a osnovna nastava treba da bude obavezna i besplatna za sve,

b srednja nastava u svojim razlicitim oblicima, ukljucujuci tehnicku i stručnu srednju nastavu, treba da bude opcedostupna za sve putem svih potrebnih sredstava i posebno postepenim uvođenjem besplatne nastave,

c visa nastava treba da se ucini jednako dostupnom za sve prema sposobnosti, svim mogucim sredstvima, a posebno uvođenjem besplatne nastave,

d osnovna nastava treba da se podstiče ili pojaca koliko je moguce za one koji nisu dobili ili završili osnovnu nastavu,

e treba aktivno razvijati mrezu skola svih nivoa, uvesti odgovarajuci sistem stipendija i stalno poboljsavati materijalni polozaj nastavnog osoblja

3 Drzave stranke ovog Pakta obavezuju se da ce poštovati slobodu roditelja i, gdje je takav slučaj, zakonskih staratelja da mimo škola koje su osnovali javni organi izaberu za svoju djecu druge skole koje su u skladu sa minimalnim normativima nastave kako su određeni ili odobreni od strane drzave i da osiguraju vjerski i moralni odgoj svoje djece u skladu sa svojim vlastitim uvjerenjima

4 Nijedan dio ovoga clana ne smije se tumačiti kao da dira u slobodu pojedinca i pravnih lica da osnuju i vode nastavne ustanove, uz uslov da se pridrzavaju načela navedenih u stavu 1 ovog clana i da se nastava u tim ustanovama uskladi sa minimalnim normativima koje moze odrediti drzava

Član 14

Svaka drzava stranka ovog Pakta, koja u vrijeme kada je postala strankom nije jos mogla osigurati obaveznu i besplatnu osnovnu nastavu na svojoj matičnoj teritoriji ili na drugim teritorijama pod njenom vlascu, obavezuje se da ce u roku od dvije godine izraditi i usvojiti detaljan plan mjera potrebnih za postepeno ostvarenje, unutar razumnog, planom utvrđenog broja godina, načela obavezne i besplatne nastave za sve

Član 15

1 Drzave stranke ovog Pakta priznaju pravo svakoga

a da sudjeluje u kulturnom zivotu,

b da se koristi napretkom nauke i njenom primjenom,

c da se koristi zastitom moralnih i materijalnih interesa koji proizilaze iz nekog naucnog, knjizevnog ili umjetnickog ostvarenja ciji je on autor

2 Mjere koje ce drzave stranke ovog Pakta preduzeti da postignu puno ostvarenje tog prava moraju obuhvatiti one koje su potrebne za odrzavanje, razvoj i sirenje nauke i kulture

3 Drzave stranke ovog Pakta obavezuju se da postuju slobodu koja je neophodna za naucno istrazivanje i stvaralacke djelatnosti

4 Drzave stranke ovog Pakta priznaju pogodnosti koje treba da proizađu iz unapređivanja i razvoja međunarodne saradnje i veza na polju nauke i kulture

DIO IV

Član 16

1 Drzave stranke ovog Pakta obavezuju se da, u skladu sa odredbama ovoga dijela Pakta, podnose izvještaje o mjerama koje su usvojile i o napretku koji je ostvaren da bi se postiglo postovanje u Paktu priznatih prava

2 a Svi izvjestaji podnose se Generalnom sekretaru Ujedinjenih naroda koji dostavlja njihove kopije Ekonomskom i socijalnom savjetu u skladu sa odredbama ovog Pakta

b Generalni sekretar Ujedinjenih naroda dostavlja također specijalizovanim organizacijama kopiju izvjestaja ili ma kog dijela izvjestaja onih drzava stranaka ovog Pakta koje su također clanice tih specijalizovanih organizacija, ukoliko se ti izvjestaji ili njihovi dijelovi odnose na neki predmet koji je prema njihovim ustavnim aktima u nadleznosti tih ustanova

Član 17

1 Drzave stranke ovog Pakta salju svoje izvjestaje u razmacima, u skladu sa programom koji ce izraditi Ekonomski i socijalni savjet u roku od godinu dana od dana stupanja na snagu ovog Pakta, posto se savjetuje sa drzavama strankama i sa zaintersovanim specijalizovanim organizacijama

2 Izvjestaji mogu navesti faktore i teskoće koji sprečavaju te drzave da potpuno izvrse obaveze iz ovog Pakta

3 Ako je neka drzava stranka ovog Pakta vec prije dostavila informacije Ujedinjenim narodima ili nekoj specijalizovanoj organizaciji, nije potrebno da se te informacije ponove, vec je dovoljno da se na tako dostavljene informacije tačno pozove

Član 18

Na osnovu svojih odgovornosti određenih Poveljom Ujedinjenih naroda na polju prava čovjeka i osnovnih sloboda, Ekonomski i socijalni savjet moze sa specijalizovanim organizacijama zaključiti dogovore o izvještajima koje mu one podnose o napretku postizanja postovanja onih odredaba ovog Pakta koje spadaju u okvir njihove djelatnosti Ti izvještaji mogu obuhvatiti podatke o odlukama i preporukama koje su o tome prihvatili njihovi nadležni organi

a to improve methods of production conservation and distribution of food by making full use of technical and scientific knowledge by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources

b taking into account the problems of both food importing and food exporting countries to ensure an equitable distribution of world food supplies in relation to need

Article 12

1 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

2 The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for

a the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child

b the improvement of all aspects of environmental and industrial hygiene

c the prevention treatment and control of epidemic endemic occupational and other diseases

d the creation of conditions which would assure to all medical service and medical attention in the event of sickness

Article 13

1 The States Parties to the present Covenant recognize the right of everyone to education They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms They further agree that education shall enable all persons to participate effectively in a free society promote understanding tolerance and friendship among all nations and all racial ethnic or religious groups

and further the activities of the United Nations for the maintenance of peace

2 The States Parties to the present Covenant recognize that with a view to achieving the full realization of this right

a primary education shall be compulsory and available free to all

b secondary education in its different forms including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education

c higher education shall be made equally accessible to all on the basis of capacity by every appropriate means and in particular by the progressive introduction of free education,

d fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education

e the development of a system of schools at all levels shall be actively pursued an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved

3 The States Parties to the present Covenant undertake to have respect for the liberty of parents and when applicable, legal guardians to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions

4 No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State

Clan 19

Ekonomski i socijalni savjet moze, radi proucavanja i davanja preporuke opce prirode ili, koliko je odgovarajuce radi obavjestenja, dostaviti Komisiji za prava covjeka izvjestaje o pravima covjeka koje podnose drzave u skladu sa clanovima 16 i 17, kao i izvjestaje o pravima covjeka koje podnose specijalizovane organizacije u skladu sa clanom 18

Clan 20

Drzave stranke ovog Pakta i zainteresovane specijalizovane organizacije mogu pod nositi Ekonomskom i socijalnom savjetu primjedbe na svaku preporuku opce prirode iz clana 19 ili na svako upucivanje na opcu preporuku koja se nalazi u izvjestaju Komisije za prava covjeka ili nekoj dokumentaciji na koju se on poziva

Clan 21

Ekonomski i socijalni savjet moze po potrebi podnijeti Generalnoj skupstini izvjestaje sa preporukama opce prirode i sazetak obavjestenja sto ih je primilo od drzava stranaka ovog Pakta i od specijalizovanih organizacija o preduzetim mjerama i o napretku u postizanju opceg postovanja prava koja su priznata u ovom Paktu

Član 22

Ekonomski i socijalni savjet moze skrenuti paznju drugim organima Ujedinjenih naroda, njihovim pomocnim organima i zainteresovanim specijalizovanim organizaci jama koje se bave pruzanjem tehnicke pomoci na svako pitanje koje iniciraju izvjestaji navedeni u ovom dijelu Pakta, sto bi moglo pomoci tim tjelima da, svako na polju svoje nadleznosti, odluci o potrebi uvođenja međunarodnih mjera koje bi mogle pridonijeti stvarnom, postepenom provođenju ovog Pakta

Clan 23

Drzave stranke ovog Pakta slazu se da mjere međunarodnog znacaja za postizanje prava priznatih u ovom Paktu obuhvataju i takve metode kao sto su zakljucenje konven cija, usvajanje preporuka, pruzanje tehnicke pomoci i odrzavanje, u zajednici sa zainter sovanim vladama, regionalnih sastanaka i tehnickih sastanaka u cilju savjetovanja i proucavanja

Član 24

Nista se u ovom Paktu ne smije tumačiti na štetu odredaba Povelje Ujedinjenih naroda i ustava specijalizovanih organizacija koje određuju odnose nadleznosti razlicitih organa Ujedinjenih naroda i specijalizovanih organizacija sa obzirom na predmete kojima se bavi ovaj Pakt

Član 25

Nista se u ovom Paktu ne smije tumaciti na stetu prirođenog prava svih naroda da potpuno i slobodno uzivaju i upotrebljavaju svoja prirodna bogatstva i izvore

DIO V

Član 26

1 Ovaj Pakt otvoren je za potpis svakoj drzavi clanici Ujedinjenih naroda ili clanici bilo koje od njenih specijalizovanih organizacija, svakoj drzavi stranci Statuta Međunarodnog suda i svakoj drzavi koju Generalna skupstina pozove da postane strankom ovog Pakta

2 Ovaj Pakt podlijeze ratifikaciji Instrumenti ratifikacije deponuju se kod General nog sekretara Ujedinjenih naroda

3 Ovaj Pakt otvoren je za pristupanje svakoj drzavi navedenoj u stavu 1 ovog clana

4 Pristupanje se vrsi deponovanjem instrumenta pristupanja kod Generalnog sekre tara Ujedinjenih naroda

5 Generalni sekretar Ujedinjenih naroda obavjestava o deponovanju svakog instru menta ratifikacije ili pristupanja sve drzave koje su potpisale ovaj Pakt ili su mu pristupile

Član 27

1 Ovaj Pakt stupa na snagu tri mjeseca nakon deponovanja trideset petog instrumenta ratifikacije ili pristupanja kod Generalnog sekretara Ujedinjenih naroda

2 Za svaku državu koja ratifikuje ovaj Pakt ili mu pristupi nakon polaganja trideset i petog instrumenta ratifikacije ili pristupanja, ovaj Pakt stupa na snagu tri mjeseca poslije deponovanja vlastitog instrumenta ratifikacije ili pristupanja

Clan 28

Odredbe ovog Pakta protezu se na sve dijelove saveznih drzava bez ikakvog ogranicenja ili izuzetka

Član 29

1 Svaka drzava stranka ovog Pakta moze predloziti izmjene i njihov tekst dostaviti Generalnom sekretaru Ujedinjenih naroda Generalni sekretar Ujedinjenih naroda saopcava svaku predloženu izmjenu državama strankama ovog Pakta sa zahtjevom da se izjasne da li zele sazivanje konferencije drzava stranaka u cilju razmatranja tih prijedloga i glasanja o njima Ako se najmanje jedna trecina drzava stranaka izjasni u prilog konferencije, Generalni sekretar Ujedinjenih naroda saziva konferenciju pod okriljem Ujedinjenih naroda Svaka izmjena koja je usvojena vecinom glasova drzava stranaka koje su prisutne i glasaju na konferenciji podnosi se na odobrenje Generalnoj skupstini Ujedinjenih naroda

2 Izmjene stupaju na snagu kada ih odobri Generalna skupstina Ujedinjenih naroda i prihvati dvotrecinska većina drzava stranaka ovog Pakta u skladu sa njihovim ustavnim postupcima

3 Kada izmjene stupe na snagu, one obavezuju drzave stranke koje su ih prihvatile, dok su ostale drzave stranke vezane odredbama ovog Pakta i svakom ranijom izmjenom koju su prihvatile

Article 14

Each State Party to the present Covenant which at the time of becoming a Party has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education free of charge undertakes within two years to work out and adopt a detailed plan of action for the progressive implementation within a reasonable number of years to be fixed in the plan of the principle of compulsory education free of charge for all

Article 15

1 The States Parties to the present Covenant recognize the right of everyone

a to take part in cultural life
b to enjoy the benefits of scientific progress and its applications
c to benefit from the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author

2 The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation the development and the diffusion of science and culture

3 The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity

4 The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co operation in the scientific and cultural fields

Part IV

Article 16

1 The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which

they have adopted and the progress made in achieving the observance of the rights recognized herein

2 a All reports shall be submitted to the Secretary General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant,

b The Secretary General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments

Article 17

1 The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned

2 Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant

3 Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the

Clan 30

Nezavisno od saopcenja izvrsenih prema clanu 26 stav 5 Generalni sekretar Ujedinjenih naroda obavještava sve drzave navedene u stavu 1 navedenog clana o sljedecem

a potpisima, ratifikacijama i pristupanjima prema clanu 26,

b danu stupanja na snagu ovog Pakta prema clanu 27 i danu stupanja na snagu svake izmjene prema clanu 29

Član 31

1 Ovaj Pakt, čiji su engleski, francuski, kineski, ruski i spanski tekst jednako vjerodostojni, bit će deponovan u arhivu Ujedinjenih naroda

2 Generalni sekretar Ujedinjenih naroda dostavit ce ovjerene kopije ovog Pakta svim drzavama navedenim u clanu 26

U potvrdu ovoga su potpisani, propisno ovlasteni od svojih vlada, potpisali ovaj Pakt, koji je bio otvoren za potpisivanje u New Yorku, 19 decembra 1966 godine

108

scope of their activities These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate, for information the reports concerning human rights submitted by States in accordance with Articles 16 and 17 and those concerning human rights submitted by the specialized agencies in accordance with Article 18

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding each within its field of competence on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions the adoption of recommendations the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources

Part V

Article 26

1 The present Covenant is open for signature by any State member of the United Nations or member of any of its specialized agencies by any State Party to the Statute of the International Court of Justice and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant

2 The present Covenant is subject to ratification Instruments of ratification shall be deposited with the Secretary General oft the United Nations

3 The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article

4 Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations

5 The Secretary General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession

Article 27

1 The present Covenant shall enter into force three months after the date of the deposit with the Secretary General of the United Nations of the thirty fifth instrument of ratification or instrument of accession

2 For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions

Article 29

1 Any State Party to the present Covenant may propose an amendment and file it with the Secretary General of the United Nations The Secretary General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals In the event that at least one-third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval

2 Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes

3 When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary General of the United Nations shall inform all States referred to in paragraph 1 of the same Article of the following particulars

a signatures, ratifications and accessions under Article 26,
b the date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29

Article 31

1 The present Covenant, of which the Chinese English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations

2 The Secretary General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26

To our knowledge, the 1996 revised Social Charter is not available in bosnian, therefore the Appendix contains the 1996 revised version in english and the 1961 version in bosnian

B Revised European Social Charter of 1996

Preamble

The governments signatory hereto being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms,

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being,

Po našem saznanju, Evropska Socijalna Povelja koja je revidirana 1996 nije još prevedena na domaci jezik, zbog toga dodatak sadrži revidiranu verziju Povelje 1996 na engleskom jezku i Evropsku Socijalnu Povelju 1961 na domacem jezku

1/2

2 13 EVROPSKA SOCIJALNA POVELJA (1961)

Vlade, potpisnice ovog dokumenta, clanice Savjeta Evrope,

S obzirom da je cilj Savjeta Evrope postizanje veceg jedinstva izmedju njenih clanova, a u svrhu sigurnosti i postizanja ideala i principa koji su njihovo zajedničko nasljeđe i olaksavanja njihovog ekonomskog i socijalnog napretka, a posebno odrzavanjem i daljim ostvarenjem ljudskih prava i osnovnih sloboda,

S obzirom da su se u evropskoj Konvenciji o zastiti ljudskih prava i osnovnih sloboda, potpisanoj u Rimu 4 novembra 1950 godine, te u Protokolu uz nju potpisanom u Parizu 20 marta 1952 godine, drzave clanice Savjeta Evrope saglasile da osiguraju svom stanovnistvu građanska i politicka prava i slobode navedene u njima,

S obzirom da uzivanje socijalnih prava treba biti osigurano bez diskriminacije u pogledu rase, boje pola, vjere, politickog misljenja, nacionalnog ili socijalnog porijekla,

Odlucne da ucine svaki zajednicki napor da poboljsaju standarde zivljenja i da unaprijede socijalno blagostanje i gradskog i seoskog stanovnistva putem adekvatnih institucija i akcija,

Dogovorile su se kako slijedi

DIO I

Stranke ugovornice prihvataju kao cilj svoje politike da ce slijediti na sve odgovarajuce nacine, po karakteru i nacionalne i internacionalne, tekovine u pogledu uslova pod kojima se sljedeca prava i principi mogu djelotvorno ostvariti

1 Svako ce imati mogucnost da zarađuje za zivot u zanimanju koje je slobodno izabrao

2 Svi radnici imaju pravo na pravicne uslove rada

3 Svi radnici imaju pravo na bezbjedne i zdrave uslove rada

4 Svi radnici imaju pravo na pravicnu naknadu dovoljnu za pristojan standard zivota za sebe i svoje porodice

5 Svi radnici i poslodavci imaju pravo na slobodu udruzivanja u nacionalnim ili internacionalnim organizacijama radi zaštite njihovih ekonomskih i socijalnih interesa

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need on the one hand, to preserve the indivisible nature of all human rights be they civil political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus,

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted,

Recognising the advantage of embodying in a Revised Charter designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised

1 Everyone shall have the opportunity to earn his living in an occupation freely entered upon

2 All workers have the right to just conditions of work

3 All workers have the right to safe and healthy working conditions

4 All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families

5 All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests

6 All workers and employers have the right to bargain collectively

7 Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed

8 Employed women, in case of maternity, have the right to a special protection

9 Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests

10 Everyone has the right to appropriate facilities for vocational training

11 Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable

12 All workers and their dependents have the right to social security

13 Anyone without adequate resources has the right to social and medical assistance

14 Everyone has the right to benefit from social welfare services

15 Disabled persons have the right to independence, social integration and participation in the life of the community

16 The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development

17 Children and young persons have the right to appropriate social, legal and economic protection

18 The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a

6 Svi radnici i poslodavci imaju pravo na kolektivne pregovore

7 Djeca i maloljetnici imaju pravo na posebnu zaštitu protiv fizičkih i moralnih opasnosti kojima su izloženi

8 Zaposlene žene, u slučaju materinstva, te druge zaposlene žene, kada je prikladno, imaju pravo na posebnu zaštitu u svom radu

9 Svako ima pravo na odgovarajuće olakšice za stručno uputstvo u pogledu pomoći izbora zanimanja koje odgovara njegovim ličnim sposobnostima i interesima

10 Svako ima pravo na odgovarajuće olakšice za stručno obrazovanje

11 Svako ima pravo da se koristi bilo kojim mjerama koje mu omogućavaju da uživa najviši mogući standard zdravlja koji je moguće dostići

12 Svi radnici i oni koji od njih zavise imaju pravo na socijalno osiguranje

13 Svako ko je bez adekvatnih prihoda ima pravo na socijalnu i zdravstvenu pomoć

14 Svako ima pravo da se koristi službama socijalnog staranja

15 Nesposobna lica imaju pravo na stručno obrazovanje, rehabilitaciju i ponovno zaposlenje, bez obzira kakvo je porijeklo i priroda njihove nesposobnosti

16 Porodica, kao osnovna jedinica društva, ima pravo na odgovarajuću socijalnu pravnu i ekonomsku zaštitu kako bi se osigurao njen potpuni razvoj

17 Majke i djeca, bez obzira na bračni status i porodične odnose, imaju pravo na odgovarajuću socijalnu i ekonomsku zaštitu

18 Državljani bilo koje strane ugovornice imaju pravo na zaposlenje u bilo kojem unosnom zanimanju na teritoriji bilo koje druge države na osnovama jednakosti sa državljanima te države, pod uslovom ograničenja zasnovanih na uvjerljivim ekonomskim i socijalnim razlozima

19 Radnici na privremenom radu u inostranstvu, koji su državljani stranke ugovornice, kao i njihove porodice, imaju pravo na zaštitu i pomoć na teritoriji bilo koje stranke ugovornice

DIO II

Stranke ugovornice se obavezuju, kako je predviđeno u Dijelu III, da će se smatrati ograničenim obavezama navedenim u članovima i stavovima koji slijede

Član 1 Pravo na rad

U svrhu osiguranja djelotvornog vršenja prava na rad, stranke ugovornice se obavezuju da će

1 prihvatiti kao jedan od svojih primarnih ciljeva i odgovornosti postizanje i održavanje, koliko je to moguće, visokog i stabilnog nivoa zaposlenosti u svrhu postizanja pune zaposlenosti,

2 djelotvorno zaštititi pravo radnika da zaradi za život u zaposlenju koje je slobodno izabrao,

3 da osnuju ili podupiru besplatne službe zapošljavanja za sve radnike,

4 da osiguraju ili unapređuju odgovarajuće stručno upućivanje, obrazovanje i rehabilitaciju

Član 2 Pravo na pravične uslove rada

U cilju osiguranja djelotvornog vršenja prava na pravične uslove rada, strane ugovornice se obavezuju da će

1 odrediti razumne dnevne i sedmične radne sate, te da se radna sedmica progresivno smanjuje do mjere do koje to povećanje produktivnosti i drugi relevantni faktori dozvoljavaju,

2 osigurati plaćene državne praznike,

3 osigurati najmanje dvije sedmice plaćenog godišnjeg odmora,

4 osigurati plaćene dodatne praznike ili da smanje radne sate radnicima koji se bave opasnim ili po zdravlje štetnim zanimanjima, kako je propisano,

5 osigurati vrijeme za odmor u toku sedmice koje će se, koliko je to moguće, podudarati sa danom koji je, po tradiciji ili običaju u zemlji ili regionu u pitanju, priznat kao dan odmora

Član 3 Pravo na bezbjedne i zdrave uslove rada

U cilju osiguranja djelotvornog vršenja prava na bezbjedne i zdrave uslove rada, strane ugovornice se obavezuju da će

1 donijeti propise o bezbjednosti i zdravlju,

2 obezbijediti izvršenje takvih propisa mjerama nadzora,

3 konsultovati, kada je to prikladno, organizacije poslodavaca i radnika o mjerama određenim za poboljšanje bezbjednosti i zdravlja u industriji

Član 4 - Pravo na pravičnu naknadu

U svrhu obezbjeđenja djelotvornog vršenja prava na pravičnu naknadu, strane ugovornice se obavezuju da će

1 radnicima priznati pravo na takvu naknadu koja će obezbjediti njima i njihovim porodicama pristojan standard življenja,

2 radnicima priznati pravo na uvećane iznose naknade za prekovremeni rad, što je podložno izuzećima u posebnim slučajevima,

3 priznati pravo muškarcima i ženama na jednako plaćanje za rad jednake vrijednosti,

4 priznati pravo svim radnicima na razuman period za otkazni rok,

5 dozvoliti odbijanje od naknada samo pod uslovima i u mjeri u kojoj je to propisano nacionalnim zakonima ili propisima ili utvrđeno kolektivnim ugovorima ili sudskim odlukama

Vršenje ovih prava biće postignuto slobodno zaključenim kolektivnim ugovorima, zakonskim mehanizmom utvrđenja naknada ili na druge načine koji odgovaraju prilikama

Član 5 Pravo na organizovanje

U svrhu osiguranja ili unapređenja sloboda radnika i poslodavaca da osnuju lokalne, državne ili međunarodne organizacije za zaštitu svojih ekonomskih i socijalnih interesa

footing of equality with the nationals of the latter subject to restrictions based on cogent economic or social reasons

19 Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party

20 All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

21 Workers have the right to be informed and to be consulted within the undertaking

22 Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking

23 Every elderly person has the right to social protection

24 All workers have the right to protection in cases of termination of employment

25 All workers have the right to protection of their claims in the event of the insolvency of their employer

26 All workers have the right to dignity at work

27 All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities

28 Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions

29 All workers have the right to be informed and consulted in collective redundancy procedures

30 Everyone has the right to protection against poverty and social exclusion

31 Everyone has the right to housing

Part II

The Parties undertake as provided for in Part III to consider themselves bound by the obligations laid down in the following articles and paragraphs

Article 1 – The right to work

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

1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment,

2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon,

3 to establish or maintain free employment services for all workers,

4 to provide or promote appropriate vocational guidance, training and rehabilitation

Article 2 – The right to just conditions of work

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

1 to provide for reasonable daily and weekly working hours the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit

i da se priključe tim organizacijama stranke ugovornice se obavezuju da nacionalno zakonodavstvo neće biti takvo da naškodi niti će se primjenjivati tako da naškodi ovim slobodama Mjera u kojoj će se garancije, određene u ovom članu, primjenjivati na policiju biti će određena nacionalnim zakonima ili pravilima Princip po kojem će se primjenjivati ove garancije na pripadnike oružanih snaga i mjeru u kojoj će se garancije primjenjivati na lica iz ove kategorije, na jednak način će odrediti nacionalni zakoni ili propisi

Član 6 Pravo na kolektivno pregovaranje

U svrhu osiguranja djelotvornog vršenja prava na kolektivno pregovaranje, stranke ugovornice se obavezuju da će

1 unapređivati zajedničke konsultacije između radnika i poslodavaca,

2 unapređivati, gdje je to potrebno i gdje odgovara, dobrovoljne pregovore između poslodavaca ili organizacija poslodavaca i radničkih organizacija, u svrhu regulisanja vremena i uslova zaposlenja putem kolektivnih ugovora,

3 unapređivati osnivanje i korištenje odgovarajućih mehanizama za pomirenje i dobrovoljnu arbitražu za rješavanje radničkih sporova,

i priznati

4 pravo radnika i poslodavaca na kolektivnu akciju u slučajevima sukoba interesa, uključujući i pravo na štrajk, ovisno o obavezama koje mogu proisteći iz kolektivnih ugovora kojima su ranije pristupili

Član 7 Pravo djece i maloljetnika na zaštitu

U svrhu osiguranja djelotvornog vršenja prava djece i maloljetnika na zaštitu, strane ugovornice se obavezuju da će

1 odrediti minimalnu starosnu granicu za zaposlenje na petnaest godina starosti, od čega mogu postojati izuzeci za djecu zaposlenu na propisanim lakim poslovima bez štete po njihovo zdravlje, moral ili obrazovanje,

2 odrediti visu minimalnu dobnu granicu za zaposlenje, koja će biti utvrđena u pogledu propisanih zanimanja koja se smatraju opasnim ili nezdravim,

3 obezbijediti da lica, koja još uvijek potpadaju pod obavezno školovanje, neće biti zaposlena na takvim poslovima niti će im se uskratiti puna korist njihovog obrazovanja,

4 obezbijediti da radni sati lica mladih od šesnaest godina budu ograničeni u saglasnosti sa potrebama njihovog razvoja i posebno njihovim potrebama za stručnim obrazovanjem,

5 priznati pravo mladim radnicima i šegrtima na pravičnu nadnicu ili drugu odgovarajuću nadoknadu,

6 obezbijediti da vrijeme koje maloljetnici provedu na stručnom obrazovanju tokom redovnog radnog vremena, uz odobrenje poslodavca, bude smatrano kao sastavni dio radnog dana,

7 obezbijediti da zaposlena lica mlađa od osamnaest godina imaju pravo na plaćeni godišnji odmor ne kraći od tri sedmice,

8 obezbijediti da lica mlađa od osamnaest godina neće biti zaposlena na noćnim poslovima uz izuzetak pojedinih zanimanja određenih nacionalnim zakonima ili propisima,

9 obezbijediti da će lica mlađa od osamnaest godina, zaposlena na poslovima propisanim nacionalnim zakonima ili propisima, biti podvrgnuta redovnoj zdravstvenoj kontroli

10 osigurati posebnu zaštitu od fizičkih i moralnih opasnosti kojima su djeca i maloljetnici izloženi, a posebno od onih koja direktno ili indirektno rezultiraju iz njihovog posla

Član 8 Pravo zaposlenih žena na zaštitu

U svrhu osiguranja djelotvornog vršenja prava zaposlenih žena na zaštitu strane ugovornice se obavezuju da će

1 obezbijediti ženama da uzmu dopust prije i poslije porođaja do ukupno najmanje dvanaest sedmica, bilo plaćenim dopustom, adekvatnim naknadama iz socijalne zaštite ili naknadama iz javnih fondova za žene,

2 smatrati da je nezakonito da poslodavac da ženi otkaz za vrijeme njene odsutnosti zbog porodiljskog odsustva ili da joj da otkaz u takvo vrijeme u kojem bi otkazni rok istekao u vrijeme njene odsutnosti,

3 obezbijediti da majke koje doje svoju djecu imaju pravo na dovoljno slobodnog vremena za ovu svrhu,

4 a regulisati zaposlenje radnica na noćnom radu u industrijskim poslovima,

b zabraniti zaposlenje radnica u podzemnim kopovima i, kada je to odgovarajuće, na svim drugim poslovima koji su za njih neprikladni zbog opasne, nezdrave ili naporne prirode tih poslova

Član 9 Pravo na stručnu poduku

U svrhu osiguranja djelotvornog vršenja prava na stručnu poduku, stranke ugovornice se obavezuju da će obezbijediti ili unaprijediti, koliko je to potrebno, službu koja će pomoći svim licima, uključujući i hendikepirana, da riješe probleme u vezi sa izborom zanimanja i napredovanjem, uz dužno postovanje individualnih osobina lica i njihovog odnosa prema mogućnostima koje pruža zanimanje, ova pomoć bi trebala biti oslobođena plaćanja i za maloljetnike, uključujući učenike, i za odrasle

Član 10 Pravo na stručno obučavanje

U svrhu osiguranja djelotvornog vršenja prava na stručno obučavanje, stranke ugovornice se obavezuju da će

1 obezbijediti ili unaprijediti, koliko je to potrebno, tehničko i stručno obučavanje za sva lica, uključujući i hendikepirana, u konsultaciji sa organizacijama poslodavaca i radnika i dati olaksice za pristup visem tehničkom i univerzitetskom obrazovanju baziranom jedino na individualnim sposobnostima,

2 obezbijediti ili unaprijediti sistem naukovanja i drugih sistematskih aranžmana za obuku dječaka i djevojčica u njihovim različitim zaposlenjima,

3 obezbijediti ili unaprijediti, koliko je to potrebno

a odgovarajuće i lako dostupne olaksice za obuku za punoljetnih radnika,

b posebne olaksice za prekvalifikaciju punoljetnih radnika, koja je potrebna zbog tehnološkog razvoja ili novih trendova u zapošljavanju,

2 to provide for public holidays with pay,

3 to provide for a minimum of four weeks annual holiday with pay

4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations

5 to ensure a weekly rest period which shall as far as possible coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship,

7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers'and workers'organisations

1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment,

2 to issue safety and health regulations,

3 to provide for the enforcement of such regulations by measures of supervision

4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration the Parties undertake

1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living,

2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases,

3 to recognise the right of men and women workers to equal pay for work of equal value,

4 to recognise the right of all workers to a reasonable period of notice for termination of employment,

5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage fixing machinery, or by other means appropriate to national conditions

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such

4 poticati puno korištenje olaksica predviđenih odgovarajucim mjerama kao sto su

a smanjenje ili oslobađanje od bilo kojih troskova ili taksi,

b garantovanje finansijske pomoci u odgovarajucim slucajevima,

c ukljucivanje u redovno radno vrijeme i onog vremena koje je radnik proveo na dopunskoj obuci na zahtjev njegovog poslodavca tokom trajanja zaposlenja,

d osiguranje, kroz adekvatan nadzor, u konsultaciji sa organizacijama poslodavaca i radnika, djelotvornosti naukovanja i drugih aranzmana obucavanja maloljetnih radnika, te adekvatne zastite maloljetnih radnika uopce

Clan 11 Pravo na zdravstvenu zastitu

U svrhu osiguranja djelotvornog vrsenja prava na zdravstvenu zastitu, strane ugovornice se obavezuju da ce, direktno ili u saradnji sa javnim ili privatnim organizacijama, preduzeti odgovarajuce mjere, dizajnirane inter alia

1 da uklone, koliko je to moguce, uzroke bolesti,

2 da obezbijede nadzor i obrazovne olaksice za unapređenje zdravlja i poticanje individualne odgovornosti u pitanjima zdravlja,

3 da sprijece, koliko je to moguce, epidemijske, endemske ili druge bolesti

Clan 12 Pravo na socijalno osiguranje

U svrhu osiguranja djelotvornog vrsenja prava na socijalno osiguranje, stranke ugovornice se obavezuju da ce

1 ustanoviti ili podupirati sistem socijalnog osiguranja,

2 podupirati sistem socijalnog osiguranja na zadovoljavajucem nivou, najmanje jednak onome koji se trazi za ratifikaciju Medjunarodna konvencija o radu (Broj 102) u vezi sa minimalnim standardima socijalnog osiguranja,

3 nastojati progresivno podici sistem socijalnog osiguranja na veci nivo,

4 poduzeti korake, zakljucivanjem odgovarajucih dvostranih i visestranih ugovora, ili na drugi nacin, i pod uslovima navedenim u tim ugovorima, kako bi osigurali

a jednak postupak kao sa svojim drzavljanima prema drzavljanima stranaka ugovornica u pogledu prava socijalnog osiguranja, ukljucujuci zadrzavanje koristi koje proizilaze iz zakonodavnog regulisanja socijalnog osiguranja, bez obzira na kretanja zasticenih lica između teritorija stranka ugovornica,

b davanje i produzavanje prava socijalnog osiguranja putem akomulacije osiguranja ili perioda zaposlenja zakljucenih po zakonu svake od stranaka ugovornica

Clan 13 Pravo na socijalnu i zdravstvenu pomoc

U svrhu osiguranja djelotvornog vrsenja prava na socijalnu i zdravstvenu pomoc, stranke ugovornice se obavezuju da ce

1 osigurati da svakom licu koje je bez adekvatnih izvora prihoda i koje nije u mogucnosti osigurati takve izvore ni svojim vlastitim nastojanjima niti na drugi nacin, narocito naknadama po semi socijalnog osiguranja, bude data adekvatna pomoć i, u slučaju bolesti, briga nuzno potrebna za njegovo stanje,

2 osigurati da lica koja primaju takvu pomoc nece iz tog razloga, pretrpjeti od smanjenja njihovih politickih ili socijalnih prava,

3 obezbijediti da svako moze primiti od odgovarajucih javnih ili privatnih sluzbi takve savjete ili licnu pomoc ukoliko je potrebna da sprijeci, ukloni ili da ublazi licne ili porodicne nuzne potrebe,

4 primijeniti odredbe iz stavova 1, 2 i 3 ovog clana, uz iste uslove koje primjenjuju na svoje drzavljane i na drzavljane drugih strana ugovornica koji se zakonito nalaze na njihovim teritorijama, u skladu sa obavezama po Evropskoj konvenciji o socijalnoj i medicinskoj pomoci potpisanoj u Parizu 11 decembra 1953 godine

Clan 14 Pravo na naknadu iz sluzbi socijalnog staranja

U svrhu osiguranja djelotvornog vrsenja prava na naknadu iz sluzbi socijalnog staranja, stranke ugovornice se obavezuju da ce

1 unaprijediti ili obezbjeđivati sluzbe koje bi, koristenjem metoda socijalnog rada, doprinijele blagostanju i razvoju i pojedinaca i grupa u zajednici i njihovom prilagođavanju drustvenoj okolini,

2 poticati ucesce pojedinaca i dobrovoljnih ili drugih organizacija u osnivanju i potpomaganju takvih sluzbi

Clan 15 Pravo fizički ili mentalno nesposobnih lica na strucno obučavanje, rehabilitaciju i socijalno zbrinjavanje

U svrhu osiguranja djelotvornog vrsenja prava fizicki i mentalno nesposobnih lica na strucno obucavanje, rehabilitaciju i zbrinjavanje, stranke ugovornice se obavezuju da ce

1 preduzeti adekvatne mjere za obezbjeđenje olaksica u obucavanju ukljucujuci, gdje je potrebno, specijalizovane institucije, javne ili privatne,

2 preduzeti adekvatne mjere za zaposljavanje nesposobnih lica, kao sto su specijalizovani zavodi za zaposljavanje, ustanove za zasticena zaposlenja i mjere poticanja poslodavaca da zaposle nesposobna lica

Član 16 Pravo porodice na socijalnu, pravnu i ekonomsku zastitu

U svrhu osiguranja neophodnih uslova za puni razvoj porodice, koja je osnovna jedinica drustva, stranke ugovornice se obavezuju da ce unapređivati ekonomsku, pravnu i socijalnu zastitu porodicnog zivota putem drustvenih i porodicnih potpora, fiskalnih aranzmana, obezbjeđenjem porodicnog stanovanja, povlasticama za one koji tek stupe u brak i drugim odgovarajucim sredstvima

Clan 17 Pravo majki i djece na socijalnu i ekonomsku zastitu

U svrhu osiguranja djelotvornog vrsenja prava majki i djece na socijalnu i ekonomsku zastitu, strane ugovornice ce preduzeti sve odgovarajuce neophodne mjere u tu svrhu, uključujuci osnivanje ili potpomaganje odgovarajucih institucija ili sluzbi

Član 18 - Pravo na zaposlenje u unosnom zanimanju na teritoriji drugih stranaka

U svrhu osiguranja djelotvornog vrsenja prava na zaposlenje u unosnom zanimanju na teritoriji bilo koje druge stranke ugovornice, stranke ugovornice se obavezuju da ce

as to impair, nor shall it be so applied as to impair, this freedom The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1 to promote joint consultation between workers and employers

2 to promote where necessary and appropriate, machinery for voluntary negotiations between employers or employers organisations and workers organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements,

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes

and recognise

4 the right of workers and employers to collective action in cases of conflicts of interest including the right to strike, subject to obligations that might arise out of collective agreements previously entered into

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake

1 to provide that the minimum age of admission to employment shall be fifteen years subject to exceptions for children employed in prescribed light work without harm to their health morals or education

2 to provide that the minimum age of admission to employment shall be eighteen years with respect to prescribed occupations regarded as dangerous or unhealthy

3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education

4 to provide that the working hours of persons under eighteen years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training,

5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances,

6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day,

7 to provide that employed persons of under eighteen years of age shall be entitled to a minimum of four weeks annual holiday with pay,

8 to provide that persons under eighteen years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations,

9 to provide that persons under eighteen years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control,

10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work

1 primijeniti postojeca pravila u duhu liberalizma,

2 pojednostaviti postojece formalnosti i smanjiti ili ukinuti teske obaveze druge troskove koje placaju strani radnici ili njihovi poslodavci,

3 liberalizirati, pojedinacno ili kolektivno, propise koji uređuju zaposljavanje stranih radnika,

i priznati

4 pravo svojih drzavljana da napuste zemlju i zaposle se u unosnom zanimanju na teritoriji drugih stranaka ugovornica

Clan 19 Pravo radnika na privremenom radu u inostranstvu i njihovih porodica na zastitu i pomoc

U svrhu osiguranja djelotvornog vrsenja prava radnika na privremenom radu u inostranstvu i njihovih porodica na zastitu i pomoc na teritoriji bilo koje stranke ugovornice, stranke ugovornice se obavezuju da ce

1 odrzavati ili se zadovoljiti time da postoje adekvatne ili besplatne sluzbe pomoci takvim radnicima narocito u dobijanju preciznih informacija, te da ce poduzeti sve odgovarajuce korake, onoliko koliko to nacionalni zakoni ili propisi dozvoljavaju, protiv zlonamjerne propagande u pogledu emigracije i imigracije,

2 usvojiti odgovarajuce mjere u okviru svoje vlastite nadleznosti da olaksaju odlazak, putovanje i prijem takvih radnika i njihovih porodica i da ce obezbijediti unutar svoje vlastite nadleznosti, odgovarajuce zdravstvene sluzbe, medicinsku brigu i dobre higijenske uslove tokom putovanja,

3 unaprijediti saradnju, koliko je to odgovarajuce, među socijalnim sluzbama, javnim i privatnim, u zemljama emigracije i imigracije,

4 osigurati za takve radnike, koji su zakonito unutar njihove teritorije, toliko koliko su ta pitanja regulisana zakonom ili propisom ili su podlozna kontroli administrativnih vlasti tretman koji nije manje povoljan od onoga koji imaju njihovi drzavljani u pogledu sljedecih pitanja

a naknade i drugih uslova zaposlenja i rada,

b clanstva u sindikatima i uzivanja povlastica kolektivnog pregovaranja,

c smjestaja,

5 osigurati za takve radnike, koji su zakonito unutar njihovih teritorija, tretman ne manje povoljan od onoga koji imaju njihovi drzavljani u pogledu poreza na zaposlenje, obaveza i doprinosa koji se placaju u pogledu zaposlenih lica,

6 olaksati, koliko je to moguce, ponovno spajanje sa porodicom stranog radnika, kojem je dozvoljeno da se nastani na teritoriji,

7 osigurati za takve radnike, koji su zakonito na njihovoj teritoriji, tretman ne manje povoljan od onoga koji imaju njihovi drzavljani u pogledu pravnih postupaka u vezi sa pitanjima navedenim u ovom clanu,

8 osigurati da takvi radnici, koji zakonito borave na njihovoj teritoriji, ne budu protjerani, sem ako ugrozavaju nacionalnu bezbjednost ili vrijeđaju javni interes ili moral,

9 dozvoliti unutar pravnih ogranicenja, transfer dijela zarada i ustedevina tih radnika po njihovoj zelji,

10 prosiriti zastitu i pomoc predviđenu u ovom clanu na migrante koji se bave licnim radom toliko koliko se takve mjere primjenjuju

DIO III

Clan 20 Obaveze

1 Svaka stranka ugovornica se obavezuje

a da ce smatrati Dio I ove Povelje deklaracijom o ciljevima koji ce slijediti na sve odgovarajuce nacine, kako je navedeno u uvodnom stavu tog dijela,

b da ce se smatrati obavezanom sa najmanje pet od sljedecih clanova Dijela II ove Povelje clanovi 1, 5, 6, 12, 13, 16 i 19,

c da ce se, pored clanova koje izabere u skladu sa prethodnom tačkom, smatrati obavezanom i određenim brojem clanova ili numerisanih stavova Dijela II Povelje koje izabere, pod uslovom da ukupni broj clanova ili numerisanih stavova kojima je obavezana nije manji od 10 clanova ili 45 numerisanih stavova

2 O clanovima ili stavovima izabranim u skladu sa tackama b i c stava 1 ovog clana bit ce obavijesten Generalni sekretar Savjeta Evrope u vrijeme kada stranka ugovornica u pitanju bude deponovala instrumente ratifikacije ili odobrenja

3 Svaka stranka ugovornica moze kasnije obavijestiti notifikacijom Generalnog sekretara Savjeta Evrope da se smatra obavezanom bilo kojim clanom ili numerisanim stavom Dijela II Povelje koji nisu bili prihvaceni pod uslovima iz stava 1 ovog clana Takvo naknadno obavezivanje smatrat ce se sastavnim dijelom ratifikacije ili odobrenja i imat ce isto dejstvo pocev od tridesetog dana nakon datuma notifikacije

4 Generalni sekretar ce dostaviti svim vladama potpisnicama i Generalnom direktoru Međunarodne organizacije rada svaku notifikaciju koju je primio u skladu sa ovim dijelom Povelje

5 Svaka stranka ugovornica ce podrzavati sistem radnickog nadzora koji odgovara stanju u toj drzavi

DIO IV

Clan 21 Izvjestaji koji se ticu prihvacenih odredaba

Stranke ugovornice ce slati Generalnom sekretaru Savjeta Evrope izvjestaj u dvogodisnjim intervalima u formi koju ce odrediti Ministarski savjet, a koji se tice primjene onih odredaba Dijela II Povelje koje su stranke prihvatile

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity the Parties undertake

1 to provide either by paid leave by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks

2 to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave or to give her notice of dismissal at such a time that the notice would expire during such a period,

3 to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose,

4 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants

5 to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women

Article 9 – The right to vocational guidance

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

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake

1 to provide or promote as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers and workers organisations and to grant facilities for access to higher technical and university education, based solely on individual aptitude,

2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments

3 to provide or promote, as necessary

a adequate and readily available training facilities for adult workers,

b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment,

4 to provide or promote, as necessary special measures for the retraining and reintegration of the long-term unemployed,

5 to encourage the full utilisation of the facilities provided by appropriate measures such as

a reducing or abolishing any fees or charges,

b granting financial assistance in appropriate cases,

c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer during employment

d ensuring, through adequate supervision in consultation with the employers and workers'organisations the efficiency of apprenticeship

Clan 22 Izvjestaji koji se ticu odredaba koje nisu prihvacene

Stranke ugovornice ce slati Generalnom sekretaru, u odgovarajucim intervalima, a kako bude zahtijevao Ministarski savjet, izvjestaje u vezi sa odredbama Dijela II Povelje koje nisu prihvatile u vrijeme ratifikacije ili odobrenja ili naknadnom notifikacijom Ministarski savjet ce odrediti, s vremena na vrijeme, u pogledu kojih odredbi ce se zahtijevati izvjestaj i oblik u kojem se izvjestaj mora pripremiti

Clan 23 Dostavljanje kopija

1 Svaka stranka ugovornica ce dostaviti kopije svojih izvjestaja o kojima je rijec u clanovima 21 i 22 onim svojim drzavnim organizacijama koje su clanovi međunarodnih organizacija poslodavaca i radnickih sindikata i koje trebaju biti pozvane prema clanu 27 stav 2 , te trebaju bit predstavljene na sastancima Podkomiteta Upravnog socijalnog komiteta

2 Stranke ugovornice ce proslijediti Generalnom sekretaru sve komentare na navedene izvjestaje primljene od ovih drzavnih organizacija, ako se to od njih zahtijeva

Clan 24 Ispitivanje izvjestaja

Izvjestaji, dostavljeni Generalnom sekretaru u skladu sa clanovima 21 i 22, bit ce ispitani od strane komiteta eksperata, koji ce pred sobom imati i sve komentare proslijeđene Generalnom sekretaru u skladu sa stavom 2 člana 23

Član 25 - Komitet eksperata

1 Komitet eksperata neće imati vise od sedam clanova koje ce postaviti Ministarski savjet sa liste nezavisnih eksperata najveceg postenja i priznatih kompetencija u međunarodnim socijalnim pitanjima, nominovanih od strana ugovornica

2 Clanovi Komiteta ce biti imenovani na period od sest godina, a mogu biti ponovo birani Međutim, od clanova koji su prvi imenovani, mandat dvojice ce isteci na kraju cetvrte godine

3 članovi, čiji mandat treba isteci na kraju inicijalnog perioda od cetiri godine, bit ce izabrani zrijebom od strane Ministarskog savjeta neposredno nakon prvog imenovanja

4 Clan Komiteta eksperata, izabran da zamijeni clana cija mandat nije istekao, zadrzat ce to mjesto u preostalom dijelu prethodnikovog mandata

Član 26 Ucesce Međunarodne organizacije rada

Međunarodna organizacija rada bit ce pozvana da imenuje predstavnika koji ce ucestvovati u svojstvu konsultanta u razmatranjima Komiteta eksperata

Clan 27 Podkomitet Upravnog socijalnog komiteta

1 Izvjestaji stranaka ugovornica i zakljucci Komiteta eksperata bit ce podneseni na ispitivanje Podkomitetu Upravnog socijalnog komiteta Savjeta Evrope

2 Podkomitet ce biti sastavljen od po jednog clana svake stranke ugovornice Pozvat ce ne vise od dvije međunarodne organizacije poslodavaca i ne vise od od dvije međunarodne sindikalne organizacije koje moze odrediti da budu predstavljene, kao posmatraci u konsultativnom svojstvu na njegovim sastancima Sem toga, podkomitet moze konsultovati ne vise od dva predstavnika međunarodnih nevladinih organizacija koje imaju konsultativni status u Savjetu Evrope u vezi sa pitanjima sa kojima su

organizacije posebno kvalifikovane da se bave, kao sto je socijalno blagostanje i ekonomska i socijalna zastita porodice

3 Podkomitet ce podnijeti Ministarskom savjetu izvjestaj koji sadrzi njihove zaključke i dodati mu izvjestaj Komiteta eksperata

Clan 28 Konsultativna skupstina

Generalni sekretar Savjeta Evrope ce dostaviti Konsultativnoj skupstini zaključke Komiteta eksperata Konsultativna skupstina ce dostaviti svoja misljenja o tim zaključcima Ministarskom savjetu

Član 29 Ministarski savjet

Vecinom od dvije trecine glasova clanova Savjeta koji su ovlasteni da ucestvuju u njegovom radu, Ministarski savjet moze, na osnovu izvjestaja podkomiteta, a nakon konsultacija sa Konsultativnom skupstinom, dati svakoj stranki ugovornici potrebne preporuke

DIO V

Clan 30 Ograničenja u vrijeme rata ili vanrednog stanja

1 U vrijeme rata ili drugog vanrednog stanja koje prijeti naciji svaka stranka ugovornica moze preduzeti mjere koje ograničavaju njene obaveze po ovoj Povelji na mjeru koju striktno zahtijeva hitnost situacije, pod uslovom da takve mjere nisu u suprotnosti sa drugim obavezama po međunarodnom pravu

2 Svaka stranka ugovornica, koja je iskoristila svoje pravo na ograniceni, nastavit ce potpuno informisati, unutar razumnog vremeskog razdoblja, Generalnog sekretara Savjeta Evrope o preduzetim mjerama i razlozima za to One ce isto tako informisati Generalnog sekretara o prestanku tih mjera i o odredbama Povelje koje je prihvatila, a koje se ponovo potpuno izvršavaju

3 Generalni sekretar ce redom informisati ostale stranke ugovornice i Generalnog direktora Međunarodne organizacije rada o svim saopcenjima primljenim u skladu sa stavom 2 ovog clana

Član 31 Ograniceni

1 Prava i principi dati u Dijelu I , za vrijeme dok se djelotvorno izvršavaju i njihovo djelotvorno izvrsenje, kako je predviđeno u Dijelu II , neće biti podvrgnuti bilo kakvim ograniceni koja nisu navedena u tim dijelovima, sem onih koja su propisana zakonom i neophodna u demokratskom društvu za zastitu prava i sloboda drugih ili za zaštitu javnog interesa, nacionalne bezbjednosti, zdravlja ili morala

2 Ograničenja, dozvoljena po ovoj Povelji, a koja se tiču prava i obaveza navedenih u njoj, nece se primjenjivati za bilo koju svrhu sem one za koju su propisani

122

and other training arrangements for young workers, and the adequate protection of young workers generally

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake either directly or in cooperation with public or private organisations to take appropriate measures designed *inter alia*

1 to remove as far as possible the causes of ill health

2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health,

3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake

1 to establish or maintain a system of social security,

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

3 to endeavour to raise progressively the system of social security to a higher level,

4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements in order to ensure

a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights including the retention of benefits arising out of social security legislation whatever movements the persons protected may undertake between the territories of the Parties

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance the Parties undertake

1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance and in case of sickness, the care necessitated by his condition

2 to ensure that persons receiving such assistance shall not for that reason, suffer from a diminution of their political or social rights

3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent to remove, or to alleviate personal or family want,

4 to apply the provisions referred to in paragraphs 1 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance signed at Paris on 11 December 1953

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services the Parties undertake

1 to promote or provide services which by using methods of social work would contribute to the welfare and development of both indi

Clan 32 Odnos izmedu Povelje i domaceg prava ili medunarodnih ugovora

Odredbe ove Povelje nece ici na stetu odredaba domaceg prava ili bilo kojeg bilateralnog ili multilateralnog ugovora, konvencije ili sporazuma koji su vec na snazi ili mogu stupiti na snagu, a po kojima bi bio dopusten povoljniji tretman zasticenih lica

Clan 33 Primjena kolektivnih ugovora

1 U drzavama clanicama, u kojima su odredbe stavova 1, 2, 3, 4 i 5 clana 2, stavovi 4, 6 i 7 clana 7 i stavovi 1, 2, 3 i 4 clana 10 Dijela II ove Povelje pitanja normalno ostavljena sporazumima izmedu poslodavaca ili organizacija poslodavaca i organizacija radnika ili se normalno provode na drugi nacin osim zakonom, obaveze iz tih stavova mogu biti prihvacene, a pristajanje na njih ce biti tretirano kao djelotvorno, ako se njihove odredbe primjenjuju kroz takve ugovore ili druga sredstva na veliku vecinu zainteresiranih radnika

2 U drzavama clanicama u kojima su ove odredbe normalno predmet zakonodavstva, obaveze u pitanju mogu, isto tako, biti prihvacene, a pristajanje na njih smatrat ce se djelotvornim, ako odredbe budu primijenjene u zakonu na veliku vecinu zainteresiranih radnika

Član 34 Teritorijalna primjena

1 Ova Povelja ce se primjenjivati na metropolske teritorije svake stranke ugovornice Svaka vlada potpisnica moze, u vrijeme potpisivanja ili deponovanja instrumenta ratifikacije ili odobrenja, navesti, u deklaraciji upucenoj Generalnom sekretaru Savjeta Evrope, teritorije koje ce biti smatrane njihovim metropolskim teritorijama u ovu svrhu

2 Svaka stranka ugovornica moze, u vrijeme ratifikacije ili odobrenja ove Povelje ili u svako vrijeme nakon toga, izjaviti notifikacijom upucenom Generalnom sekretaru Savjeta Evrope da ce se primjena Povelje prosiriti, u cijelosti ili djelimicno na nemetropolsku teritoriju ili teritorije oznacene u navedenoj deklaraciji, za cije međunarodne odnose je odgovorna ili za koje je pretpostavljena njena međunarodna odgovornost Ona ce navesti u deklaraciji clanove i stavove Dijela II Povelje koje ona prihvata kao obavezujuce u vezi sa teritorijama oznacenim u deklaraciji

3 Povelja ce se prosiriti na teriotoriju ili teritorije navedene u gore navedenoj deklaraciji pocevsi od tridesetog dana nakon datuma kojeg je Generalni sekretar primio notifikaciju takve deklaracije

4 Svaka stranka ugovornica moze kasnije izjaviti notifikacijom upucenom Generalnom sekretaru Savjeta Evrope da, u pogledu jedne ili vise teritorija, na koje se Povelja prosirila u skladu sa stavom 2 ovog clana, prihvata kao obavezujuci svaki clan ili svaki nabrojani stav koji ranije nije prihvatila u vezi sa tom teritorijom ili teritorijama

Takve obaveze, naknadno prihvacene, smatrat ce se sastavnim dijelom originalne deklaracije u vezi sa teritorijom u pitanju i imat ce isti efekat pocevsi od tridesetog dana nakon datuma notifikacije

5 Generalni sekretar ce dostaviti drugim vladama potpisnicama i Generalnom direktoru Međunarodne organizacije rada svaku notifikaciju koja mu je dostavljena u skladu sa ovim clanom

Clan 35 Potpisivanje, ratifikacija i stupanje na snagu

1 Ova Povelja ce biti otvorena za potpisivanje clanicama Savjeta Evrope Ona ce biti ratifikovana ili odobrena Instrumenti ratifikacije ili odobrenja ce biti deponovani kod Generalnog sekretara Savjeta Evrope

2 Ova Povelja ce stupiti na snagu pocev od tridesetog dana nakon datuma deponovanja petog instrumenta ratifikacije ili odobrenja

3 U pogledu bilo koje vlade potpisnice koja naknadno izvrsi ratifikaciju, Povelja ce stupiti na snagu pocevsi od tridesetog dana nakon datuma deponovanja njenog instrumenta ratifikacije ili odobrenja

4 Generalni sekretar ce obavijestiti sve clanice Savjeta Evrope i Generalnog direktora Međunarodne organizacije rada o stupanju na snagu Povelje, imenima stranaka ugovornica koje su je ratifikovale ili odobrile i o naknadnom deponovanju svakog instrumenta ratifikacije ili odobrenja

Clan 36 Izmjene

Svaka clanica Savjeta Evrope moze predloziti izmjene ove Povelje u saopcenju upucenom Generalnom sekretaru Savjeta Evrope Generalni sekretar ce proslijediti drugim clanicama Savjeta Evrope svaku predlozenu izmjenu, koju ce razmatrati Ministarski savjet i podnijeti je na misljenje Konsultativnoj skupstini Bilo koja izmjena odobrena od Ministarskog savjeta ce stupiti na snagu pocevsi od tridesetog dana od kada stranke ugovornice informisu Generalnog sekretara o njihovom prihvatanju Generalni sekretar ce obavijestiti sve ostale clanove Savjeta Evrope i Generalnog direktora Međunarodne organizacije rada o stupanju na snagu takvih izmjena

Clan 37 - Otkazivanje

1 Svaka stranka ugovornica moze otkazati ovu Povelju samo na kraju perioda od pet godina od datuma na koji je Povelja stupila na snagu za tu stranku, ili od kraja svakog narednog perioda od dvije godine, a u svakom slucaju sest mjeseci nakon davanja izjave o otkazivanju Generalnom sekretaru Savjeta Evrope koji ce informisati ostale stranke i Generalnog direktora Međunarodne organizacije rada Takvo otkazivanje nece umanjiti vrijednost Povelje u pogledu ostalih stranaka ugovornica pod uslovom da nikada ne bude manje od pet ugovornih stranaka

2 Svaka stranka ugovornica moze, u saglasnosti sa odredbama datim u prethodnom stavu, otkazati bilo koji clan ili stav Dijela II Povelje koji je prihvatila pod uslovom da broj clanova ili stavova kojim je ugovorna stranka obavezana nikada ne bude manji od 10 članova i 45 stavova i da taj broj clanova ili stavova stalno sadrzi clanove odabrane od stranke ugovornice između onih za koje su date posebne reference u clanu 20 stav 1 tacka b

3 Svaka stranka ugovornica moze otkazati ovu Povelju ili bilo koji clan ili stav Dijela II Povelje pod uslovima navedenim u stavu 1 ovog clana u pogledu bilo koje teritorije na koju se Povelja primjenjuje na osnovu deklaracije date u skladu sa stavom 2 clana 34

Član 38 Dodatak

Dodatak ovoj Povelji ce biti njen sastavni dio

U potvrdu ovoga potpisnici, propisno ovlasteni, potpisuju ovu Povelju

viduals and groups in the community, and to their adjustment to the social environment,

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services

Article 15 – The right of persons with disabilities to independence social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake in particular

1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or where this is not possible, through specialised bodies, public or private

2 to promote their access to employment through all measures tend ing to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability In certain cases such measures may require recourse to specialised placement and support services,

3 to promote their full social integration and participation in the life of the community in particular through measures including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure

Article 16 – The right of the family to social legal and economic protection

With a view to ensuring the necessary conditions for the full develop ment of the family which is a fundamental unit of society the Parties undertake to promote the economic legal and social protection of family life by such means as social and family benefits fiscal arrange ments provision of family housing benefits for the newly married and other appropriate means

Article 17 – The right of children and young persons to social legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake either directly or in co operation with public and private organisations to take all appropriate and necessary measures designed

1 *a* to ensure that children and young persons, taking account of the rights and duties of their parents, have the care the assistance the education and the training they need in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose,

b to protect children and young persons against negligence, vio lence or exploitation,

c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family s support

2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party the Parties under take

Sacinjeno u Turinu, 18 oktobra 1961 godine, na engleskom i francuskom jeziku, a oba teksta su jednako vjerodostojna, u jedinoj kopiji koja ce biti deponovana u arhivu Savjeta Evrope Generalni sekretar ce dostaviti ovjerene kopije svakom od potpisnika

2 13 1 Dodatak Socijalnoj povelji

Domasaj Socijalne povelje u odnosu na zasticena lica

1 Bez stete po clan 12 stav 4 i clan 13 stav 4, lica obuhvacena clanovima 1 do 17 podrazumijevaju i strance samo ukoliko su oni drzavljani druge stranke ugovornice zakonito nastanjeni ili redovno rade unutar teritorije stranke ugovornice u pitanju, uz shvatanje da ovi clanovi trebaju biti tumaceni u svjetlu odredaba clanova 18 i 19

Ovo tumacenje nece ici na stetu prosirenja slicnih olaksica na druga lica bilo koje druge stranke ugovornice

2 Svaka stranka ugovornica ce dati izbjeglicama, kako je definisano u Konvenciji koja se odnosi na status izbjeglica, potpisanoj u Ženevi 28 jula 1951 godine, a koje zakonito privremeno borave na njenoj teritoriji, sto je moguce povoljniji tretman, a u svakom slucaju ne manje povoljan nego sto je onaj po obavezama koje su prihvatile stranke ugovornice po recenoj Konvenciji i po bilo kojem drugom postojecem međunarodnom instrumentu primjenjivom na te izbjeglice

124

DIO I CLAN 18 i DIO II CLAN 18 STAV 1

Podrazumijeva se da se ove odredbe ne odnose na pitanje ulaska na teritorije stranaka ugovornice i ne idu na stetu odredaba Evropske konvencije o preduzecima, potpisane u Parizu 13 decembra 1955 godine

DIO II

Član 1 stav 2

Ova odredba nece se tumaciti kao zabrana ili osnazenje bilo koje klauzule sindikalne sigurnosti ili prakse

Član 4 stav 4

Ova odredba ce se shvatiti tako da ne zabranjuje neposredan otkaz za svaki ozbiljan prekrsaj

Clan 4 stav 5

Podrazumijeva se da stranka ugovornica moze preuzeti obavezu koja se zahtijeva u ovom stavu ako za veliku vecinu radnika nije dozvoljeno da trpi odbijanje od nadnica bilo zakonom, kolektivnim ugovorima ili arbitraznim odlukama

Clan 6 stav 4

Podrazumijeva se da svaka stranka ugovornica moze, toliko koliko je se to tice, zakonom regulisati primjenu prava na strajk, pod uslovom da svaka dalja restrikcija ovog prava moze biti opravdana pod uslovima iz clana 31

Clan 7 stav 8

Podrazumijeva se da stranka ugovornica moze preuzeti obavezu koja se zahtijeva u ovom stavu, ako to odrazava duh obavezivanja, predviđanjem u zakonu da velika vecina lica ispod osmnaest godina starosti nece biti zaposlena na nocnim poslovima

Član 12 stav 4

Rijeci zavisno o uslovima navedenim u takvim ugovorima u uvodu ovog stava, upucuju na znacenje, *inter alia*, da u pogledu povlastica koje su dostupne nezavisno o doprinosima osiguranja, stranka ugovornica moze zahtijevati ispunjenje propisanog perioda boravka prije davanja takvih povlastica drzavljanima drugih stranaka ugovornica

Clan 13 stav 4

Vlade koje nisu stranke Evropske konvencije o socijalnoj i zdravstvenoj pomoci, mogu ratifikovati Socijalnu povelju u pogledu ovog stava pod uslovom da daju državljanima drugih stranaka ugovornica tretman koji je u skladu sa odredbama navedene Konvencije

Clan 19 stav 6

U svrhu ove odredbe, termin '**porodica stranog radnika**' znaci najmanje njegovu zenu i djecu koja od njega zavise ispod dvadeset jedne godine zivota

D I O III

Podrazumijeva se da Povelja sadrzi pravne obaveze međunarodnog karaktera cija je primjena podređena jedino nadzoru određenom u Dijelu IV Povelje

Član 20 stav 1

Podrazumijeva se da '**numerisani stavovi**' mogu ukljucivati clanove koji se sastoje samo od jednog stava

1 to apply existing regulations in a spirit of liberality

2 to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers

3 to liberalise individually or collectively regulations governing the employment of foreign workers

and recognise

4 the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake

124

1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit against misleading propaganda relating to emigration and immigration,

2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey,

3 to promote cooperation, as appropriate between social services public and private, in emigration and immigration countries

4 to secure for such workers lawfully within their territories insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities treatment not less favourable than that of their own nationals in respect of the following matters

a remuneration and other employment and working conditions

b membership of trade unions and enjoyment of the benefits of collective bargaining,

c accommodation

5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes dues or contributions payable in respect of employed persons,

6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory

7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article,

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality

9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire,

10 to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply

11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several one of these languages to migrant workers and members of their families,

12 to promote and facilitate, as far as practicable the teaching of the migrant worker s mother tongue to the children of the migrant worker

DIO V

Clan 30

Pojam u vrijeme rata ili drugog vanrednog stanja shvatit ce se tako da obuhvata i prijetnju od rata

2 13 2 Dopunski protokol uz Evropsku Socijalnu povelju

PREAMBULA

Drzave članice Savjeta Evrope, potpisnice ovog dokumenta,

Odlucne da preduzmu nove mjere kako bi prosirile zastitu socijalnih i ekonomskih prava garantovanih Evropskom socijalnom poveljom, koja je otvorena za potpisivanje u Turinu 18 oktobra 1961 godine (u daljem tekstu Povelja),

Dogovorile su se kako slijedi

128

DIO I

Stranke prihvataju da je cilj njihove politike, koji treba postici na sve odgovarajuce nacine i nacionalnog i međunarodnog karaktera, postizanje uslova u kojima ce sljedeca prava i principi moci biti djelotvorno provedeni

1 Svi radnici imaju pravo na jednake mogucnosti i jednak tretman po pitanju zaposlenja i zanimanja bez diskriminacije na temelju pola

2 Radnici imaju pravo da budu informisani i konsultovani unutar preduzeca

3 Radnici imaju pravo da ucestvuju u određivanju i poboljsanju radnih uslova i radne sredine u preduzecu

4 Svako starije lice ima pravo na socijalnu zastitu

DIO II

Stranke se obavezuju, kako je predvideno u Dijelu III , da ce se smatrati ograničenim obavezama propisanim u sljedecim clanovima

Član 1 Pravo na jednake mogucnosti i jednak tretman po pitanjima zaposlenja i zanimanja bez diskriminacije na osnovu pola

1 U cilju osiguranja djelotvornog vrsenja prava na jednake mogucnosti i jednak tretman po pitanjima zaposlenja i zanimanja bez diskriminacije na osnovu pola, stranke se obavezuju priznati to pravo i preduzeti odgovarajuce mjere da osiguraju ili unaprijede njegovu primjenu na sljedecim poljima

dostupnost zaposlenja, zastita od otpustanja i ponovno zaposljavanje u zanimanju,

strucne upute, obucavanje, prekvalifikacija i rehabilitacija,

rokovi zaposlenja i radni uslovi ukljucujuci naknadu,

razvoj karijere ukljucujuci unapređenje

2 Odredbe koje se ticu zastite zena, posebno u pogledu trudnoce, babinja i post porođajnog perioda, neće se smatrati diskriminirajucim u smislu stava 1 ovog clana

3 Stav 1 ovog clana nece sprijeciti usvajanje specificnih mjera usmjerenih na otklanjanje *de facto* nejednakosti

4 Profesionalne djelatnosti koje se mogu, zbog njihove prirode ili konteksta u kojem se obavljaju, povjeriti samo licima određenog pola, mogu biti iskljucene iz domasaja ovog clana ili neke od njegovih odredaba

Član 2 Pravo na informisanje i konsultovanje

1 U cilju osiguranja djelotvornog vrsenja prava radnika da budu informisani i konsultovani unutar preduzeca, stranke se obavezuju da ce usvojiti ili poticati mjere koje ce omogociti radnicima ili njihovim predstavnicima, u skladu sa nacionalnim zakono davstvom i praksom

a da budu redovno informisani ili u odgovarajuce vrijeme i na razumljiv nacin o ekonomskoj i finansijskoj situaciji preduzeca u kojem su zaposleni, uz shvatanje da se otkrivanje određenih informacija koje bi moglo stetiti preduzecu moze odbiti ili biti uslovljeno povjerljivoscu, i

b da budu konsultovani pravovremeno o predlozenim odlukama koje bi se mogle znacajno odraziti na interese radnika, posebno o onim odlukama koje bi mogle imati znacajan uticaj na situaciju zaposlenja u preduzecu

2 Stranke mogu isključiti iz podrucja primjene stava 1 ovog clana ona preduzeca koja zapošljavaju manje od određenog broja radnika koji treba odrediti nacionalno zakono davstvo ili praksa

Član 3 Pravo na učestvovanje u određivanju i poboljsanju radnih uslova i radne sredine

1 U cilju osiguranja djelotvornog vršenja prava radnika da ucestvuju u određivanju i poboljsanju uslova rada i radne sredine u preduzecu, stranke se obavezuju usvojiti ili poticati mjere koje ce omogućiti radnicima ili njihovim predstavnicima, u skladu sa nacionalnim zakondavstvom i praksom, da daju doprinos

a određivanju i poboljšanju uslova rada, organizacije rada i radne sredine,

b zaštiti zdravlja i sigurnosti u preduzecu,

c organizovanju socijalnih i socijalno kulturnih sluzbi i olaksica u preduzecu,

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

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

a access to employment protection against dismissal and occupational reintegration

b vocational guidance, training retraining and rehabilitation,

c terms of employment and working conditions, including remuneration,

d career development, including promotion

Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking the Parties undertake to adopt or encourage measures enabling workers or their representatives in accordance with national legislation and practice

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality, and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking the Parties undertake to adopt or encourage measures enabling workers or their representatives in accordance with national legislation and practice, to contribute

a to the determination and the improvement of the working conditions work organisation and working environment,

b to the protection of health and safety within the undertaking,

c to the organisation of social and socio-cultural services and facilities within the undertaking,

d to the supervision of the observance of regulations on these matters

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage either directly or in cooperation with public or private organisations appropriate measures designed in particular

to enable elderly persons to remain full members of society for as long as possible, by means of

a adequate resources enabling them to lead a decent life and play an active part in public social and cultural life

b provision of information about services and facilities available for elderly persons and their opportunities to make use of them

d kontroli i nadgledanju propisa o ovim pitanjima

2 Stranke mogu isključiti iz dometa primjene stava 1 ovog clana ona preduzeca koja zapošljavaju manje od određenog broja radnika koji treba odrediti nacionalno zakono davstvo ili praksa

Clan 4 Pravo starijih lica na socijalnu zastitu

U cilju osiguranja djelotvornog vrsenja prava starijih lica na socijalnu zastitu, stranke se obavezuju usvojiti ili poticati, bilo direktno ili u saradnji sa drzavnim ili privatnim organizacijama, odgovarajuce mjere namijenjene posebno da

1 omoguce starijim licima da u potpunosti ostanu clanovi drustva dok god je to moguce, putem

a odgovarajucih izvora sredstava koja ce im omoguciti da vode pristojan zivot i igraju aktivnu ulogu u drzavnom, drustvenom i kulturnom zivotu,

b obezbjeđenja informacija o sluzbama koje su na raspolaganju starijim licima i njihovim mogucnostima da ih koriste,

2 omoguce starijim licima da slobodno izaberu nacin zivota i da vode nezavisan zivot u porodicnom okruzenju onoliko koliko to zele i koliko mogu, putem

a osiguranja stanovanja koje odgovara njihovim potrebama i stanju njihovog zdravlja ili odgovarajucom pomoci za adaptaciju njihovog stana,

b zdravstvene brige i sluzbi koje zahtijeva njihova drzava,

3 starijim licima koja zive u ustanovama odgovarajucu potporu, postujuci njihovu privatnost, te ucesce u odlucivanju koje se tice zivotnih uslova u ustanovi

130

DIO III

Clan 5 Obaveze

1 Svaka od stranaka se obavezuje

a da ce smatrati Dio I ovog Protokola izjavom o ciljevima koje ce slijediti na sve odgovarajuce nacine, kako je navedeno u uvodnom stavu tog Dijela,

b da ce se smatrati obavezanom jednim ili sa vise članova Dijela II ovog Protokola

2 Clan ili clanovi izabrani u skladu sa tackom b stava 1 ovog clana bit ce prijavljeni Generalnom sekretaru Savjeta Evrope u vrijeme deponovanja instrumenata ratifikacije, prihvatanja ili odobrenja drzave ugovornice o kojoj se radi

3 Svaka stranka moze kasnije izjaviti, notifikacijom Generalnom sekretaru, da se smatra obavezanom bilo kojim clanovima Dijela II ovog Protokola, a koje vec nije prihvatila pod uslovima iz stava 1 ovog clana Takvo obavezivanje, učinjeno naknadno, smatrat ce se integralnim dijelom ratifikacije, prihvatanja ili odobrenja i imat ce istu snagu pocevsi od tridesetog dana nakon datuma notifikacije

DIO IV

Član 6 Kontrola nad izvrsavanjem preuzetih obaveza

Stranke se obavezuju podnositi izvjestaje o onim odredbama Dijela II ovog Protokola koje su prihvatile, u izvjestajima podnesenim na temelju clana 21 Povelje

DIO V

Član 7 Izvrsavanje preuzetih obaveza

1 Relevantne odredbe clanova 1 do 4 Dijela II ovog Protokola mogu se izvrsiti

a putem zakona ili propisa,

b putem sporazuma između poslodavaca ili organizacija poslodavaca i radnickih organizacija,

c kombinacijom ova dva metoda, ili

d na druge odgovarajuce nacine

2 Udovoljavanje obavezama koje proistice iz clanova 2 i 3 ovog Protokola smatrat ce se djelotvornim ako se odredbe primjenjuju, u skladu sa stavom 1 ovog clana, na veliku vecinu radnika o kojima se radi

Clan 8 Odnos izmedu Povelje i ovog Protokola

1 Odredbe ovog Protokola nece ici na stetu odredaba Povelje

2 Clanovi 22 do 32 i clan 36 Povelje ce se primjenivati, *mutatis mutandis*, na ovaj Protokol

Clan 9 Teritorijalna primjena

1 Ovaj Protokol ce se primjenjivati na metropolske teritorije svake stranke Svaka drzava moze, u momentu potpisivanja ili kada deponuje instrumente ratifikacije, prihvatanja ili odobrenja navesti, izjavom upucenom Generalnom sekretaru Savjeta Evrope, teritoriju koja ce se smatrati njihovom metropolskom teritorijom, za ovu svrhu

2 Svaka drzava ugovornica moze, u momentu ratifikacije, prihvatanja ili odobrenja ovog Protokola ili u bilo koje vrijeme kasnije, izjaviti notifikacijom upucenom Generalnom sekretaru Savjeta Evrope da ce se Protokol prosiriti, u cijelosti ili djelimicno, na nemetropolsku teritoriju ili teritorije navedene u izjavi za cije međunarodne odnose je odgovorna ili za koje preuzima međunarodnu odgovornost U izjavi ce navesti clan ili clanove Dijela II ovog Protokola koje prihvata kao obavezujuce u pogledu teritorija imenovanih u izjavi

3 Ovaj Protokol ce, u pogledu teritorije ili teritorija navedenih u gornjoj izjavi, stupiti na snagu pocevši od tridesetog dana nakon datuma kojeg Generalni sekretar primi notifikaciju o takvoj izjavi

4 Svaka stranka moze kasnije izjaviti, notifikacijom upucenom Generalnom sekretaru Savjeta Evrope, da u pogledu jedne ili vise teritorija na koje je proširen Protokol u skladu sa stavom 2 ovog člana, prihvata da bude obavezana bilo kojim članom koji vec nije

- to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of

  a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing

  b the health care and the services necessitated by their state

- to guarantee elderly persons living in institutions appropriate support while respecting their privacy and participation in decisions concerning living conditions in the institution

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking establishment or service,

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer the Parties undertake to provide that workers claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work the Parties undertake in consultation with employers and workers'organisations

1 to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct,

2 to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers the Parties undertake

1 to take appropriate measures

a to enable workers with family responsibilities to enter and remain in employment as well as to re-enter employment after an absence due to those responsibilities including measures in the field of vocational guidance and training,

b to take account of their needs in terms of conditions of employment and social security,

c to develop or promote services, public or private in particular child daycare services and other childcare arrangements

prihvatila u pogledu te teritorije ili teritorija Takve obaveze, preuzete naknadno, smatrat ce se integralnim dijelom originalne izjave u pogledu teritorije o kojoj se radi i imat ce istu snagu pocevsi od tridesetog dana nakon datuma kada Generalni sekretar Savjeta Evrope bude imao notifikaciju o takvoj izjavi

Član 10 Potpisivanje, ratifikacija, prihvatanje, odobrenje i stupanje na snagu

1 Ovaj Protokol ce biti otvoren za potpis drzavama clanicama Savjeta Evrope koje su potpisnice Povelje Podlijeze ratifikaciji, prihvatanju ili odobrenju Nijedna drzava članica Savjeta Evrope nece ratifikovati, prihvatiti ili odobriti ovaj Protokol sem istovremeno ili nakon ratifikacije Povelje Instrumenti ratifikacije, prihvatanja ili odobrenja bit ce deponovani kod Generalnog sekretara Savjeta Evrope

2 Ovaj Protokol ce stupiti na snagu tridesetog dana nakon datuma deponovanja treceg instrumenta ratifikacije, prihvatanja ili odobrenja

3 U pogledu svake drzave potpisnice koja ga naknadno ratifikuje, ovaj Protokol ce stupiti na snagu pocevsi od tridestog dana nakon datuma deponovanja njenog instrumenta ratifikacije, prihvatanja ili odobrenja

Član 11 - Otkazivanje

1 Svaka stranka moze otkazati ovaj Protokol samo na kraju perioda od pet godina od datuma na koji je Protokol za nju stupio na snagu ili na kraju svakog uzastopnog perioda od dvije godine, a u svakom slučaju, šest mjeseci nakon davanja otkaza Generalnom sekretaru Savjeta Evrope

2 Svaka stranka moze, u skladu sa odredbama iz prethodnog stava, otkazati svaki član Dijela II ovog Protokola koji je prihvatila, pod uslovom da broj članova kojima je ta stranka obavezana, nikada ne bude manji od jedan

3 Svaka stranka moze otkazati ovaj Protokol ili bilo koji od clanova Dijela II Protokola pod uslovima navedenim u stavu 1 ovog clana, u pogledu svake teritorije na koju se Protokol moze primijeniti na osnovu izjave date u skladu sa stavovima 2 i 4 člana 9

4 Smatrat ce se da je svaka stranka, koja je obavezana Poveljom i ovim Protokolom, a koja otkaze Povelju u skladu sa odredbama stava 1 clana 37 Povelje, otkazala također i ovaj Protokol

Član 12 - Notifikacije

Generalni sekretar Savjeta Evrope obavijestit će drzave članice Savjeta Evrope i Generalnog direktora Međunarodne organizacije rada o

a svakom potpisu,

b deponovanju svakog instrumenta ratifikacije, prihvatanja ili odobrenja,

c svakom datumu stupanja na snagu ovog Protokola u skladu sa članovima 9 i 10,

d svakom drugom aktu, notifikaciji ili saopcenju u vezi sa ovim Protokolom

Član 13 Dodatak

Dodatak ovom Protokolu činit će njegov integralni dio

U potvrdu ovoga potpisnici, propisno ovlašteni, potpisali su ovaj Protokol

Sacinjeno u Strasbourgu, 5 maja 1988 godine, na engleskom i francuskom jeziku, a oba teksta su jednako vjerodostojna, u jedinom primjerku koji ce ostati deponovan u arhivu Savjeta Evrope Generalni sekretar Savjeta Evrope ce dostaviti ovjerene kopije svakoj drzavi clanici Savjeta Evrope

2 13 3 Dodatak protokolu

Domasaj Protokola u odnosu na zasticena lica

1 Lica obuhvacena clanovima 1 do 4 ukljucuju strance samo ukoliko su oni drzavljani drugih stranaka koji zakonito prebivaju ili redovno rade unutar teritorije stranke u pitanju, pod uslovom da se razumije da ce se ovi clanovi tumaciti u svjetlu odredaba članova 18 i 19 Povelje

Ovo tumacenje nece ici na stetu prosirenja slicnih olaksica na druga lica od strane bilo koje stranke

2 Svaka stranka ce dati izbjeglicama, definisanim u Konvenciji o statusu izbjeglica, potpisanoj u Zenevi 28 jula 1951 godine, te u Protokolu od 31 januara 1967 godine, a koje zakonito borave na njenoj teritoriji, najpovoljniji mogući tretman, a u svakom slučaju ne manje povoljan od onoga koji je ucesnica prihvatila kao obavezu po navedenim instrumentima i po svim drugim postojecim međunarodnim instrumentima primjenljivim na te izbjeglice

3 Svaka stranka ce dati apatridima, definisanim u Konvenciji o statusu apatrida sacinjenoj u New Yorku 28 septembra 1954 godine, koji zakonito borave na njenoj teritoriji, najpovoljniji mogući tretman, a u svakom slucaju ne manje povoljan od onoga koji je ucesnica prihvatila kao obavezu po navedenom instrumentu i po svim drugim postojecim međunarodnim instrumentima primjenljivim na te apatride

Član 1

Podrazumijeva se da pitanja socijalne sigurnosti, kao i druge odredbe koje se odnose na olakšice za nezaposlene, stare i prezivjele osobe, mogu biti iskljuceni iz dometa ovog clana

Član 1 stav 4

Ova odredba se ne moze tumaciti kao zahtjev strankama da u zakone i propise unesu listu zanimanja koja, zbog njihove prirode ili konteksta u kojem se obavljaju, mogu biti rezervisana za lica određenog pola

Članovi 2 i 3

1 U svrhu primjene ovih clanova, izraz **predstavnici radnika**" znači lica koja su priznata kao takva prema nacionalnom zakonodavstvu ili praksi

2 to provide a possibility for either parent to obtain during a period after maternity leave, parental leave to take care of a child the duration and conditions of which should be determined by national legislation collective agreements or practice

3 to ensure that family responsibilities shall not as such constitute a valid reason for termination of employment

Article 28 – The right of workers representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers representatives to carry out their functions the Parties undertake to ensure that in the undertaking

a they enjoy effective protection against acts prejudicial to them including dismissal based on their status or activities as workers representatives within the undertaking,

b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies the Parties undertake to ensure that employers shall inform and consult workers representatives in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences for example by recourse to accompanying social measures aimed in particular at aid for the redeployment or retraining of the workers concerned

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake

a to take measures within the framework of an overall and co ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty as well as their families to in particular employment, housing training education, culture and social and medical assistance

b to review these measures with a view to their adaptation if necessary

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed

1 to promote access to housing of an adequate standard,

2 to prevent and reduce homelessness with a view to its gradual elimination

3 to make the price of housing accessible to those without adequate resources

Part III

Article A – Undertakings

1 Subject to the provisions of Article B below each of the Parties undertakes

a to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means as stated in the introductory paragraph of that part

2 Izraz nacionalno zakonodavstvo i praksa obuhvata, zavisno od slucaja, pored zakona i propisa, kolektivne ugovore, druge sporazume izmedu poslodavaca i predstavnika radnika, obicaje kao i relevantno obicajno pravo

3 U svrhu primjene ovih clanova, izraz 'preduzece' shvata se kao izraz koji upucuje na garnituru materijalnih i nematerijalnih komponenti sa ili bez svojstva pravne licnosti, formiranih da proizvode dobra ili pruzaju usluge radi finansijske uitakmice i koja imaju moc da odrede svoju vlastitu trzisnu politiku

4 Podrazumijeva se da vjerske zajednice i njihove institucije mogu biti iskljucene od primjene ovih clanova, iako te institucije mogu biti preduzeca u smislu stava 3 Ustanove koje provode aktivnosti koje su inspirisane odredenim idealima ili vodene odredenim moralnim konceptima, idealima i konceptima koji su zasticeni nacionalnim zakonodavstvom, mogu biti iskljucene od primjene ovih clanova u onoj mjeri koja je potrebna da zastiti orjentaciju preduzeca

5 Podrazumijeva se da ce, u drzavama u kojima se prava utvrđena u clanovima 2 i 3 provode u razlicitim uredenjima preduzeca, zainteresovana stranka morati razmotriti ispunjavanje obaveza koje proizilaze iz tih odredaba

Član 3

Ova odredba nece stetiti ni ovlastenjima, ni obavezama drzave u pogledu usvajanja propisa o zdravlju i sigurnosti na radnom mjestu, niti ovlastenjima i odgovornostima tijela zaduzenih za pracenje njihove primjene

Izrazi 'socijalne i socijalno kulturne usluge i ustanove shvataju se tako da upucuju na socijalne i/ili kulturne ustanove za radnike obezbijedene od nekih preduzeca kao sto su socijalna pomoc, sport, sobe za majke dojilje, biblioteke, djeciji ljetni kampovi, itd

Član 4 stav 1

U svrhu primjene ovog stava, izraz 'dok god je to moguce upucuje na fizicka, psiholoska i intelektualna svojstva starijih lica

Član 7

Podrazumijeva se da radnici, koji su iskljuceni u skladu sa stavom 2 clana 2 i stavom 2 clana 3, nisu uzeti u obzir kod utvrđivanja broja zainteresovanih radnika

2 13 4Protokol kojim se mijenja Evropska Socijalna povelja

Drzave clanice Savjeta Evrope, potpisnice ovog Protokola uz Evropsku socijalnu povelju, otvorene za potpis u Turinu 18 oktobra 1961 godine (u daljem tekstu Povelja),

Odlucne da preduzmu neke mjere radi unapredenja djelotvornosti Povelje, a posebno funkcionisanja njenih nadzornih mehanizama,

Uzimajuci, zbog toga u obzir da je pozeljno promijeniti odredene odredbe Povelje,

Dogovorile su se kako slijedi

Clan 1

Clan 23 Povelje glasit ce kako slijedi

Clan 23 Dostavljanje kopija izvjestaja i komentara

1 Kada se Generalnom sekretaru salje izvjestaj u skladu sa clanovima 21 i 22, svaka stranka ugovornica ce proslijediti kopiju tog izvjestaja onim svojim nacionalnim organizacijama koje su clanovi medjunarodnih organizacija poslodavaca i sindikatima koji su, u skladu sa clanom 27 stav 2, pozvani da posalju predstavnike na sastanke Upravnog komiteta vlada Te organizacije ce poslati Generalnom sekretaru sve komentare na izvjestaje stranaka ugovornica Generalni sekretar ce poslati kopiju ovih komentara zainteresovanim strankama ugovornicama, koje na njih mogu odgovoriti

2 Generalni sekretar ce proslijediti kopiju izvjestaja stranaka ugovornica medunarodnim nevladinim organizacijama koje imaju konsultativni status u Savjetu Evrope i koje imaju odredjene nadleznosti u pitanjima uredjenim ovom Poveljom

3 Izvjestaji i komentari o kojima je rijec u clanovima 21 i 22 i u ovom clanu bit ce, na zahtjev, dostupni javnosti

Clan 2

Clan 24 Povelje glasit ce kako slijedi

Clan 24 Ispitivanje izvjestaja

1 Izvjestaje, poslane Generalnom sekretaru u skladu sa clanovima 21 i 22, ispitat ce Komitet nezavisnih eksperata, konstituisan prema clanu 25 Komitet ce pred sobom imati sve komentare dostavljene Generalnom sekretaru u skladu sa stavom 1 clana 23 Po završetku ispitivanja, Komitet nezavisnih eksperata ce napisati izvjestaj koji ce sadrzavati zakljucke Komiteta

2 S obzirom na izvjestaje o kojima je rijec u clanu 21, Komitet nezavisnih eksperata ce cijeniti, sa pravne tacke gledista, da li nacionalni zakon i praksa udovoljavaju obavezama koje proistice iz Povelje zainteresovane stranke ugovornice

3 Komitet nezavisnih eksperata moze uputiti zahtjev za dodatne informacije i objasnjenja direktno strankama ugovornicama U vezi s tim, Komitet nezavisnih eksperata moze takoder odrzati, ako je potrebno, sastanak sa predstavnicima stranke ugovornice, bilo na svoju inicijativu, bilo na zahtjev zainteresovane stranke ugovornice Organizacije o kojima je rijec u stavu 1 clana 23 ce o tome biti informisane

4 Zakljucci Komiteta nezavisnih eksperata bit ce objavljeni javno, a Generalni sekretar ce ih dostaviti Upravnom komitetu vlada, Parlamentarnoj skupstini i organizacijama pomenutim u stavu 1 clana 23 i stavu 2 clana 27

Clan 3

Clan 25 Povelje glasit ce kako slijedi

Clan 25 Komitet nezavisnih eksperata

1 Komitet nezavisnih eksperata sastojat ce se od najmanje devet clanova koje izabere Parlamentarna skupstina vecinom glasova, sa liste eksperata najvece cestitosti i priznatih

b to consider itself bound by at least six of the following nine articles of Part II of this Charter Articles 1 5 6 7 12 13 16 19 and 20

c to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty three numbered paragraphs

2 The articles or paragraphs selected in accordance with subparagraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited

3 Any Party may at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification

4 Each Party shall maintain a system of labour inspection appropriate to national conditions

Article B – Links with the European Social Charter and the 1988 Additional Protocol

1 No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate of the Additional Protocol to which it was bound

2 Acceptance of the obligations of any provision of this Charter shall from the date of entry into force of those obligations for the Party concerned result in the corresponding provision of the European Social Charter and, where appropriate of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments

Part IV

Article C – Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter

Article D – Collective complaints

1 The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol

2 Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol

Part V

Article E – Non discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race colour, sex language, religion political or other opinion national extraction or social origin health association with a national minority birth or other status

sposobnosti u nacionalnim i medjunarodnim socijalnim pitanjima, koje predlozi strana ucesnica Tacan broj clanova odredit ce Ministarski savjet

2 Clanovi Kkomiteta bit ce izabrani na period od sest godina Mogu biti reizabrani jednom

3 Clan Komiteta eksperata, izabran da zamijeni clana kojem mandat nije istekao, vrsit ce sluzbu u preostalom dijelu mandata svog prethodnika

4 Clanovi komiteta ce zasjedati u licnom svojstvu Tokom svog mandata, oni ne mogu obavljati niti jednu funkciju nespojivu za zahtjevima nezavisnosti, nepristrasnosti i valjanosti, koji su svojstveni za njihovu sluzbu

Član 4

Clan 27 Povelje glasit ce kako slijedi

Clan 27 Upravni komitet

1 Izvjestaji stranaka ugovornica, komentari i informacije, dostavljeni u skladu sa stavom 1 clana 23 i 3 clana 24, te izvjestaji Komiteta nezavisnih eksperata, podnosit ce se Upravnom komitetu

2 Komitet ce se sastojati od po jednog predstavnika svake stranke ugovornice On ce pozvati ne vise od dvije međunarodne organizacije poslodavaca i ne vise od dvije međunarodne sindikalne organizacije da na sastanke Komiteta posalju posmatrace u konsultativnom svojstvu Osim toga, kmitet može konsultovati predstavnike međunarodnih nevladinih organizacija, koje imaju konsultativni status u Savjetu Evrope i koje imaju posebne kompetencije u pitanjima regulisanim ovom Poveljom

3 Upravni komitet ce pripremati odluke Ministarskog savjeta Posebno, u svjetlu izvjestaja Komiteta nezavisnih eksperata i stranaka ugovornica, Komitet ce izabrati obrazlazuci razloge svog izbora, na bazi socijalnih, ekonomskih i drugih politickih razmatranja situacije koje mogu,u tom pogledu, biti predmet preporuka svakoj zainteresovanoj ugovornoj stranki, u skladu sa clanom 28 Povelje On ce prezentirati Ministarskom savjetu izvjestaj koji ce se javno objaviti

4 Na osnovu svojih nalaza o primjeni Socijalne Povelje uopce, Upravni komitet moze podnijeti Ministarskom savjetu prijedloge usmjerene na proučavanje koje treba preduzeti u socijalnim pitanjima i clanovima Povelje koji bi se eventualno mogli osavremeniti

Član 5

Clan 28 Povelje glasit ce kako slijedi

Clan 28 Ministarski savjet

1 Ministarski savjet ce, dvotrecinskom vecinom glasova onih koji imaju ovlastenje da glasaju, ograniceno na stranke ugovornice, a na osnovu izvjestaja Upravnog komiteta, usvojiti rezoluciju koja obuhvata cijeli ciklus nadzora i koja sadrzi individualne preporuke zainteresovanoj stranki ugovornici

2 Uzimajuci u obzir prijedloge Upravnog komiteta prema stavu 4 clana 27, Ministraski savjet ce donijeti one odluke koje smatra odgovarajucim

Član 6

Clan 29 Povelje glasit ce kako slijedi

Clan 29 Parlamentarna skupstina

Generalni sekretar Savjeta Evrope dostavit ce Parlamentarnoj skupstini, u svrhu odrzavanja periodicnih plenarnih debata, izvjestaje Komiteta nezavisnih eksperata i Upravnog komiteta, kao i rezolucije Ministarskog savjeta

Clan 7

1 Ovaj Protokol ce biti otvoren za potpis dzavama clanicama Savjeta Evrope koje su potpisnice Povelje, a koje svoju saglasnost da budu obavezane mogu izraziti

a potpisom bez rezerve ratifikacije, prihvatanja ili odobrenja, ili

b potpisom pod uslovom ratifikacije, prihvatanja ili odobrenja kojem slijedi ratifikacija, prihvatanje ili odobrenje

2 Instrumenti ratifikacije, prihvatanja ili odobrenja bit ce deponovani kod Generalnog Sekretara Savjeta Evrope

Clan 8

Ovaj Protokol ce stupiti na snagu trideset dana nakon datuma na koji sve strane ugovornice Povelje izraze svoju saglasnost da budu obavezane protokolom u skladu sa odredbama clana 7

Clan 9

Generalni sekretar Savjeta Evrope obavijestit ce drzave clanice Savjeta o

a svakom potpisu,

b deponovanju svakog instrumenta ratifikacije, prihvatanja ili odobrenja,

c datumu stupanja na snagu ovog Protokola u skladu sa clanom 8,

d svakom drugom aktu, notifikaciji ili saopcenju u vezi sa ovim Protokolom

U potvrdu ovoga potpisnici, propisno za to ovlasteni, potpisali su ovaj Protokol

Sacinjeno u Turinu, 21 oktobra 1991 godine, na engleskom i francuskom, cijii su tekstovi jednako vjerodostojni, u jedinom primjerku koji ce ostati deponovan u arhivu Savjeta Evrope Generalni sekretar Savjeta Evrope dostavit ce ovjerene kopije svakoj drzavi clanici Savjeta Evrope

136

Article F – Derogations in time of war or public emergency

1 In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law

2 Any Party which has availed itself of this right of derogation shall within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed

Article G – Restrictions

1 The rights and principles set forth in Part I when effectively realised and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security public health or morals

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed

Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties conventions or agreements which are already in force or may come into force under which more favourable treatment would be accorded to the persons protected

Article I – Implementation of the undertakings given

1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by

a laws or regulations

b agreements between employers or employers organisations and workers organisations

c a combination of those two methods

d other appropriate means

2 Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned

Article J – Amendments

1 Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI proposed by a Party or by the Governmental Committee shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter

2 Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance

3 Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it

In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance

4 Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it

128

Part VI

Article K – Signature, ratification and entry into force

1 This Charter shall be open for signature by the member States of the Council of Europe It shall be subject to ratification, acceptance or approval Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe

2 This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph

3 In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval

Article L – Territorial application

1 This Charter shall apply to the metropolitan territory of each Party Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose

2 Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration

3 The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General

4 Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General

Article M – Denunciation

1 Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it or at the end of any subsequent period of two years and in either case after giving six months'notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly

2 Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A paragraph 1, subparagraph b

3 Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with paragraph 2 of Article L

Article N – Appendix

The appendix to this Charter shall form an integral part of it

Article O – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of

a any signature

b the deposit of any instrument of ratification acceptance or approval

c any date of entry into force of this Charter in accordance with Article K,

d any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2 F paragraph 2 L paragraphs 1 2, 3 and 4,

e any amendment in accordance with Article J

f any denunciation in accordance with Article M,

g any other act notification or communication relating to this Charter

In witness whereof the undersigned, being duly authorised thereto, have signed this revised Charter

Done at Strasbourg this 3rd day of May 1996, in English and French, both texts being equally authentic in a single copy which shall be deposited in the archives of the Council of Europe The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office

Appendix to the revised European Social Charter

Scope of the revised European Social Charter in terms of persons protected

1 Without prejudice to Article 12 paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties

2 Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees

3 Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice

Article 2, paragraph 6

Parties may provide that this provision shall not apply

a to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours,

b where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence

Article 4 paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons

Article 7 paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work

Article 8 paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition Exceptions could be made, for instance in the following cases

a if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship,

b if the undertaking concerned ceases to operate

c if the period prescribed in the employment contract has expired

Article 12 paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph- provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention

Article 16

It is understood that the protection afforded in this provision covers single parent families

Article 17

It is understood that this provision covers all persons below the age of eighteen years unless under the law applicable to the child majority is attained earlier without prejudice to the other specific provisions provided by the Charter particularly Article 7

This does not imply an obligation to provide compulsory education up to the above-mentioned age

Article 19, paragraph 6

For the purpose of applying this provision the term family of a foreign worker is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker

Article 20

1 It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor s benefit, may be excluded from the scope of this article

2 Provisions concerning the protection of women particularly as regards pregnancy, confinement and the postnatal period shall not be deemed to be discrimination as referred to in this article

3 This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities

4 Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which by reason of their nature or the context in which they are carried out may be reserved to persons of a particular sex

Articles 21 and 22

1 For the purpose of the application of these articles, the term workers'representatives" means persons who are recognised as such under national legislation or practice

2 The terms ' national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers'representatives, customs as well as relevant case law

3 For the purpose of the application of these articles, the term 'undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy

4 It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings within the meaning of paragraph 3 Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking

5 It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions

6 The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice

Article 22

1 This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application

2 The terms ' social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities

Article 24

1 It is understood that for the purposes of this article the terms "termination of employment" and 'terminated" mean termination of employment at the initiative of the employer

2 It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons

a workers engaged under a contract of employment for a specified period of time or a specified task,

b workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration,

c workers engaged on a casual basis for a short period

3 For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment

a trade union membership or participation in union activities outside working hours or with the consent of the employer within working hours,

b seeking office as acting or having acted in the capacity of a workers representative

c the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities,

d race colour sex marital status family responsibilities, pregnancy, religion political opinion, national extraction or social origin,

e maternity or parental leave

f temporary absence from work due to illness or injury

4 It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations collective agreements or other means appropriate to national conditions

Article 25

1 It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship

2 It is understood that the definition of the term insolvency must be determined by national law and practice

3 The workers'claims covered by this provision shall include at least

a the workers claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment

b the workers'claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred,

c the workers claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guaran tee system prior to the insolvency or the termination of the employ ment

4 National laws or regulations may limit the protection of workers claims to a prescribed amount which shall be of a socially acceptable level

Article 26

It is understood that this article does not require that legislation be enacted by the Parties

It is understood that paragraph 2 does not cover sexual harassment

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity The terms "dependent children and other members of their immediate family who clearly need their care and support" mean per sons defined as such by the national legislation of the Party concerned

Articles 28 and 29

For the purpose of the application of this article, the term "workers'representatives" means persons who are recognised as such under national legislation or practice

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of

a Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter,

b Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter,

c Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter,

d Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the *threat* of war

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned

Article J

The term "amendment" shall be extended so as to cover also the addition of new articles to the Charter

THE LIMBURG PRINCIPLES ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PART I THE NATURE AND SCOPE OF STATES PARTIES' OBLIGATIONS

A General Observations

1 Economic, social and cultural rights are an integral part of international human rights law They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights

2 The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976 The Covenants serve to elaborate the Universal Declaration of Human Rights these instruments constitute the International Bill of Human Rights

3 As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights

4 The International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna, 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice

5 The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organizations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States parties' achievements

6 The achievement of economic, social and cultural rights may be realized in a variety of political settings There is no single road to their full realization Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures

7 States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant

8 Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time

9 Non-governmental organizations can play an important role in promoting the implementation of the Covenant This role should accordingly be facilitated at the national as well as the international level

10. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant

LIMBURŠKI PRINCIPI O IMPLEMENTACIJI MEĐUNARODNI PAKT O EKONOMSKIM, SOCIJALNIM I KULTURNIM PRAVIMA

DIO I PRIRODA I OBIM OBAVEZA DRŽAVA UGOVORNICA

A Opce obaveze

1 Ekonomska, socijalna i kulturna prava su sastavni dio međunarodnog prava o ljudskim pravima Ona su predmet specifičnih ugovornih obaveza u različitim međunarodnim instrumentima, posebno u Međunarodnom paktu o ekonomskim, socijalnim i kulturnim pravima

2 Međunarodna pakt o ekonomskim, socijalnim i kulturnim pravima, zajedno sa Međunarodnim paktom o civilnim i političkim pravima i Opcionalnim protokolom, je stupio na snagu 1976 godine Paktovi služe za elaboraciju Univerzalne deklaracije o ljudskim pravima, ovi instrumenti predstavljaju Međunarodni zakon o ljudskim pravima

3 Pošto su ljudska prava i osnovne slobode nedjeljivi i međusobno ovisni, potrebno je jednako i hitno razmotriti provođenje, unapijeđenje i zaštitu kako građanskih tako i političkih, ekonomskih, socijalnih i kulturnih prava

4 Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima (u daljem tekstu Pakt) bi se, u skladu sa Bečkom konvencijon o pravu ugovora (Beč, 1969) trebao tumačiti in bona fide, uzimajuci u obzir predmet i svrhu, ubičajeno značenje, pripremni rad i relevantnu praksu.

5 Iskustvo relevantnih specijaliziranih agencija kao i tijela Ujedinjenih Naroda i međuvladinih organizacija uključujuci i radne grupe Ujedinjenih Naroda i specijalne izvještače u području ljudskih prava, trebali bi biti uzeti u obzir pri provođenju Pakta i nadgledanju postignuca Država ugovornica

6 Postignuca ekonomskih, socijalnih i kulturnih prava se mogu realizirati u različitim političkim sredinama Ne postoji nikakav jedinstven put za njihovu realizaciju Uspjesi i neuspjesi se registruju i u tržišnim i ne-tržišnim privredama, i u centraliziranim i decentraliziranim političkim strukturama

7 Države ugovornice moraju u svako doba djelovati in bona fide pri ispunjavanju svojih obaveza iz Pakta koji su prihvatili

8 Mada se puno ostvarivanje prava koja su priznata u Paktu treba postizati progresivno, primjena nekih prava se može odmah kontrolirati sudski, dok druga prava to mogu postati vremenom

9 Ne-vladine organizacije mogu igrati važnu ulogu u unapređivanju provođenja Pakta Ova uloga bi, prema tome, trebala biti olakšana na nacionalnom kao i na međunarodnom nivou

10 Države ugovornice se smatraju odgovornim, kako međunarodnoj zajednici tako i svom narodu za svoje poštivanje obaveza iz Pakta

11 Udruženi nacionalni napor za pozivanje na puno učestvovanje svih sektora društva je, stoga, neophodno da bi se postigao napredak u ostvarivanju ekonomskih, socijalnih i kulturnih prava U svim fazama se traži jasno predviđanje, uključujući formulaciju, primjenu i reviziju nacionalnih politika

12 Nadzoru nad pridržavanjem Pakta bi trebalo pristupiti u duhu saradnje i dijaloga U tom cilju, pri razmatranju izvještaja Država ugovornica, Komitet za ekonomska, socijalna i kulturna prava, u daljem tekstu "Komitet trebao bi analizirati uzroke i faktore koji ometaju ostvarivanje prava koje obuhvata Pakt i, gdje je to moguce, naznačiti rješenja Ovakav pristup ne bi trebao unaprijed donositi zaključak, gdje raspoloživa informacija garantuje takav zaključak, da Država strana nije ispunila obaveze iz Pakta

13 Svi organi koji vrše monitoring Pakta trebaju obratiti posebnu pažnju na principe ne-diskriminacije i jednakosti pred zakonom kada procjenjuju koliko se Države ugovornice pridržavaju Pakta

11 A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social and cultural rights Popular participation is required at all stages, including the formulation, application and review of national policies

12 The supervision of compliance with the Covenant should be approached in a spirit of co-operation and dialogue To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyse the causes and factors impeding the realization of the rights covered under the Covenant and, where possible, indicate solutions This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13 All organs monitoring the Covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant

14 Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities

15 Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives

B Interpretative Principles specifically relating to Part II of the Covenant

Article 2 (1) "to take steps by all appropriate means, including particularly the adoption of legislation"

16 All States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant

17 At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant

18 Legislative measures alone are not sufficient to fulfil the obligations of the Covenant It should be noted, however, that article 2 (1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant

19 States parties shall provide for effective remedies including, where appropriate, judicial remedies

20 The appropriateness of the means to be applied in a particular State shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations

14 Obzirom na značaj za razvoj progresivnog ostvarenja prava iznijetih u Paktu, posebna pažnja treba se posvetiti mjerama za poboljšanje životnog standarda siromašnih i drugih ugroženih grupa, uzimajući u obzir da se mogu tražiti specijalne mjere za zaštitu kulturnih prava siromašnih naroda i manjina

15 Trendovi u međunarodnim ekonomskim odnosima bi trebali biti uzeti u obzir pri ocjenjivanju napora međunarodne zajednice za postizanje ciljeva iz Pakta

B **Principi interpretacije koji se posebno odnose na Dio II Pakta**

Član 2(1) "preduzeti korake svim raspoloživim sredstvima, naročito uključujući usvajanje zakona"

16 Sve Države ugovornice su obavezne odmah otpočeti sa preduzimanjem koraka za puno ostvarivanje prava sadržanih u Paktu

17 Na nacionalnom nivou, Države ugovornice, koristiti će sva prikladna sredstva, uključujući zakonodavne, administrativne, sudske, ekonomske, socijalne i obrazovne mjere, dosljedno prirodi prava kako bi ispunile svoje obaveze iz Pakta

18 Same zakonodavne mjere nisu dovoljne za ispunjenje obaveza iz Pakta Trebali bi naglasiti, međutim, da član 2(1) često zahtjeva da se preduzme zakonska mjera u slučajevima kada se postojećim zakonodavstvom kiše obaveze preuzete po Paktu

19 Države ugovornice ce se pobrinuti za efikasne pravne lijekove uključujući, gdje se može primjeniti, sudske pravne lijekove

20 Prikladnost sredstava koje treba primjeniti u određenoj državi odredice ta Država ugovornica i bice predmet revizije od strane Ekonomskog i socijalnog vijeca Ujedinjenih Naroda, uz asistenciju Komiteta Ta revizija ce biti bez predrasuda o kompetenciji ostalih organa osnovanih u skladu sa Poveljom Ujedinjenih Naroda

"da se progresivno postigne potpuno ostvarivanje prava"

21 Obaveza "da se progresivno postigne potpuno ostvarivanje prava" zahtjeva od Države ugovornice da se, što je moguce ekspeditivnije, kreće ka ostvarivanju prava Ovo ni u kom slučaju nece biti tumačeno da se Državama podrazumjeva pravo da beskonačno odlažu napore da se osigura potpuno ostvarivanje Naprotiv, sve Države ugovornice su obavezne da odmah otpočnu sa preduzimanjem koraka za ispunjavanje njihovih obaveza iz Pakta

22 Neke obaveze iz Pakta zahtjevaju trenutnu, potpunu implementaciju od strane Država ugovornica kao što je zabrana diskriminacije iz člana 2(2) Pakta

23 Obaveza progresivnog ispunjenja je neovisna od povecanja sredstava, traži se efikasno korištenje raspoloživih sredstava

24 Progresivno provođenje se može izvršiti ne samo povecanjem sredstava, nego i razvojem socijalnih sredstava neophodnih da svako može ostvariti prava koja su mu priznata u Paktu

"do svojih maksimalno raspoloživih sredstava"

25 Države ugovornice su obavezne, bez obzira na stupanj ekonomskog razvoja, da osiguraju poštivanje minimuma suštinskih prava na sredstva za život

26 Svoja raspoloživa sredstva se odnosi i na sredstva unutar Države i ona koja međunarodna zajednica stavlja na raspolaganje kroz međunarodnu kooperaciju i pomoc

27 Kod određivanja da li su preduzete adekvatne mjere za ostvarivanje prava koja su priznata u Paktu posebna pažnja ce se posvetiti na jednaku i efikasnu upotrebu i dostupnost raspoloživim sredstvima

28 Pri korištenju raspoloživih sredstava odgovarajući prioritet će se dati ostvarivanju prava koja su priznata u Paktu, imajući na umu potrebu da se svakome osigura zadovoljenje životnih potreba, kao i osiguranje prijeko potrebnih usluga

"pojedinačno i putem međunarodne pomoci i kooperacije, posebno ekonomske i tehničke"

"to achieve progressively the full realization of the rights"

21 The obligation "to achieve progressively the full realization of the rights" requires States parties to move as expeditiously as possible towards the realization of the rights Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant

22 Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2 (2) of the Covenant

23 The obligation of progressive achievement exists independently of the increase in resources, it requires effective use of resources available

24 Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant

"to the maximum of its available resources"

25 States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all

26 "Its available resources" refers to both the resources within a State and those available from the international community through international co-operation and assistance

27 In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources

28 In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services

"individually and through international assistance and co-operation, especially economic and technical"

29 International co-operation and assistance pursuant to the Charter of the United Nations (arts 55 and 56) and the Covenant shall have in view as a matter of priority the realization of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political

30 International co-operation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (cf art 28 Universal Declaration of Human Rights)

29 Međunarodna saradnja i pomoc u skaldu sa Poveljom Ujedinjenih Naroda (članovi 55 i 56) i Paktom imace u vidu, kao prioritet, ostvarivanje svih ljudskih prava i osnovnih sloboda, privrednih socijalnih i kulturnih kao i građanskih i političkih

30 Međunarodna saradnja i pomoć se moraju usmjeriti ka uspostavljanju socijalnog i međunarodnog poretka u kojem se prava i slobode izložene u Paktu mogu potpuno ostvarivati (cf član 28 Univerzalne deklaracije o ljudskim pravima)

31 Bez obzira na razlike u njihovim političkim, ekonomskim i socijalnim sistemima, Države ce sarađivati jedna sa drugom na unapređivanju međunarodnog socijalnog, ekonomskog i kulturnog napretka, posebno ekonomskog i asta zemalja u razvoju, bez diskriminacije zasnovane na tim razlikama

32 Države ugovornice ce preduzeti korake međunarodnim sredstvima da pomognu saradnju u ostvarivanju prava priznatih Paktom

33 Međunarodna saradnja i pomoc će se zasnivati na suverenoj jednakosti država i bice usmjerena na ostvarenje prava koja su sadržana u Paktu

34 Pri preuzimanju obaveze na međunarodnu saradnju i pomoc shodno članu 2(1), imace se na umu uloga međunarodnih organizacija i doprinos ne-vladinih organizacija

Član 2(2) Ne-diskriminacija

35 Član 2(2) poziva na trenutnu primjenu i uključuje eksplicitnu garanciju u ime Država ugovornica Stoga ona treba biti podvrgnuta sudskoj reviziji i ostalim odgovarajucim procedurama

36 Osnove za diskriminaciju navedene u članu 2(2) nisu iscrpljene

37 Nakon sto postanu ugovornicom Pakta, države ce *de jure* odbacititi diskriminaciju poništavanjem bez odlaganja svih diskriminatorskih zakona, propisa i prakse (uključujuci akta propuštanja kao i činjenja) koja imaju uticaj na uživanje ekonomskih socijalnih i kulturnih prava

38 *De facto* diskriminacija koja nastaje kao rezultat nejednakog uživanja ekonomskih, socijalnih i kulturnih prava, zbog nestašice sredstava ili drugačije, trebalo bi da se okonča što je moguce brže

39 Specijalne mjere koje se preduzimaju isključivo u svrhu osiguranja adekvatnog napretka određenih grupa ili pojedinaca, koji traže takvu zaštitu koja može biti potrebna da bi se tim grupama ili pojedincima osiguralo jednako uživanje ekonomskih, socijalnih i kulturnih prava, nece se smatrati diskriminacijom pod uslovom međutim, da te mjere, kao posljedica, ne vode ka podupiranju odvojenih prava za različite grupe i da se te mjere nece produžiti i nakon što se namjeravani ciljevi postignu

40 Član 2(2) zahtjeva od Država ugovornica da zabrane privatnim osobama i tijelima da provode disktriminaciju u ma kojem području života

41 U primjeni člana 2(2) odgovarajuca pažnja se mora posvetiti na sve relevantne međunarodne instumente uključujuci Deklaraciju i Konvenciju o eliminaciji svih oblika rasne diskriminacije, kao i na aktivnosti nadzornog komiteta (CERD) iz pomenute Konvencije

Član 2(3) Ne-državljani u zemljama u razvoju

42 Kao opce pravilo, Pakt se primjenjuje na državljane i na ne-državljane

43 Svrha člana 2(3) je bila da se okonča dominacija izvjesnih ekonomskih grupa ne-državljana u vremenima kolonizacije U ovom svijetlu bi trebao biti usko interpretiran izuzetak u članu 2(3)

44 Ova uska interpretacija člana 2(3) se posebno odnosi na pojam ekonomskih prava i na pojam zemalja u razvoju Ovaj zadnji pojam se odnosi na one zemlje koje su dobile nezavisnost i koje potpadaju pod odgovarajucu klasifikaciju Ujedinjenih Naroda o zemljama u razvoju

31 Irrespective of differences in their political, economic and social systems, States shall co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences

32 States parties shall take steps by international means to assist and co-operate in the realization of the rights recognized by the Covenant

33 International co-operation and assistance shall be based on the sovereign equality of States and be aimed at the realization of the rights contained in the Covenant

34 In undertaking international co-operation and assistance pursuant to article 2 (1) the role of international organizations and the contribution of non-governmental organizations shall be kept in mind

Article 2 (2) Non-discrimination

35 Article 2 (2) calls for immediate application and involves and explicit guarantee on behalf of the States parties It should, therefore, be made subject to judicial review and other recourse procedures

36 The grounds of discrimination mentioned in article 2 (2) are not exhaustive

37 Upon becoming a party to the Covenant States shall eliminate de jure discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights

38 De facto discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible

39 Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved

40 Article 2 (2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life

41 In the application of article 2 (2) due regard should be paid to all relevant international instruments including the Declaration and Convention on the Elimination of all Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention

Article 2 (3) Non-nationals in developing countries

42 As a general rule the Covenant applies equally to nationals and non-nationals

Član 3 Jednaka prava za muškarce i žene

45 Pri primjeni člana 3 posebna pažnja treba se obratiti na Deklaraciju i Konvenciju o eliminaciji svih oblika diskriminacije protiv žena i druge relevantne instrumente i aktivnosti nadzornog komiteta (CEDAW) prema pomenutoj Konvenciji

Član 4 Ograničenja

46 Član 4 je prije svega namjenjen da se zaštite za prava pojedinaca prije nego da se dopusti nametanje ograničenja od strane države

47 Svrha člana nije da uvede ograničenja na prava koja utječu na sredstva za izdržavanje ili preživljavanje pojedinca ili na integritet osobe

"određeno zakonom"[1]

48 Nece se stavljati nikakvo ograničenje na primjenu ekonomskih, socijalnih i kulturnih prava, osim ako to nije predviđeno opce primjenljivim nacionalnim zakonom koji je u skladu sa Paktom i koji je na snazi u vrijeme kada se ograničenje primjenuje

49 Zakoni kojima se nameću ograničenja na primjenu ekonomskih, socijalnih i kulturnih prava nece biti arbitrarni ili nerazumni ili diskriminatorski

50 Zakonski propisi koji ograničavaju primjenu ekonomskih, socijalnih i kulturnih prava bice jasni i svakome pristupačni

51 Protiv nelegalnih nametanja ili zloupotreba u primjeni ograničenja na ekonomska, socijalna i kulturna prava zakon će osigurati adekvatne zaštite i efikasne pravne lijekove

"unapređenje opceg blagostanja"

52 Ovaj termin ce se tumačiti tako da znači dobrobit cijelog naroda uopće

"u demokratskom društvu"[2]

53 Izraz "u demokratskom društvu" ce se tumačiti kao da namece daljnje restrikcije na primjenu ograničenja

54 Teret leži na državi koja namece ograničenja da pokaže da ograničenja ne ugrožavaju demokratsko funkcionisanje društva

55 Kako ne postoji nikakav model demokratskog društva, društvo koje priznaje i poštuje ljudska prava iznesena u Povelji Ujedinjenih Naroda i Univerzalnoj deklaraciji o ljudskim pravima može se smatrati da zadovoljava ovu definiciju

"u skladu sa prirodom ovih prava"

56 Restrikcija "u skladu sa prirodom ovih prava" zahtjeva da ograničenje neće biti interpretirano ili primjenjeno tako da se ugrozi suština prava o kojem je riječ

Član 5

57 Član 5(1) podcrtava činjenicu da ne postoji opće, primjenjivo ili rezidualno pravo države da nametne ograničenja iznad onih koja su posebno osigurana u zakonu Nijedna od odredbi u zakonu se ne može interpretirati na takav način da se unište "sva priznata prava ili slobode Uz to, član 5 je namjenjen da se osigura da se ništa od navedenog u Paktu nece interpretirati tako kao da ugrožava prirođeno pravo svih ljudi da potpuno i slobodno uživaju i koriste svoje prirodno bogatstvo i resurse

---

[1] Limburški principi 48-51 proističu iz Principa iz Sirakuze 15-18 UN Doc E/CN 4/1884/4 28 septembar 1984 i 7 Human Rights Quarterlz 3 (1985) str 5

[2] Uporedi Principe iz Sirakuze 19-21 ibid str 5

43 The purpose of article 2 (3) was to end the domination of certain economic groups of non-nationals during colonial times In the light of this the exception in article 2 (3) should be interpreted narrowly

44 This narrow interpretation of article 2 (3) refers in particular to the notion of economic rights and to the notion of developing countries The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries

Article 3 Equal rights for men and women

45 In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments and the activities of the supervisory committee (CEDAW) under the said Convention

Article 4 Limitations

46 Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State

47 The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person

"determined by law" */

48 No limitation on the exercise of economic, social and cultural rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied

49 Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory

50 Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone

51 Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition on application of limitations on economic, social and cultural rights.

"promoting the general welfare"

52 This term shall be construed to mean furthering the well-being of the people as a whole

---

*/ The Limburg Principles 48-51 are derived from the Siracusa Principles 15-18, United Nations Doc E/CN 4/1984/4, 28 September 1984 and 7 Human Rights Quarterly 3 (1985), at p. 5

58 Svrha člana 5 (2) je da osigura da se nijedna odredba iz Pakta ne interpretira na štetu odredaba domaceg prava ili svih bilateralnih ili multilateralnih međudržavnih sporazuma, konvnecija ili sporazuma koji su vec na snazi ili mogu stupiti na snagu po kojima bi se dogovorio mnogo povoljniji tretman osobama koje se štite Isto tako, član 5(2) se nece interpretirati tako da ograničava primjenu zaštićenih ljudskih prava u vecem stepenu od državnih ili međunarodnih obaveza koje je Država ugovornica prihvatila

C Principi interpretacije koji se odnose na Dio III Pakta

Član 8 *"Propisano zakonom"*[3]

59 Vidi interpretativne principe pod sinonimskim terminom "određeno zakonom" u Članu 4

"potrebno u demokratskom društvu"

60 Pored interpretativnih principa navedenih u članu 4 vezano za termin "u demokratskom društvu", član 8 namece vece ograničenje za Državu ugovornicu koja provodi ograničenja na prava sindikata U njemu se zahtjeva da je to ograničenje zaista potrebno Termin "potreban" implicira da ograničenje

a) odgovara na iskazanu javnu ili društvenu potrebu,

b) slijedi zakonski cilj, i

c) proporcionalno je tom cilju

61 Svaka procjena što se tiče potrebe za ograničenjem ce biti bazirana na objektivnim razmatranjima

"nacionalna sigurnost"

62 Nacionalna sigurnost može se prizvati da opravda mjere kojima se ograničavaju određena prava samo kada se preduzimaju da zaštite egzistenciju nacije ili njenog teritorijalnog integriteta ili političke nezavisnosti od sile ili prijetnje sile

63 Nacionalna sigurnost ne može biti prizvana kao razlog za nametanje ograničenja da bi se spriječile samo lokalne ili relativno izolovane prijetnje za zakon i red

64 Nacionalna sigurnost se ne može koristiti kao isprika za nametanje nejasnih ili arbitrarnih ograničenja, a može biti prizvana samo kada postoji adekvatna zaštita i efekasni lijekovi protiv zloupotrebe

65 Sistematično kršenje ekonoskih, socijalnih i kulturnih prava podriva istinsku nacionalnu sigurnost i može ugroziti međunarodni mir i sigurnost Država koja je odgovorna za takvo kršenje nece prizivati nacionalnu sigurnost kao opravdanje za mjere koje su usmjerene na ugušivanje suprostavljanja tom kršenju ili višenju represivne prakse protiv svog naroda

"javni red (ordre public)"

66 Izraz "javni red (ordre public)" kako se koristi u Paktu može se definisati kao zbir pravila koja osiguravaju funkcionisanje društva ili niz osnovnih principa na kojima je društvo zasnovano Poštivanje ekonomskih, socijalnih i kulturnih prava je dio javnog reda (*order public*)

67 Javni red (ordre public) ce se interpretirati u kontekstu svrhe određenih ekonomskih, socijalnih i kulturnih prava koja su ograničena po ovom osnovu

68 Državni organi ili agenti odgovorni za održavanje javnog reda (ordre public) podlijegati će kontrolama pri izvršavanju njihove moći, kroz parlament, sudove, ili ostala kompetentna neoovisna tijela

"prava i slobode ostalih"

69 Opseg prava i sloboda ostalih koji mogu djelovati kao ograničenje na prava iz Pakta proteže se iznad prava i sloboda priznatih u Paktu

---

[3] Limburški principi 59 69 proističu iz Principa iz Sirakuze 10 15-26, 29-32 i 35-37 ibid str 4-7

"in a democratic society" **/

53 The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations

54 The burden is upon a State imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society

55 While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition

"compatible with the nature of these rights"

56 The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned

Article 5

57 Article 5 (1) underlines the fact that there is no general, implied or residual right for a State to impose limitations beyond those which are specifically provided for in the law None of the provisions in the law may be interpreted in such a way as to destroy "any of the rights or freedoms recognized" In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources

58 The purpose of article 5 (2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected Neither shall article 5 (2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party

C Interpretative Principles specifically relating to Part III of the Covenant

Article 8 "prescribed by law" ***/

59 See the interpretative principles under the synonymous term "determined by law" in article 4

**/ Compare Siracusa Principles 19-21, ibid , at p 5

***/ The Limburg Principles 59-69 are derived from the Siracusa Principles 10, 15-26, 29-32 and 35-37, ibid , at pp 4-7

D Kršenje ekonomskih, socijalnih i kulturnih prava

70 Neispunjavanje obaveza sadržanih u Paktu od strane Države ugovornice, prema međunarodnom pravu, predstavlja kršenje Pakta

71 Pri određivanju šta se može ocijeniti kao nepridržavanje, mora se imati na umu da Pakt pruža Državi ugovornici granicu diskrecije u odabiranju sredstava za provođenje njenih ciljeva, i da faktori van njene razumne kotrole mogu suprotno djelovati na njenu sposobnost da provede određena prava

72 Država ugovornica krši Pakt, između ostalog, i ako

- propusti poduzeti mjeru koju od nje traži Pakt,
- hitno ne ukloni prepreke koje je dužna ukloniti kako bi se omogućilo neposredno ispunjenje prava,
- bez odlaganja ne spiovede pravo koje je, u skladu sa Paktom, dužna odmah osigurati,
- namjerno ne postigne općenito prihvaćeni međunarodni minimalni standard, koji je sposobna postići u okviru svoje moći,
- primjeni ograničenje na pravo priznato Paktom, na način koji nije u skladu sa Paktom,
- smišljeno unazađuje ili zaustavlja progresivnu realizaciju prava, osim ako ne djeluje u okviru ograničenja dopuštenog Paktom ili to čini zbog nedostatka dostupnih resursa ili više sile,
- ne podnese izvještaje kako se to od nje traži Paktom

73 U skladu sa međunarodnim pravom svaka država ugovornica ima pravo izraziti gledište da se druga država ugovornica ne pridržava svojih obaveza prema Paktu i o tome obavijestiti tu državu ugovornicu Svaka nesuglasica koja bi se pojavila biti ce riješena u skladu sa relevantnim propisima međunarodnog prava koji se tiču mirnog rješavanja sukoba

DIO II RAZMATRANJE IZVJEŠTAJA DRŽAVA UGOVORNICA I MEĐUNARODNA SARADNJA PREMA DIJELU IV PAKTA

A Priprema i podnošenje izvještaja od strane država ugovornica

74 Efikasnost mašinerije za nadgledanje, o kojoj se govori u IV dijelu Pakta , uveliko ovisi o kvalitetu i pravovremenosti izvještaja država ugovornica Od vlada se stoga traži da sačine izvještaje sa što je moguce jasnijim značenjem U ovu svrhu, one bi trebale razviti adekvatne unutrašnje procedure konsultacija sa kompetentnim vladinim odjelima i agencijama, kompilaciju relevantnih podataka, obuk osoblja, prikupljanje dokumentacije sa potrebnim informacijama i konsultacije sa relevantnim nevladinim i međunarodnim institucijama

75 Priprema izvještaja prema Članu 16 Pakta može se olakšati implementacijom elemenata programa savjetničkih usluga i tehničke pomoći, kako su predložili predsjedavajuci glavnih supervizijskih organa za ljudska prava, u njihovom izvještaju iz 1984 godine upucenog Generalnoj skupštini UN (UN Doc A 39/484)

76 Države stranke bi trebale smatrati svoje obaveze o izvještavanju kao priliku za široku javnu diskusiju o ciljevima i politici realizacije ekonomskih, socijalnih i kulturnih prava U ovu svrhu treba dati širok publicitet izvještajima u nacrtu, ako je to moguce Priprema izvještaja bi trebala takođe biti prilika za pregled razmjera u kojima relevantne domace politike adekvatno reflektiraju obim i sadržaj svakog prava, te za određivanje sredstava za njihovu realizaciju

77 Države ugovornice se ohrabruju da ispitaju mogucnost uključivanja nevladinih organizacija u pripremanje njihovih izvještaja

78 Pri izvještavanju o poduzetim pravnim koracima za provedbu Pakta, države ugovornice ne bi trebale samo opisati relevantne zakonske odredbe One bi sukladno trebale specificirati sudska sredstva, administrativne procedure i druge mjere koje su usvojile u cilju sprovedbe tih prava te praksu u skladu sa tim sredstvima i procedurama

79 Izvještaji država ugovornica trebaju sadržati i kvantitativne informacije kako bi se ukazalo na razmjeru u kojoj su ova prava zaista zaštićena Statističke informacije i informacije o budžetarnim izdvajanjima i troškovima bi trebale biti prezentirane na takav način kako bi se olakšala procjena o poštivanju obaveza iz Pakta Države ugovornice bi trebale, gdje je to moguce, usvojiti jasno definirane

"necessary in a democratic society"

60 In addition to the interpretative principles listed under article 4 concerning the phrase "in a democratic society", article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights It requires that such a limitation is indeed necessary The term "necessary" implies that the limitation

(a) responds to a pressing public or social need,

(b) pursues a legitimate aim, and

(c) is proportional to that aim

61 Any assessment as to the necessity of a limitation shall be based upon objective considerations

"national security"

62 National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force

63 National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order

64 National security cannot be used as a pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse

65 The systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population

"public order (ordre public)"

66 The expression "public order (ordre public)" as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded Respect for economic, social and cultural rights is part of public order (ordre public)

67 Public order (ordre public) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground

68 State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies

ciljeve i indikatore u implementaciji Pakta Takvi ciljevi i indikatori bi trebali biti odgovarajuce zasnovani na kriterijima uspostavljenim kroz međunarodnu saradnju u cilju povecanja relevantnosti i komparativnosti podataka priloženih od strane država ugovornica u njihovim izvještajima

80 Gdje je to potrebno, vlade bi trebale sprovesti ili naložiti studije koje bi omogucile popunu praznina u informacijama u vezi postignutog progresa i poteškoća na koje se naišlo u postizanju poštivanja prava iz Pakta

81 Izvještaji država ugovornica trebaju naznačiti područja gdje bi se mogao postici veći napredak kroz međunarodnu saradnju i predložiti programe ekonomske i tehničke saradnje koji bi mogli pomoći u tom cilju

82 Kako bi se osigurao jasan dijalog između država ugovornica i organa koji procjenjuju njihovo poštivanje odredaba Pakta države ugovornice trebaju odrediti predstavnike koji su potpuno upoznati sa pitanjima razmatranim u izvještaju

B **Uloga Komiteta o ekonomskim, socijalnim i kulturnim pravima**

83 Komitetu je povjereno da pomogne Ekonomskom i socijalnom vijecu u značajnim zadacima koje mu je dodijelio Pakt Osobito, njegova uloga je da razmatra izvještaje država ugovornica i da upucuje prijedloge i preporuke opce prirode, uključujuci sugestije i preporuke za vece poštivanje Pakta od strane država ugovornica Odluka Ekonomskog i socijalnog vijeca da zamijeni svoju Radnu grupu sa Komitetom nezavisnih eksperata trebala bi voditi efikasnijoj supervziji implementacije od strane država ugovornica

84 Kako bi bio omogucen da potpuno izvrši svoju zadaću Ekonomsko i socijalno vijece treba osigurati da se Komitetu osigura dovoljno sjednica Imperativno je da se obezbijede neophodno osoblje i objekti kako bi Komitet efikasno vršio svoje naznačene funkcije, u skladu sa ECOSOC Rezolucijom 1985/17

85 Kako bi se odgovorilo na kompleksnost značajnih pitanja iz Pakta, Komitet može razmotriti delegiranje određenih zadataka svojim članovima Na primjer, grupe za sačinjavanje nacrta mogle bi biti uspostavljene kako bi se pripremile preliminarne formulacije ili preporuke opce prirode ili pregled ukupnih primljenih informacija Mogli bi se imenovati izvjestitelji koji bi pomogli radu Komiteta, posebno u pripremanju izvještaja o specifičnim temama, te u tu svrhu konsultirati države ugovornice, specijalizovane agencije i relevantne eksperte i sačiniti prijedloge u vezi projekata ekonomske i tehničke pomoci, koji bi pomogli u prevazilaženju teškoca na koje su države ugovornice naišle u ispunjavanju svojih obaveza iz Pakta

86 Komitet bi, prema Članovima 22 i 23 Pakta, trebao istražiti sa drugim organima Ujedinjenih Nacija, specijalizovanim agencijama i drugim uključenim organizacijama, mogucnosti poduzimanja dodatnih međunarodnih mjera koje bi mogle doprinijeti progresivnoj implementaciji Pakta

87 Komitet bi trebao ponovo razmotriti sadašnji šestogodišnji ciklus izvještavanja u svijetlu kašnjenja koja su dovela do simultanih razmatranja izvještaja podnesenih u različitim fazama ciklusa Komitet bi, takođe, trebao pregledati upute za države ugovornice kako bi im se pomoglo u pripremanju izvještaja, te predložiti neophodne modifikacije

88 Komitet treba razmotriti pozivanje država ugovornica da komentiraju određene odabrane teme koje vode direktnom i trajnom dijalogu sa Komitetom

89 Komitet bi trebao posvetiti adekvatnu pažnju metodološkim pitanjima sadržanim u procjenjivanju poštivanja obaveza iz Pakta Razmatranje pokazatelja, u onoj mjeri u kojoj bi oni mogli pomoci u mjerenju postignutog progresa u postizanju određenih prava, moglo bi biti korisno u ocjenjivanju izvještaja podnesenih u skladu sa Paktom Komitet bi trebao obratiti veliku pažnju na pokazatelje odabrane od strane ili koji su u okviru specijalizovanih agencija, te se osloniti na ili promovirati dodatna istraživanja, u konsultaciji sa specijalizovanim odgovarajucim agencijama, tamo gdje su uočene praznine

90 Onda kada Komitet nije zadovoljan sa adekvatnošcu informacija dostavljenih od strane drzava ugovornica za jasnocu ocjene postignutog progresa i uočenih poteškoća, on treba zatražiti dodatne informacije, specificirajuci precizne teme ili pitanja na koje bi države ugovornice trebale odgovoriti

91 U pripremi izvještaja prema ECOSOC Rezoluciji 1985/17, Komitet treba razmotriti važna tematska pitanja pokrenuta tokom njegovih razmatranja, kao dodatak »pregleda njegovih razmatranja izvještaja«

"rights and freedoms of others"

69 The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant

D Violations of Economic, Social and Cultural Rights

70 A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant

71 In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights

72 A State party will be in violation of the Covenant, inter alia, if.

- it fails to take a step which it is required to take by the Covenant,
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right,
- it fails to implement without delay a right which it is required by the Covenant to provide immediately,
- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet,
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant,
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure,
- it fails to submit reports as required under the Covenant

73 In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes

PART II CONSIDERATION OF STATES PARTIES' REPORTS AND INTERNATIONAL CO-OPERATION UNDER PART IV OF THE COVENANT

A Preparation and submission of reports by States parties

74 The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the quality and timeliness of reports by States parties Governments are therefore urged to make their reports as meaningful

C **Odnosi između Komiteta i specijalizovanih agencija i drugih međunarodnih organa**

92 Uspostava Komiteta treba se posmatrati kao prilika za razvoj pozitivnog i obostrano korisnog odnosa između Komiteta i specijalizovanih agencija i drugih međunarodnih organa

93 Treba li bi se razmotriti novi aranžmani prema Članu 18 Pakta, tamo gdje bi oni mogli pomoći doprinosu specijalizovanih agencija radu Komiteta Budući da radni metodi koji se tiču implementacije ekonomskih socijalnih, i kulturnih prava variraju od jedne do druge specijalizovane agencije, potrebna je fleksibilnost u pravljenju ovakvih aranžmana prema Članu 18

94 Značajno je za dobro nadgledanje implementacije Pakta u skladu sa IV Dijelom da se razvije dijalog između specijalizovanih agencija i Komiteta sa obzirom na pitanja zajedničkog interesa Konsultacije bi takođe trebale da se pozabave potrebom razvoja pokazatelja za ocjenjivanje poštivanja Pakta, sačinjavanjem uputa za podnošenje izvještaja od strane država ugovornica, pravljenjem aranžmana za podnošenje izvještaja od strane specijalizovanih agencija prema Članu 18 Potrebno je razmotriti sve relevantne procedure usvojene u agencijama Učešće njihovih predstavnika u sastancima Komiteta bilo bi vrlo korisno

95 Bilo bi korisno ako bi članovi Komiteta posjetili odgovarajuće specijalizovane agencije, bili obavješteni kroz lične kontakte, o programima agencija relevantnih za realizaciju prava sadržanih u Paktu te prodiskutovali moguća polja saradnje sa tim agencijama

96 Trebale bi se inicirati konsultacije između Komiteta i međunarodnih finansijskih institucija i razvojnih agencija kako bi se razmijenile informacije i podijelile ideje u vezi distribucije dostupnih resursa u svezi sa realizacijom prava priznatih Paktom Ove razmjene bi trebale razmotriti uticaj međunarodne ekonomske pomoći na napore država ugovornica da implementiraju Pakt i mogućnosti tehničke i ekonomske sradnje u skladu sa Članom 22 Pakta

97 Komisija o ljudskim pravima, pored svojih odgovornosti, trebala bi, u skladu sa Članom 19 Pakta, uzeti u obzir rad Komiteta u svom razmatranju tačaka svog programa u vezi ekonomskih, socijalnih i kulturnih prava

98 Pakt o ekonomskim, socijalnim i kulturnim pravima je u vezi sa Paktom o civilnim i političkim pravima iako većina prava može biti jasno opisana kao prava koja potpadaju pod okvir jednog ili drugog Pakta, postoji nekoliko prava i odredaba pomenutih u oba instrumenta koja nisu podložna jasnoj diferencijaciji Oba Pakta, šta više, dijele zajedničke odredbe i članove Važno je da konsultativni aranžmani budu uspostavljeni između Komiteta za ekonomska, socijalna i kulturna pitanja i Komiteta za ljudska prava

99 Imajući u vidu relevantnost drugih međunarodnih pravnih instrumenata za Pakt, Ekonomsko i socijalno vijeće bi trebalo prethodno razmotriti potrebu razvoja efikasnih konsultativnih aranžmana između različitih supervizijskih tijela

100 Međunarodne i regionalne međuvladine organizacije koje se bave realizacijom ekonomskih socijalnih i kulturnih prava se pozivaju da, po potrebi, razviju mjere za promociju implementacije Pakta

101 Kako je Komitet pomoćni organ Ekonomskog i socijalnog vijeca, nevladine organizacije koje uživaju status konsultanata ekonomskog i socijalnog vijeca se pozivaju da prisustvuju i prate sastanke Komiteta i, kada je to shodno, podnose informacije u skladu sa ECOSOC Rezolucijom 1296 (XLIV)

102 Komitet treba razviti, u saradnji sa međuvladinim organizacijama i nevladinim organizacijama, kao i institutima za istraživanje, jedan dogovoreni sistem zabilježavanja pohranjivanja i pristupa sudskim precedentima i drugom interpretativnom materijalu u vezi međunarodnih instrumenata o ekonomskim socijalnim i kulturnim pravima

103 Kao jedna od mjera preporučenih u Članu 23, preporučuje se da se periodično održavaju seminari kako bi se izvršio pregled rada Komiteta i postignutog progresa u realizaciji ekonomskih, socijalnih i kulturnih prava od strane država ugovornica

as possible For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions

75 The preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly (United Nations Doc. A39/484)

76 States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realize economic, social and cultural rights For this purpose wide publicity should be given to the reports, if possible in draft The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realized

77 States parties are encouraged to examine the possibility of involving non-governmental organizations in the preparation of their reports

78 In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures

79 Quantitative information should be included in the reports of States parties in order to indicate the extent to which the rights are protected in fact Statistical information and information on budgetary allocations and expenditures should be presented in such a way as to facilitate the assessment of the compliance with Covenant obligations States parties should, where possible, adopt clearly defined targets and indicators in implementing the Covenant Such targets and indicators should, as appropriate, be based on criteria established through international co-operation in order to increase the relevance and comparability of data submitted by States parties in their reports

80 Where necessary, governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights

81 Reports by States parties should indicate the areas where more progress could be achieved through international co-operation and suggest economic and technical co-operation programmes that might be helpful toward that end

82 In order to ensure a meaningful dialogue between the States parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report

B Role of the Committee on Economic, Social and Cultural Rights

83 The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant In particular, its role is to consider States parties reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties The decision of the Economic and Social Council to replace its sessional Working Group by a Committee of independent experts should lead to a more effective supervision of the implementation by States parties

84 In order to enable it to discharge fully its responsibilities the Economic and Social Council should ensure that sufficient sessions are provided to the Committee It is imperative that the necessary staff and facilities for the effective performance of the Committee's functions be provided, in accordance with ECOSOC resolution 1985/17

85 In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members For example, drafting groups could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received Rapporteurs could be appointed to assist the work of the Committee in particular to prepare reports on specific topics and for that purpose consult States parties, specialized agencies and relevant experts and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.

86. The Committee should, pursuant to articles 22 and 23 of the Covenant, explore with other organs of the United Nations, specialized agencies and other concerned organizations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant

87 The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications

88 The Committee should consider inviting States parties to comment on selected topics leading to a direct and sustained dialogue with the Committee.

89 The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant The Committee should take due account of the indicators selected by or in the framework of the specialized agencies and draw upon or promote additional research, in consultation with the specialized agencies concerned, where gaps have been identified

90 Whenever the Committee is not satisfied that the information provided by a State party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State party to address

91 In preparing its reports under ECOSOC resolution 1985/17, the Committee should consider, in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations

C Relations between the Committee and Specialized Agencies, and other international organs

92 The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialized agencies and other international organs

93 New arrangements under article 18 of the Covenant should be considered where they could enhance the contribution of the specialized agencies to the work of the Committee Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialized agency to another, flexibility is appropriate in making such arrangements under article 18

94 It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialized agencies and the Committee with respect to matters of common interest In particular consultations should address the need for developing indicators for assessing compliance with the Covenant, drafting guidelines for the submission of reports by States parties, making arrangements for submission of reports by the specialized agencies under article 18 Consideration should also be given to any relevant procedures adopted in the agencies Participation of their representatives in meetings of the Committee would be very valuable

95 It would be useful if Committee members could visit specialized agencies concerned, learn through personal contact about programmes of the agencies relevant to the realization of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies

96 Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realization of the rights recognized in the Covenant These exchanges should consider the impact of international economic assistance on efforts by States parties to implement the Covenant and possibilities of technical and economic co-operation under article 22 of the Covenant

97 The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the Committee in its consideration of items on its agenda relating to economic, social and cultural rights

98. The Covenant on Economic, Social and Cultural Rights is related to the Covenant on Civil and Political Rights Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and provisions referred to in both instruments which are not susceptible to clear differentiation Both Covenants moreover share common provisions and articles. It is important that consultative arrangements be established between the Economic, Social and Cultural Rights Committee and the Human Rights Committee.

99 Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for developing effective consultative arrangements between the various supervisory bodies

100 International and regional intergovernmental organizations concerned with the realization of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant

101 As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organizations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with ECOSOC resolution 1296 (XLIV)

102 The Committee should develop, in co-operation with intergovernmental organizations and non-governmental organizations as well as research institutes an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.

103 As one of the measures recommended in article 23 it is recommended that seminars be held periodically to review the work of the Committee and the progress made in the realization of economic, social and cultural rights by States parties

Appendix II· The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

Cees Flinterman[*]

Introduction

In 1986 the International Commission of Jurists, the Maastricht Centre for Human Rights of the University of Limburg (the Netherlands) and the Urban Morgan Institute for Human Rights, College of Law, University of Cincinnati (Ohio, USA) convened a group of distinguished experts in international law to consider the nature and scope of the obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights (CESCR) This meeting, which was attended, among others, by some members of the then newly constituted ECOSOC Committee on Economic, Social and Cultural Rights and by staff members of the United Nations and Specialized Agencies resulted in the adoption of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights At the initiative of the Netherlands Government, these Principles have been issued as an official United Nations document (UN Doc E/CN 4/1987/17, Annex), they have also been published in the *Human Rights Quarterly*, Vol 9, 1987, pp 122-135 and in the *Review of the International Commission of Jurists*, No 37, December 1986, pp 43-55

Over the past 10 years economic, social and cultural rights have received more, although certainly not yet sufficient, attention at the international governmental level The Committee on Economic, Social and Cultural Rights has played a most constructive role in this respect Mention should also be made of the various studies in the field of economic, social and cultural rights undertaken by Special Rapporteurs appointed by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities In 1993, the World Conference on Human Rights in Vienna reaffirmed the universality, interdependence and indivisibility of economic, social, cultural, civil and political rights, and stressed the need for elaborating an Optional Protocol to the CESCR In this respect it is also relevant to mention a comprehensive report of the Netherlands Advisory Committee on Human Rights and Foreign Policy on the issue of economic, social and cultural rights (Advisory Report, No 18, 1994), which was in general favourably received by the Netherlands Government

It is clear that the monitoring of the progressive realisation of economic, social and cultural rights is extremely complicated and requires an enormous amount of good quality data The view has been expounded that economic and social indicators should be developed to assess progress in the realisation of economic, social and cultural rights It is certainly worthwhile to pursue this enquiry in light of the conclusions reached by a UN Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights (UN Doc A/CONF 157/PC/73 (1993)) However, another potentially fruitful approach may be to focus on identifying violations enumerated in the ESC-Covenant The proposal to elaborate an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is based on the same premise The Limburg Principles made already an early start in identifying the issue of violations of economic, social and cultural rights (Principles 70-73) In a

[*] Professor of International Law at Maastricht University, the Netherlands

MASTRIHTSKI VODIČ O POVREDAMA EKONOMSKIH, SOCIJALNIH I KULTURNIH PRAVA

1 Značaj ekonomskih, socijalnih i kulturnih prava

1 Od kada su 1986 godine usvojeni Limburški principi, ekonomski i socijalni uvjeti su se alarmirajucom brzinom pogoršali za preko 1 6 milijardi ljudi dok su se isto tako dramatično brzim tempom poboljšali za više od četvrtine svjetske populacije [1] Razlika između bogatih i siromašnih se udvostručila u posljednje tri dekade, pri čemu 1 4 procenta svjetskog dohotka otpada na najsiromašniju petinu svjetske populacije, a 85 procenata na najbogatiju petinu Utjecaj ovakvih razlika na živote ljudi, pogotovo onih siromašnih, je dramatičan i čini uživanje ekonomskih, socijalnih i kulturnih prava iluzornim za značajan dio čovječanstva

2 Od završetka hladnoga rata, u svim svjetskim regionima postojao je trend smanjenja uloge države i oslanjanja na tržište u rješavanju problema ljudskog blagostanja, kao odgovor na uvjete stvorene međunarodnim i domacim finansijskim tržištima i institucijama te u nastojanju da se privuku investicije međunarodnih kompanija, čije bogatstvo i moc su prevazilazili bogatstvo i moc mnogih država Više se ne uzima kao gotovo da ostvarenje ekonomskih, socijalnih i kulturnih prava značajno ovisi o djelovanju države, iako je prema međunarodnom pravu država ta koja ostaje krajnje odgovorna za garantovanje ostvarenja ovih prava Dok ovi trendovi čine izazov odgovora na povrede ekonomskih, socijalnih i kulturnih prava još vecim, danas se više nego ikada ranije ova prava moraju shvatiti ozbiljno, te se stoga treba pozabaviti odgovornošcu vlada za propuste u ispunjenju njihovih obaveza u ovoj oblasti

3 Došlo je također, do značajnog pravnog razvoja koji je unaprijedio ekonomska, socijalna i kulturna prava nakon 1986 godine, uključujuci pojavu pravnih propisa Komiteta za ekonomska, socijalna i kulturna prava, te usvajanje instrumenata kao što su revidirana Evropska socijalna povelja iz 1996 godine i Dodatni protokol Evropskoj povelji, koji su osigurali Sistem kolektivnih žalbi, te San Salvadorški Protokol Američke konvencije o ljudskim pravima u oblasti ekonomskih, socijalnih i kulturnih prava iz 1988 godine Vlade su se čvisto obavezale da ce se efikasnije pozabaviti ekonomskim, socijalnim i kulturnim pravima u okviru sedam konferencija Svjetskih samita Ujedinjenih nacija (1992-1996) Šta više, kroz predložene Opcionalne protokole Međunarodnom paktu za ekonomska, socijalna i kulturna prava, te Konvencijom o eliminaciji svih oblika diskriminacije žena, ukazao se potencijal za uvecanje odgovornosti za povrede ekonomskih, socijalnih i kulturnih prava Došlo je i do značajnih razvoja u okviru pokreta nacionalnih civilnih društava, te regionalnih i međunarodnih nevladinih organizacija u oblasti ekonomskih, socijalnih i kulturnih prava

4 Sada je nepobitno da su sva ljudska prava nedjeljiva, međuovisna, međusobno srodna i od jednake važnosti za ljudsko dostojanstvo Zbog toga, države su odgovorne za povrede ekonomskih socijalnih i kulturnih prava, kao što su odgovorne i za povrede civilnih i političkih prava

5 Kao i u slučaju civilnih i političkih prava, propust države potpisnice da se povinuje obavezama ugovora koje se tiču ekonomskih, socijalnih i kulturnih prava, prema međunarodnom pravu, predstavlja povredu tog ugovora Nadograđujuci se na Limburške

[1] UNDP, Izvještaj o ljudskom razvoju 1996, para 29

the issue of violations of economic, social and cultural rights (Principles 70-73) In a recent article by Audrey R Chapman[1] it was argued that it is time for NGOs, governments and human rights monitoring bodies to reorient their work toward identifying and rectifying violations The author of this article invited other researchers and monitors to join her and the American Association for the Advancement of Science in the development of such a violations approach

In light of their earlier effective cooperation which resulted in the adoption of the Limburg Principles and in light of their continuing commitment to the further realisation of economic, social and cultural rights, the International Commission of Jurists, the Maastricht Centre for Human Rights and the Urban Morgan Institute for Human Rights convened early 1997, on the occasion of the 10th anniversary of the Limburg Principles, another workshop which especially focused on the relevance of a 'violations approach' in order to strengthen the monitoring of the CESCR The objective of this workshop was to get a better understanding of the concept of violations of economic, social and cultural rights, to compile a catalogue of types of violations of these rights and to use this catalogue to develop a set of guidelines which may further assist mechanisms that monitor economic, social and cultural rights, notably the Covenant Committee

The participants to the Maastricht meeting (22-26 January 1997), a group of more than 30 experts, unanimously agreed on the following guidelines which they understand to reflect the evolution of international law since 1986 These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels

I The Significance of Economic, Social and Cultural Rights

1 Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1 6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population [2] The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1 4 percent of the global income and the richest fifth 85 percent The impact of these disparities on the lives of people – especially the poor – is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity

2 Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the State and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many States It is no longer taken for granted that the realisation of economic, social and cultural rights depends significantly on action by the State, although, as a matter of international law, the State remains ultimately responsible for guaranteeing the realisation of these rights While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and,

---

[1] Audrey R Chapman A 'Violations Approach' for Monitoring the International Covenant on Economic, Social and Cultural Rights , *Human Rights Quarterly*, Vol 18, 1996, pp 23-66

[2] UNDP *Human Development Report 1996* paragraph 29

principe[2], razmatranja u daljem tekstu se prevashodno odnose na Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima (u daljem tekstu »Pakt«) Ona se, međutim, jednako odnose i na interpretaciju i primjenu drugih normi međunarodnog i domaceg prava u oblasti ekonomskih, socijalnih i kulturnih prava

II Značenje povreda ekonomskih, socijalnih i kulturnih prava

Obaveza da se poštuje, štiti i ispuni

6 Kao i civilna i politička prava, ekonomska, socijalna i kulturna prava namecu tri različita tipa obaveza za države obaveze da se poštuje, štiti i ispuni Propust da se ispuni bilo koja od ove tri obaveze predstavlja povredu tih prava Obaveza *da se poštuje* zahtijeva od dižava da se suzdrže od miješanja u uživanje ekonomskih, socijalnih i kulturnih prava Tako pravo na stanovanje je povrijeđeno, ako država vrši arbitrarne prisilne deložacije Obaveza *da se štiti* zahtjeva od država da spriječe povrede tih prava od trece strane Tako, propust da se osigura da se privatni poslodavci pridržavaju osnovnih standarda rada može značiti povredu prava na rad ili prava na pravedne i povoljne uslove rada Obaveza *da se ispuni* zahtijeva od država da poduzmu odgovarajuce zakonodavne, administrativne, budžetske, sudske i druge mjere u cilju punog ostvarenja takvih prava Stoga, propust država da osiguraju suštinsku osnovnu zdravstvenu njegu siromašnima može predstavljati povredu prava

Obaveze ponašanja i ostvarenja rezultata

7 Obaveze da se poštuje, štiti i ispuni svaka za sebe sadrže elemente obaveze ponašanja i obaveze postizanja rezultata Obaveza ponašanja traži djelovanje, razumno sračunato u cilju ostvarenja uživanja pojedinog prava U slučaju prava na zdravlje, na primjer, obaveza ponašanja može značiti usvajanje i sprovođenje plana djelovanja u cilju smanjenja smrtnosti majki Obaveza rezultata traži od dižava da postignu specifične ciljeve kako bi zadovoljili pojedini bitni standard S obzirom na pravo na zdravlje, na primjer, obaveza rezultata zahtijeva smanjenje smrtnosti majki na nivoe dogovorene 1994 godine na Međunarodnoj konferenciji o populaciji i razvoju u Kairu i 1995 godine na Četvrtoj svjetskoj konferenciji o ženama u Pekingu

Granica diskrecije

8 Kao i u slučaju civilnih i političkih prava, države uživaju krajnju diskreciju u odabiru sredstava za implementaciju njihovih pojedinih obaveza Državna praksa i primjena pravnih

---

[2] Relevantni Limburški principi su slijedeci 70 Propust države potpisnice da se pridržava obaveze sadržane u Paktu, prema međunarodnom pravu, predstavlja povredu Pakta 71 Pri utvrđivanju onoga što čini propust u pridržavanju, treba se imati na umu da Pakt daje državi potpisnici krajnju diskreciju u odabiru sredstava za sprovođenje njenih ciljeva, te da faktori izvan njene razumne kontrole mogu suprotno uticati na njenu sposobnost da sprovede pojedina prava 72 Država potpisnica ce povrijediti Pakt, između ostalog, i ako a) ne poduzme mjeru koju Pakt od nje zahtijeva, b) hitno ne ukloni prepreke koje je dužna ukloniti kako bi omogucila hitno ispunjenje prava, c) ne sprovede bez odlaganja pravo koje je, prema Paktu obavezna hitno obezbijediti, d) svojevoljno ne ispuni opcenito usvojeni minimum međunarodnih standarda, koji su ispunjivi u okviru njene moci e) primijeni ograničenje na pravo priznato u Paktu na drugi način nego što je dopušteno Paktom, f) smišljeno usporava ili zaustavlja progresivno ostvarenje prava osim ako djeluje u okviru ograničenja dopuštenim od strane Pakta ili to čini zbog nedostatka raspoloživih resursa ili zbog više sile g) ne podnese izvještaje kako je to obavezna u skladu sa Paktom 73 U skladu sa međunarodnim pravom, svaka dizava potpisnica Pakta ima pravo da izrazi gledište da se druga država potpisnica ne pridržava svojih obaveza iz Pakta i da o tome obavijesti tu državu potpisnicu Bilo kakva nesuglasica koja bi na ovaj način nastala bice riješena u skladu sa relevantnim pravilima međunarodnog prava koja se tiču mirnog rješavanja nesuglasica Puni tekst Limburških principa je objavljen u UN Doc E/CN 4/1987/17, Annex Tekst je ponovo odštampan u Human Rights Quarterly br 9, str 122'35 (1987) i *Pregledu Međunarodnog suda pravde* br 37 decembar 1986, str 43, 43-55

therefore, to deal with the accountability of governments for failure to meet their obligations in this area

3 There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996) Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place

4 It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity Therefore, States are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights

5 As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty Building upon the Limburg Principles,[3] the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the Covenant') They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights

---

[3] The relevant Limburg Principles are the following 70 A failure by a State Party to comply with an obligation contained in the Covenant is under international law a violation of the Covenant 71 In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State Party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights 72 A State Party will be in violation of the Covenant *inter alia*, if a) it fails to take a step which it is required to take by the Covenant b) it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right c) it fails to implement without delay a right which it is required by the Covenant to provide immediately d) it wilfully fails to meet a generally accepted international minimum standard of achievement which is within its powers to meet e) it applies a limitation to a right recognised in the Covenant other than in accordance with the Covenant, f) it deliberately retards or halts the progressive realisation of a right unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*, g) it fails to submit reports as required under the Covenant 73 In accordance with international law each State Party to the Covenant has the right to express the view that another State Party is not complying with its obligations under the Covenant and to bring this to the attention of that State Party Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes The full text of the Limburg Principles was published in UN Doc E/CN 4/1987/17, Annex *Human Rights Quarterly* Vol 9 1987 pp 122-135 *Review of the International Commission of Jurists*, No 37, December 1986, pp 43-55

normi na konkretne slučajeve i situacije od strane tijela za pracenje međunarodnih ugovora, kao i od strane domacih sudova, doprinijeli su razvoju univerzalnih minimalnih standarda i opceg shvacanja obima, prirode i ograničenja ekonomskih, socijalnih i kulturnih prava Činjenica da se puno ostvarenje vecine ekonomskih, socijalnih i kulturnih prava može postici samo progresivno, što se, ustvari, takođe odnosi na vecinu civilnih i političkih prava, ne mijenja prirodu pravne obaveze država, koja zahtijeva hitno poduzimanje nekih, a što je moguce prije drugih koraka Zbog toga, teret je na državi da demonstrira da postiže mjerljiv napredak ka punom ostvarenju dotičnih prava Država ne može koristiti odredbe "progresivnog ostvarenja" iz Člana 2 Pakta kao izgovor za nepridržavanje Pakta Isto tako, država ne može opravdati odstupanja ili ograničenja prava priznatih u Paktu zbog različitih socijalnih, religioznih i kulturnih razloga

Minimalne osnovne obaveze

9 Povrede Pakta nastupaju kada država ne uspije da zadovolji ono što je Komitet za ekonomska, socijalna i kulturna prava označio kao "minimalnu osnovnu obavezu da se, kao najmanje, osigura zadovoljenje minimalnog bitnog nivoa svakog od prava Tako, na primjer, država potpisnica u kojoj je bilo koji značajan broj pojedinaca uskracen za osnovnu prehranu, osnovnu zdravstvenu zaštitu, osnovno sklonište i stanovanje, ili za najosnovniji oblik edukacije, *prima facie* vrši povredu Pakta "[3] Takve minimalne osnovne obaveze se primjenjuju bez obzira na dostupnost resursa dotične zemlje ili bilo kojih drugih faktora i teškoca

Dostupnost resursa

10 U mnogim slučajevima, pridržavanje ovih obaveza može kod vecine država biti postignuto sa relativnom lakocom i bez značajnijih implikacija po resurse U drugim slučajevima, međutim, puna realizacija prava može ovisiti o dostupnosti adekvatnih finansijskih i materijalnih resursa Međutim, kako je utvrđeno Limburškim principima 25-28 i potvrđeno razvijanjem propisa komiteta za ekonomska, socijalna i kulturna prava, nedovoljnost resursa ne skida sa država određeni minimum obaveza u vezi implementacije ekonomskih, socijalnih i kulturnih prava

Politika države

11 Povreda ekonomskih, socijalnih i kulturnih prava nastupa kada država slijedi, djelovanjem ili propuštanjem, politiku ili praksu koja se smišljeno suprotstavlja ili se neobazire na obaveze iz Pakta, ili kada propusti da postigne zahtijevani standard ponašanja i rezultata Osim toga, bilo kakva diskriminacija na temelju rase, boje, spola, jezika, religije, političkog ili drugog mišljenja, nacionalnog ili socijalnog porijekla, vlasništva, rođenja ili drugog statusa, u svrhu ili sa učinkom ništenja ili onemogucavanja jednakog uživanja ili vršenja ekonomskih, socijalnih i kulturnih prava, predstavlja povredu Pakta

Diskriminacija polova

12 Diskriminacija žena s obzirom na prava priznata Paktom se shvaca u svjetlu standarda jednakosti za žene, sadržanog u Konvenciji o eliminaciji svih oblika diskriminacije protiv žena Standard zahtijeva eliminaciju svih oblika diskriminacije žena, uključujuci diskriminaciju polova koja proističe iz socijalnog, kulturnog i drugog strukturalnog nepovoljnog položaja

Nemogucnost pridržavanja

---

[3] Vidi Komitet za ekonomska, socijalna i kulturna prava, Opci komentar br 3, 5 sjednica, 1990, UN Doc E/1991/23, Annex III, para 10

II The Meaning of Violations of Economic, Social and Cultural Rights

Obligations to Respect Protect and Fulfil

6 Like civil and political rights economic, social and cultural rights impose three different types of obligations on States the obligations to respect, protect and fulfil Failure to perform any one of these three obligations constitutes a violation of such rights The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights Thus, the right to housing is violated if the State engages in arbitrary forced evictions The obligation to *protect* requires States to prevent violations of such rights by third parties Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights Thus, the failure of States to provide essential primary health care to those in need may amount to a violation

Obligations of Conduct and of Result

7 The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result The obligation of conduct requires action reasonably calculated to realise the enjoyment of a particular right In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women

Margin of Discretion

8 As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights The fact that the full realisation of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realisation of the rights in question The State cannot use the 'progressive realisation' provisions in Article 2 of the Covenant as a pretext for non-compliance Nor can the State justify derogations or limitations of rights recognised in the Covenant because of different social, religious and cultural backgrounds

Minimum Core Obligations

9 Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights ( ) Thus, for example, a State Party in which any significant number of individuals is

13 Pri utvrđivanju djelovanja ili propuštanja koji predstavljaju povredu nekog ekonomskog, socijalnog ili kulturnog prava, važno je razlikovati nemogucnost od nedostatka volje od strane države da se pridižava svojih ugovornih obaveza Država koja tvrdi da nije u mogucnosti sprovesti svoje obaveze iz razloga izvan njene kontrole, nosi teret dokazivanja da se zaista radi o takvom slučaju Na primjer, privremeno zatvaranje jedne obrazovne institucije zbog zemljotresa, bila bi okolnost izvan kontrole države, dok bi eliminacija šeme socijalne sigurnosti bez adekvatnog programa kao zamjene mogla biti primjer nedostatka volje od strane države da ispuni svoje obaveze

Povrede nastale putem opunomocenja

14 Povrede ekonomskih, socijalnih i kulturnih prava mogu uslijediti putem direktnog djelovanja dižave ili drugih entiteta, nedovoljno reguliranih od strane države Primjeri takvih povreda uključuju

a) Formalno uklanjanje ili suspenziju propisa neophodnih za kontinuirano uživanje ekonomskih, socijalnih i kulturnih prava koja se trenutno uživaju,

b) Aktivno negiranje takvih prava određenim pojedincima ili grupama, bilo kroz zakonodavnu ili prisilnu diskriminaciju,

c) Aktivna podrška mjerama usvojenim od strane trecih strana, koje su nekonzistentne sa ekonomskim, socijalnim i kulturnim pravima,

d) Usvajanje propisa ili politike koji su očito nekompatibilni sa ranije postojecim pravnim obavezama s obzirom na ova prava, osim ako je to učinjeno sa namjerom i učinkom povecanja jednakosti i unapređenja realizacije ekonomskih, socijalnih i kulturnih prava za najugroženije grupe,

e) Usvajanje bilo kakve smišljeno retrogresivne mjere, koja umanjuje razmjeru garantovanja bilo kojeg takvog prava,

f) Sračunato ometanje ili zaustavljanje progresivne realizacije prava zaštićenog Paktom osim ako država djeluje u okviru ograničenja dopuštenog paktom, ili to čini zbog manjka dostupnih resursa ili zbog više sile,

g) Smanjenje ili preusmjeravanje specifičnih javnih izdataka, ako takvo smanjenje ili preusmjeravanje rezultira u neuživanju tih prava i nije popraceno adekvatnim mjerama za osiguranje minimalnih životnih prava za svakoga

Povrede nastale propuštanjem

15 Povrede ekonomskih, socijalnih i kulturnih prava također mogu nastati propuštanjem ili propustom države da poduzme neophodne mjere koje proističu iz pravnih obaveza Primjeri takvih povreda uključuju

a) Propust da se poduzmu odgovarajuci koraci propisani Paktom,

b) Propust da se reformira ili opozve propis koji je očito nekonzistentan sa obavezom Pakta,

c) Propust da se sprovede propis ili politika kreirana u cilju implementacije odredaba Pakta,

deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, violating the Covenant "[4] Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties

Availability of Resources

10 In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications In other cases, however, full realisation of the rights may depend upon the availability of adequate financial and material resources Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights

State Policies

11 A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant

Gender Discrimination

12 Discrimination against women in relation to the rights recognised in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination Against Women That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages

Inability to Comply

13 In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations

Violations through Acts of Commission

14 Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States Examples of such violations include

---

[4] See Committee on Economic Social and Cultural Rights, *General Comment No 3 (Fifth session 1990)*, UN Doc E/1991/23 Annex III paragraph 10

d) Propust da se regulišu aktivnosti pojedinaca ili grupa kako bi ih se spriječilo da više povrede ekonomskih, socijalnih i kulturnih prava,

e) Propust da se iskoristi maksimum dostupnih resursa u cilju pune realizacije Pakta,

f) Propust da se prati realizacija ekonomskih, socijalnih i kulturnih prava, uključujući razvoj i primjenu kriterija i indikatora za procjenu pridržavanja,

g) Propust da se hitno uklone prepreke koje je država dužna ukloniti kako bi se omogućilo hitno ispunjenje prava garantovanog Paktom,

h) Propust da se bez odlaganja sprovede pravo koje je država, na osnovu Pakta, dužna hitno obezbijediti,

i) Propust da se ispuni općenito prihvaćeni međunarodni minimalni standard, koji je u okviru moći države,

j) Propust države da uzme u obzir svoje međunarodne pravne obaveze u oblasti ekonomskih, socijalnih i kulturnih prava kada stupa u bilateralne ili multilarne sporazume sa drugim državama, međunarodnim organizacijama ili multinacionalnim korporacijama

III Odgovornost za povrede

Odgovornost države

16 Povrede spomenute u poglavlju II se, u principu, mogu pripisati onoj državi unutar čije se jurisdikcije dogode Kao posljedica toga, odgovorna država mora uspostaviti mehanizme za korekciju takvih povreda, uključujući praćenje istraga, sudskog postupanja i pravnih lijekova za žrtve

Strana dominacija ili okupacija

17 U uslovima strane dominacije, uskraćivanja ekonomskih, socijalnih i kulturnih prava mogu se pripisati ponašanju države koja vrši efektivnu kontrolu nad dotičnom teritorijom Ovo je slučaj u uvjetima kolonijalizma, drugih oblika strane dominacije i vojne okupacije Dominirajuća ili okupirajuća sila snosi odgovornost za povrede ekonomskih, socijalnih i kulturnih prava Postoje, također, i okolnosti u kojima države, djelujući složno, vrše povredu ekonomskih, socijalnih i kulturnih prava

Radnje nedržavnih entiteta

18 Obaveza da se štiti uključuje odgovornost države da osigura da privatni entiteti ili pojedinci uključujući transnacionalne korporacije nad kojima imaju jurisdikciju, ne uskraćuju pojedincima njihova ekonomska, socijalna i kulturna prava Države su odgovorne za povrede ekonomskih, socijalnih i kulturnih prava koja rezultiraju iz njihovog propusta da revno vrše kontrolu ponašanja takvog nedržavnog počinitelja

Radnje međunarodnih organizacija

19 Obaveze država da štite ekonomska, socijalna i kulturna prava se proširuju, također, i na njihovo učešće u međunarodnim organizacijama, gdje djeluju kolektivno Posebno je važno za države da koriste svoj uticaj kako bi osigurale da povrede ne rezultiraju iz programa i politike organizacija čiji su one članovi Od suštinskog je značaja za eliminaciju povreda

(a) the formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed,
(b) the active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination,
(c) the active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights,
(d) the adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realisation of economic, social and cultural rights for the most vulnerable groups,
(e) the adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed,
(f) the calculated obstruction of, or halt to, the progressive realisation of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*,
(g) the reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone

Violations through Acts of Omission

15 Violations of economic, social and cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations Examples of such violations include

(a) the failure to take appropriate steps as required under the Covenant,
(b) the failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant,
(c) the failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant,
(d) the failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights,
(e) the failure to utilise the maximum of available resources towards the full realisation of the Covenant,
(f) the failure to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance,
(g) the failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant,
(h) the failure to implement without delay a right which it is required by the Covenant to provide immediately,
(i) the failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet,
(j) the failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organisations or multinational corporations

175

ekonomskih socijalnih i kulturnih prava za međunarodne organizacije, uključujući i međunarodne finansijske institucije, da korigiraju svoju politiku i praksu tako da one ne rezultiraju u uskraćenju ekonomskih, socijalnih i kulturnih prava Države, članice ovakvih organizacija, pojedinačno ili kroz vladajuća tijela, kao i sekretarijat i nevladine organizacije, trebale bi podsticati i generalizirati trend da nekoliko takvih organizacija revidiraju svoju politiku i programe, kako bi uzeli u obzir pitanja ekonomskih, socijalnih i kulturnih prava posebno kada se ova politika i programi sprovode u zemljama kojima nedostaje resursa da bi se odupriješli pritisku međunarodnih institucija na njihovo odlučivanje u vezi ekonomskih, socijalnih i kulturnih prava

IV Žrtve povreda

Pojedinci i grupe

20 Kao što je slučaj i sa civilnim i političkim pravima, i pojedinci i grupe mogu biti žrtve povreda ekonomskih, socijalnih i kulturnih prava Određene grupe trpe neproporcionalnu štetu u ovom pogledu, kao što su grupe sa slabijim primanjima, žene, domorodački i plemenski narodi, okupirano stanovništvo, tražioci azila, izbjeglice i domace razmještene osobe, manjine, starije osobe, djeca, seljaci bez zemlje, hendikepirane osobe i beskućnici

Krivične sankcije

21 Žrtve povreda ekonomskih, socijalnih i kulturnih prava se ne bi trebale suočavati sa krivičnim sankcijama samo iz razloga njihovog statusa kao žrtava, na primjer, putem zakona koji kriminalizira osobu zbog toga što je beskućnik Isto tako, niko ne bi trebao biti kažnjen zbog zahtjeva za uživanje njegovih ekonomskih, socijalnih i kulturnih prava

V Pravna sredstva i drugi odgovori na povrede

Pristup pravnim sredstvima

22 Bilo koja osoba ili grupa, koja je žrtva povrede nekog ekonomskog, socijalnog ili kulturnog prava, bi trebala imati pristup efikasnim sudskim ili drugim odgovarajućim sredstvima, kako na domacem tako i na međunarodnom nivou

Adekvatna odšteta

23 Sve žrtve povreda ekonomskih, socijalnih i kulturnih prava su ovlaštene na adekvatnu odštetu, koja može imati oblik restitucije, kompenzacije, rehabilitacije i satisfakcije ili garancija da se one nece ponoviti

Nedopustivost oficijelnog sankcioniranja povreda

24 Nacionalni sudski i drugi organi moraju osigurati da bilo kakva proglašenja koja oni učine ne rezultiraju u oficijelnom sankcioniranju povrede neke međunarodne obaveze dotične države Kao minimum nacionalna sudstva bi trebala razmotriti relevantne odredbe međunarodnog i regionalnog prava o ljudskim pravima, kao tumačece sredstvo u formuliranju bilo kakvih odluka u vezi povreda ekonomskih, socijalnih i kulturnih prava

Nacionalne institucije

25 Promotivna i tijela za praćenje, kao što su institucije nacionalnog ombudsmena i komisije za ljudska prava, trebali bi odgovoriti na povrede ekonomskih, socijalnih i kulturnih prava isto onako vigorozno kako odgovaraju na povrede civilnih i političkih prava

III Responsibility for Violations

State Responsibility

16 The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims

Alien Domination or Occupation

17 Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question This is true under conditions of colonialism, other forms of alien domination and military occupation The dominating or occupying power bears responsibility for violations of economic, social and cultural rights There are also circumstances in which States acting in concert violate economic, social and cultural rights

Acts by Non-State Entities

18 The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors

Acts by International Organisations

19 The obligations of States to protect economic, social and cultural rights extend also to their participation in international organisations, where they act collectively It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organisations of which they are members It is crucial for the elimination of violations of economic, social and cultural rights for international organisations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights Member States of such organisations, individually or through the governing bodies, as well as the secretariat and non-governmental organisations should encourage and generalise the trend of several such organisations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights

IV Victims of Violations

Individuals and Groups

20 As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced

Domaca primjena međunarodnih instrumenata

26 Direktno uključivanje ili primjena međunarodnih instrumenata kojima se priznaju ekonomska socijalna i kulturna prava u domaci pravni poredak, mogu značajno poboljšati obim i efikasnost pravnih sredstava i trebaju, u svakom slučaju, biti ohrabrivani

Nekažnjivost

27 Države trebaju razviti efikasne mjere kako bi isključile mogucnost nekažnjavanja bilo koje povrede ekonomskih, socijalnih i kulturnih prava i osigurale da nijedna osoba koja bi mogla biti odgovorna za povrede tih prava nema imunitet od odgovornosti za svoje radnje

Uloga pravničkih profesija

28 Kako bi se postigla efikasna sudska i druga sredstva za žrtve povreda ekonomskih, socijalnih i kulturnih prava, advokati, sudije, advokatska udruženja i pravna zajednica bi trebali posvecivati opcenito mnogo više pažnje ovim povredama u vršenju njihovih profesija, kako je preporučeno od strane Međunarodne komisije pravnika u deklaraciji iz Bangalorea i Planu djelovanja iz 1995 godine [4]

Specijalni izvjestitelji

29 Radi daljeg jačanja međunarodnih mehanizama za spriječavanje, rano otkrivanje, pracenje i uklanjanje povreda ekonomskih, socijalnih i kulturnih prava, UN Komisija za ljudska prava ce imenovati tematske Specijalne izvjestitelje o ovoj oblasti

Novi standardi

30 Kako bi se dalje pojasnio sadržaj obaveza država da poštuju, štite i ispune ekonomska, socijalna i kulturna prava države i odgovarajuca međunarodna tijela bi trebala aktivno slijediti usvajanje novih standarda za specifična ekonomska, socijalna i kulturna prava, posebno prava na rad, na hranu, na stanovanje i na zdravlje

Opcionalni protokoli

31 Opcionalni protokol koji osigurava pojedincima i grupi žalbe u vezi prava priznatih Paktom trebao bi biti usvojen i ratifikovan bez odlaganja Predloženi opcionalni protokol Konvencije o eliminaciji svih oblika diskriminacije žena bi trebao osigurati da se posveti jednaka pažnja povredama ekonomskih, socijalnih i kulturnih prava Osim toga, trebalo bi se razmotriti sačinjavanje nacrta opcionalne procedure žalbi, prema Konvenciji o pravima djeteta

Dokumentovanje i pracenje

32 Dokumentovanje i pracenje povreda ekonomskih, socijalnih i kulturnih prava bi trebalo biti vršeno od strane svih relevantnih učesnika, uključujuci nevladine organizacije, nacionalne vlade i međunarodne organizacije Prijeko je potrebno da relevantne međunarodne organizacije pruže podršku neophodnu za implementaciju međunarodnih instrumenata u ovoj oblasti Mandat Visokog komesara Ujedinjenih Nacija za ljudska prava uključuje promociju ekonomskih, socijalnih i kulturnih prava i od suštinskog je značaja da se hitno poduzmu efikasni koraci i da adekvatano osoblje i finansijski resursi budu posveceni ovom cilju Specijalizovane agencije i druge međunarodne organizacije koje rade u ekonomskoj i socijalnoj sferi bi , također trebale staviti odgovarajuci naglasak na ekonomska, socijalna i kulturna prava kao prava, a tamo gdje to vec ne čine, doprinijeti naporima da se odgovori na povrede ovih prava

---

[4] *Deklaracija iz Bangalorea i Plan za djelovanje (1995) reprint u Pregledu Međunarodnog suda pravde br 55*, decembar 1995 , str 219, 219-27

persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless

Criminal Sanctions
21 Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalising persons for being homeless Nor should anyone be penalised for claiming their economic, social and cultural rights

V Remedies and Other Responses to Violations

Access to Remedies
22 Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels

Adequate Reparation
23 All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition

No Official Sanctioning of Violations
24 National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aide in formulating any decisions relating to violations of economic, social and cultural rights

National Institutions
25 Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights

Domestic Application of International Instruments
26 The direct incorporation or application of international instruments recognising economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases

Impunity
27 States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions

Role of the Legal Professions
28 In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995 [5]

Special Rapporteurs
29 In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field

New Standards
30 In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health

Optional Protocols
31 The optional protocol providing for individual and group complaints in relation to the rights recognised in the Covenant should be adopted and ratified without delay The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child

Documenting and Monitoring
32 Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organisations It is indispensable that the relevant international organisations provide the support necessary for the implementation of international instruments in this field The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective Specialised agencies and other international organisations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights

180

[5] Reproduced in *ICJ Review*, No 55, December 1995, pp 219-227

CONVENTION No 111

Convention concerning Discrimination in Respect of Employment and Occupation [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958 and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958

Article 1

1 For the purpose of this Convention the term "discrimination" includes—

(a) any distinction, exclusion or preference made on the basis of race, colour sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation ,

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies

2 Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination

3 For the purpose of this Convention the terms " employment ' and " occupation ' include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to

[1] Date of coming into force 15 June 1960

KONVENCIJA BROJ 111

KOJA SE ODNOSI NA DISKRIMINACIJU U POGLEDU ZAPOŠLJAVANJA I ZANIMANJA 1958

Generalna konferencija Međunarodne organizacije rada

koju je sazvao u Zenevi Administrativni savet Međunarodnog biroa rada i koja se sastala 4 jula 1958 godine u svoje cetrdeset drugo zasedanje

posto je odlucila da ovi predlozi dobiju formu međunarodne konvencije u pogledu zaposljavanja i zanimanja pitanje koje predstavlja cetvrtu tacku dnevnog reda zasedanja

posto je odlucila da ovi predlozi dobiju formu međunarodne konvencije

smatrajuci da Filadelfijska deklaracija potvrđuje da sva ljudska bica bez obzira na rasu veroispovest ili pol imaju prava na svoj materijalni napredak i svoj duhovni razvoj u slobodi i dostojanstvu u ekonomskoj obezbeđenosti i sa jednakim mogucnostima

smatrajuci među ostalim da diskriminacija predstavlja povredu prava navedenih u Opstoj deklaraciji o pravima coveka

usvaja na dan 25 juna hiljadu devetstotina pedeset osme godine donju konvenciju koja ce biti nazvana Konvencija koja se odnosi na diskriminaciju (uposljavanja i zanimanje) 1958

Član 1

1 Za primenu ove konvencije izraz diskriminacija podrazumeva

a) svako pravljenje razlike isključenje ili davanje prvenstva zasnovanog na rasi boji polu veri politickom mišljenju nacionalnom ili socijalnom poreklu koji idu za tim da unište ili naruse jednakost mogucnosti ili postupanja u pogledu zaposljavanja ili zanimanja

b) svako drugo pravljenje razlike iskljucenje ili davanje prvenstva koje ide za tim da uniste ili narusi jednakost mogucnosti ili postupanja u pogledu upošljavanja ili zanimanja koje ce moci poimenice naznaciti zainteresovana drzava članica nakon konsultovanja pred stavnickih organizacija poslodavaca i radnika ako one postoje i drugih odgovarajucih organa

2 Pravljenje razlika iskljucenje ili davanje prvenstva koje se zasnivaju na trazenim kval ifikacijama za neko određeno zaposlenje nisu smatrani kao diskriminacija

3 Za primenu ove konvencije reci uposljavanje i zanimanje podrazumevaju pristup strucnom osposobljavanju pristup zaposljavanju i raznim zanimanjima kao i uslove zaposlenja

Član 2

Svaka drzava članica za koju je ova konvencija na snazi obavezuje se da formuliše i sprovodi nacionalnu politiku koja tezi da unapredi pomocu metoda prilagođenih nacionalnim uslovima i običajima jednakost mogucnosti i postupka u pogledu zapošljavanja i zanimanja u cilju otklanjanja svake diskriminacije u tom pogledu

Član 3

Svaka drzava clanica za koju je ova konvencija na snazi treba na nacin prilagođen nacionalnim prilikama i običajima

a) da nastoji da uspostavi saradnju sa organizacijama poslodavaca i radnika i ostalim odgovarajucim organizmima u cilju prihvatanja i sprovođenja ove politike

b) da donosi zakone i podstice donosenje programa za osposobljavanje kojima bi se obezbedilo prihvatanje i sprovođenje ove politike

c) da ukine svaku zakonsku odredbu i da izmeni svaku administrativnu odredbu ili pra ksu koja se ne slaze sa pomenutom prilikom

182

national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy ,

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy ,

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy ,

(d) to pursue the policy in respect of employment under the direct control of a national authority ,

(e) to ensure observance of the policy in the activities of vocational guidance vocational training and placement services under the direction of a national authority ,

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action

Article 4

Any measures affecting an individual who is justifiably suspected of or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice

Article 5

1 Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination

2 Any Member may, after consultation with representative employers' and workers organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation

*
* *

Articles 7 14 Standard final provisions [1]

[1] See Appendix I

d) da sprovodi ovu politiku u pogledu uposljavanja pod direktnom kontrolom neke nacionalne vlasti

e) da obezbedi sprovođenje ove politike u delatnostima sluuzbi za profesionalnu orijentaciju (za strucno osposobljavanje) i za uposljavanje pod kontrolom neke nacionalne vlasti

f) da naznaci u svojim godisnjim izvestajima o primeni ove Konvencije mere koje su preduzete saglasno ovoj politici kao i postignute rezultate

Član 4

Ne smatraju se kao diskriminacije sve mere namenjene nekom licu koje je individualno predmet neke opravdane sumnje da sprovodi delatnost stetnu po sigurnost drzave ili za koje je ustanovljeno da se uistinu odaje ovoj aktivnosti ukoliko pomenuto lice ima prava da pribegne nekom nadleznom organu ustanovljenom prema nacionalnoj praksi

Clan 5

1 Posebne mere zastite ili pomoci predviđene u drugim konvencijama ili preporukama koje je usvojila Međunarodna konferencija rada, ne smatraju se kao diskriminacije

2 Svaka drzava clanica moze posle konsultovanja predstavnickih organizacija poslodavaca i radnika ako one postoje definisati kao nediskriminacione sve ostale posebne mere koje su namenjene da se vodi racuna o posebnim potrebama lica za koje je zastita ili neka posebna pomoc uopste priznata kao potrebna iz razloga kao sto su pol godine invalidnost porodicne obaveze ili socijalni ili kulturni nivo

Clan 6

Svaka drzava clanica koja ratifikuje ovu konvenciju obavezuje se da ce je primenjivati na svoje nemetropolske teritorije saglasno odredbama Ustava Međunarodne organizacije rada

Clan 7

Ratifikacije ove konvencije bice dostavljene generalnom direktoru Međunarodnog biroa rada koji ce ih registrovati

Clan 8

1 Ova konvencija obavezivace samo drzave clanice Međunarodne organizacije rada čiju ratifikaciju bude registrovao generalni direktor

2 Ona ce stupiti na snagu dvanaest meseci od dana kad generalni direktor bude registrovao ratifikacije drzava clanica

3 Posle toga ova konvencija ce stupiti na snagu za svaku drzavu clanicu dvanaest meseci od dana registrovanja njene ratifikacije

Clan 9

1 Svaka drzava clanica koja bude ratifikovala ovu konvenciju moze da je otkaze po isteku perioda od 10 godina od dana pocetnog stupanja na snagu Konvencije aktom dostavljenim generalnom direktoru Međunarodnog biroa rada koji je on registrovao Otkaz ce stupiti na snagu tek po isteku godine dana od dana njegovog registrovanja

2 Svaka drzava clanica koja ratifikuje ovu konvenciju i koja se godinu dana po isteku perioda od deset godina pomenutog u prethodnom paragrafu ne koristi pravom otkaza predviđenog ovim clanom bice vezana za novi period od deset godina u uslovima predviđenim u ovom clanu

Clan 10

1 Generalni direktor Međunarodnog biroa rada obavestice sve drzave clanice Međunarodne organizacije rada o registrovanju svih ratifikacija i otkaza koje mu budu dostavile drzave clanice Organizacije

2 Notifikujuci drzavama clanicama Organizacije registrovanje druge ratifikacije koja ce mu biti podnesena generalni direktor skrenuce paznju drzavama clanicama Organizacije na to koga dana ce ova konvencija stupiti na snagu

Clan 11

Generalni direktor Međunarodnog biroa rada dostavice generalnom sekretaru Ujedinjenih nacija radi registrovanja saglasno clanu 102 Povelje Ujedinjenih nacija potpuna obavestenja o svim ratifikacijama i o svim otkazima koje bude registrovao saglasno prednjim clanovima

Clan 12

Svaki put kad bude smatrao potrebnim Administrativni savet Međunarodnog biroa rada dostavice Generalnoj konferenciji izvestaj o primeni ove konvencije i razmotrice da li je potrebno da se unese u dnevni red konferencije pitanje njene potpune ili delimicne revizije

Clan 13

1 U slucaju da konferencija usvoji novu konvenciju kojom se potpuno ili delimicno revidira ova konvencija i ukoliko nova konvencija ne odredi drukcije

a) ratifikacija od strane neke drzave clanice nove konvencije o reviziji povlaci po sili zakona bez obzira na gornji clan 9 neposredni otkaz ove konvencije pod uslovom da nova revidirana konvencija stupi na snagu

b) pocev od datuma stupanja na snagu nove revidirane konvencije ova konvencija prestace da bude otvorena za ratifikaciju drzava clanica

2 Ova konvencija ce ostati u svakom slucaju na snazi u svojoj formi i sadrzati za drzave clanice koje je budu ratifikovale a koje ne budu ratifikovale revidiranu konvenciju

184.

ASSOCIATION OF INDEPENDENT TRADE UNIONS OF BOSNIA AND HERZEGOVINA

No
Sarajevo 9 October 1998

INTERNATIONAL LABOUR ORGANISATION
- Director-General -

GENEVA

SUBJECT Complaint against Violation of Convention No 111 concerning discrimination in employment

The Association of Independent Trade Unions of Bosnia and Herzegovina hereby conveys its complaint against the flagrant violation of the Convention No 111 in the factories Aluminij" and "Soko ' Mostar, Bosnia and Herzegovina, from which all Serb and Bosniak employees have been dismissed, and only Croat employees hired for the jobs We ask the ILO Director-General and Administrative Board to take all the measures, in accordance with the ILO Constitution other acts and their powers, to reinstate in the jobs the employees who were dismissed because of their nationality

Explanation

Six hundred employees of the factory "Aluminij" Mostar and 950 employees of "Soko" Mostar were dismissed because they were Serb or Bosniak, they were actually physically prevented from entering the factory The managements of these factories gave the employees absolutely no written documents stating that they were dismissed from their jobs

One section of the factory "Aluminij" Mostar BiH was opened after the war by the President of the Republic of Croatia, Dr Franjo Tudman, and the Director of the Factory, Mr Mijo Brajkovic, stated that "this is the factory of the people who are currently working here" Most of the employees working there at that moment - who were all Croat - had never before worked at the factory or lived in Mostar, they were hired for the jobs of the dismissed Serbs and Bosniaks

The non-Croat employees of "Soko" Mostar were also dismissed and are not allowed to have access to the factory

The Association of Independent Trade Unions of Bosnia and Herzegovina the Trade Union of Metallurgic Industry Workers of Bosnia and Herzegovina and the syndicate organisation of the dismissed workers of "Soko" and Aluminij ' have taken all the measures in BiH, yet have not succeeded in resolving the problem

SAVEZ SAMOSTALNIH SINDIKATA BOSNE I HERCEGOVINE
UNION OF AUTONOMOUS TRADE UNIONS OF BOSNIA AND HERZEGOVINA

Broj

Sarajevo 09 oktobra 1996 godine

MEDJUNARODNA ORGANIZACIJA RADA
- generalnom direktoru -

Ž E N E V A

PREDMET Pritužba zbog kršenja Konvencije br 111 koja se odnosi na diskriminaciju u pogledu zapošljavanja i zanimanja

Savez samostalnih sindikata Bosne [illegible] podnosi pritužbu zbog potpunog [illegible] i Hercegovina iz kojih su otpušteni svi radnici s psk[illegible] bosnjačke nacionalnosti a na njihova radna mjesta zaposleni isključivo radnici hrvatske nacionalnosti i zahtjeva od generalnog direktora i Administrativnog tijela MOR-a da u skladu sa Ustavom MOR-a drugim aktima i svojim ovlaštenjima poduzmu sve mjere da se radnici otpušteni zbog svoje nacionalne pripadnosti vrate na posao

Obrazloženje

600 radnika fabrike "Aluminij" - Mostar 950 radnika "Soko" Mostar - Bosna i Hercegovina otpušteni su s posla zato što su srpske ili bosnjačke nacionalnosti i to tako što im se fizički zabranio ulazak u fabrike Poslovodstvo ovih fabrika nije radnicima dalo apsolutno nikakve pisane dokumente da su otpušteni s posla

Dio fabrike "Aluminij" Mostar Bid je [illegible] rata otvorio predsjednik Republike Hrvatske dr Franjo Tuđman a direktor fabrike gosp Mijo Brajković izjavio "ovo je fabrika ljudi koji trenutno ratuju u rovovima" Većina zaposlenih radnika u tom trenutku - isključivo Hrvata nikada nije [illegible] u toj fabrici niti izvjesno u Mostaru. Već su zaposleni na radna mjesta otpuštenih radnika s psk[illegible] i bosnjačke nacionalnosti

Adresa Obala Kulina bana I Sarajevo Bosna i Hercegovina
Telefon
Kabinet predsjednika [illegible] 87 71 [illegible] 20 [illegible]
Stručna služba 668 700 [illegible]
[illegible] 664 871 [illegible]

1 The Directors of the factories - Mr Mijo Brajkovic of "Aluminij" and Dragan Čovic of "Soko" - did not allow the Trade Unions representatives to enter the factories, neither did they want to talk,

2 A request has been submitted with the Federation Labour Inspection, in accordance with the law and the ILO Convention No 81, asking for their inspectional supervision and establishment of the state of facts However, the Labour Inspectors of the Herzegovina-Neretva Canton Ministry of Labour and Social Policy tried upon the order of the Federation Inspection, to ensure joint control, but without success The Deputy Cantonal Minister of Labour and Social Policy, Mr Ljubo Zovko, who was obliged to provide this control, did not do it As a result, neither the Federation Inspection nor that of the Canton was allowed to enter the factory to conduct the control

Evidence Letter from the Cantonal Inspection No 04-149/98 of 18 February 1998 and No 04-185/98 of 27 February 1998,

3 The Association of Independent Trade Unions of Bosnia and Herzegovina and the Trade Union of Metallurgic Industry Workers of Bosnia and Herzegovina have tried to obtain more precise information through the Trade Union "Pechineya", France, as this French firm has a contract with "Aluminij" for servicing and maintenance of equipment and sale of metal The letter we received from Mr Claude Lable, member of the Administrative Council of 'Pechiney', France, says of the situation at the factory in Mostar that "the Croats do not wish to have the Muslims at the Factory" and that "for these reasons, 'Pechiney' does not wish to renew the Contract for equipment servicing and sale of metal, so that their reserves are full"

Evidence Letter from Mr Claude Lable,

4 Trying to resolve this issue, the Association of Independent Trade Unions of Bosnia and Herzegovina, the Trade Union of Metallurgic Industry Workers of Bosnia and Herzegovina and the syndicate organisation of the dismissed Serb and Bosniak workers also approached

- the BiH Federation Government, and had talks with Prime Minister Edhem Bičakčic,
- the BiH Council of Ministers, and had talks with the Co-Chair, Mr Haris Silajdžic, because the state of BiH is a signatory to the Convention No 111 and this concerns workers who are currently living in the territories of the Federation BiH and Republika Srpska,
- Mr Carlos Westendorp, the High Representative, whose obligation is to supervise the implementation of all the provisions of the Dayton Agreement and exercise of equal rights for all BiH citizens, and, in this context, to take all measures to prevent discrimination on any, particularly on ethnic, grounds

The delegations of the Syndicates of the "Aluminij" and "Soko" factories also had talks on this matter with the Deputy High Representative Mr Jacques Klein and received promises that he would "try to resolve the problem"

However, despite the requests of the Association of Independent Trade Unions of Bosnia and Herzegovina, the Trade Union of Metallurgic Industry Workers of Bosnia and Herzegovina and the syndicate organisation of the dismissed workers of the Mostar "Aluminij" and "Soko" factories submitted to all legal institutions in BiH,

Radnici nehrvatske nacionalnosti u fabrici "Soko" Mostar su takodje otpusteni i onemogucavaju im se pristup u fabriku.

Savez samostalnih sindikata Bosne i Hercegovine, Sindikat metalaca Bosne i Hercegovine i sindikalne organizacije otpustenih radnika fabrika "Soko" i "Aluminij" poduzeli su sve mjere u BiH, ali nisu uspjeli riješiti problem.

1. Direktori ovih fabrika gosp. Mino Brajkovic - "Aluminij" i Dragan Covic - "Soko" Mostar nisu dozvolili ulazak u fabrike predstavnicima Sindikata, niti su željeli razgovarati.

2. Federalnoj inspekciji rada upucen je zahtjev da u skladu sa Zakonom i Konvencijom MOR-a br. 81. izvrši inspekcijski nadzor i utvrdi činjenično stanje. Medjutim, inspektori rada kantonalnog ministarstva rada i socijalne politike Hercegovačko-neretvanskog kantona su, po nalogu Federalne inspekcije pokušali obezbijediti zajedničku kontrolu, ali to nisu uspjeli. Zamjenik ministra kantonalnog ministarstva rada i socijalne politike gosp. Lubo Zovko koji je bio dužan obezbijediti ovu kontrolu nije to ucinio, tako da ni Federalnoj ni kantonalnoj inspekciji nije dozvoljen ulazak u fabriku niti kontrolni pregled.

Dokaz: Dopis kantonalne inspekcije br. 04-149/98 od 18.02.1998. i 04-185/ 27.02.1998. godine.

3. Savez samostalnih sindikata Bosne i Hercegovine i Sindikat metalaca BiH pokusali su da do potpunih informacija dodju putem Sindikata "Pechineya" - Francuska jer ova francuska firma ima ugovor sa fabrikom "Aluminij" o servisiranju i održavanju tehnike i prodaje metala. U pismu dobivenom od gosp. Lable Claude - clana Vijeća Administracije Pechiney - Francuska, o situaciji u fabrici u Mostaru stoji "Hrvati ne zele Muslimane u Fabrici" "iz tih razloga Pechiney ne zeli obnoviti ugovor o servisiranju tehnike i prodaje metala tako da su njihove zalihe pune".

Dokaz: pismo gosp. Lable Claude.

4. Savez samostalnih sindikata Bosne i Hercegovine, Sindikat metalaca BiH i sindikalne organizacije otpuštenih radnika srpske i bošnjačke nacionalnosti u rjesavanju ovog pitanja obracali su se i:

- Vladi Federacije BiH i imali razgovore sa premijerom Edhemom Bicakcicem
- Ministarskom vijecu BiH i razgovarali sa gosp. Harisom Silajdzicem, kopredsjedavajucim jer je potpisnik Konvencije br. 111 drzava BiH i radi se o radnicima koji danas žive i na području Federacije BiH i Republike Srpske,
- Gosp. Karlosu Vestendorpu - Visokom predstavniku cija je obaveza da nadgleda sprovodjenje svih odredbi Dejtonskog sporazuma i ostvarivanje jednakih prava za sve gradjane BiH i u tom kontekstu preduzima sve mjere za sprjecavanje diskriminacije ljudi po bilo kom a posebno nacionalnom osnovu

the discriminatory policy of the Directors Mijo Brajkovic and Dragan Čovic continues

The Association of Independent Trade Unions of Bosnia and Herzegovina and the Trade Union of Metallurgic Industry Workers of Bosnia and Herzegovina cannot ensure application of the Convention 111 through the legal authorities in BiH We therefore ask the ILO Director-General to initiate the procedure, in accordance with Article 24 of the ILO Constitution, and take measures to prevent violations of the said Convention and reinstate in their jobs the Serb and Bosniak workers dismissed on account of their nationality

Respectfully,

signed by
PRESIDENT
OF BiH TRADE UNION
OF METALLURGIC INDUSTRY WORKERS
Ismet Bajramovic

PRESIDENT
OF BiH ASSOCIATION
OF INDEPENDENT T UNIONS
Sulejman Hrle

ATTACHMENT Available documentation as evidence

cc
- ILO, Director-General, Geneva
- ETUC, Director-General, Brussels,
- ITCTU, Director-General Brussels

Delegacije Sindikata fabrika "Aluminij" i "Soko" Mostar obavile su razgovor o ovome i sa zamjenikom Visokog predstavnika gosp Žakom Kijnom i dobili su obecanje da ce "pokušati riješiti problem".

Medjutim, i pored zahtjeva Saveza samostalnih sindikata Bosne i Hercegovine, Sindikata metalaca BiH, sindikata otpustenih radnika fabrika "Aluminij" i "Soko" Mostar svim legalnim institucijama u BiH, diskriminatorska politika direktora Mije Brajkovića i Čovic Dragana se nastavlja

Savez samostalnih sindikata Bosne i Hercegovine i Sindikat metalaca BiH ne mogu da obezbjede primjenu Konvencije 111 putem legalnih organa vlasti u BiH, te stoga od generalnog direktora Medjunarodne organizacije rada zahtijevaju da, u skladu sa članom 24 Ustava MOR-a pokrenu postupak i preduzmu mjere za sprecavanje kršenja navedene Konvencije i povratak na posao radnika otpuštenih s posla zbog pripadnosti srpskoj i bošnjačkoj nacionalnosti.

S poštovanjem,

PREDSJEDNIK
SINDIKATA METALACA BiH
Ismet Bajramović

SINDIKAT METALACA BOSNE I HERCEGOVINE SARAJEVO

PREDSJEDNIK
SAVEZA SAMOSTALNIH SINDIKATA BiH
Sulejman Hrle

PRILOG Raspoloživa dokumentacija kao dokaz

DOSTAVLJENO

- MOR - generalnom direktoru - Ženeva,
- ETUC - generalnom sekretaru - Brisel,
- IFCTU - generalnom sekretaru - Brisel

BRIEF OF *AMICUS CURIAE*
TO THE HUMAN RIGHTS CHAMBER OF BOSNIA AND HERZEGOVINA
SUBMITTED BY THE INTERNATIONAL HUMAN RIGHTS LAW GROUP
IN RESPECT OF AN APPLICATION BY SAKIB ZAHIROVIÆ
Case No CH/97/67 (v BiH and the Federation of BiH)
14 December 1998

INTRODUCTION

This Brief of *Amicus Curiae* is submitted in accordance with the Rules of Procedure of the Human Rights Chamber, specifically Article 32, paragraph 1 *ter*

> *The Chamber may at any stage of the proceedings allow or invite any government or non governmental body or organisation, individual or group of individuals and in particular the Human Rights Ombudsperson to participate as Amicus Curiae*

The International Human Rights Law Group respectfully requests that the Chamber allow it standing to proceed The Chamber has expressed an interest in receiving *Amicus* interventions from non-governmental organizations As an NGO which has worked for some time on the issues of discrimination and employment, the Law Group appreciates the opportunity to make observations on this important and highly publicized case of alleged employment discrimination The Law Group has convened representatives of government administrative offices, trade unions, lawyers and other interested parties in discussion of the issues addressed in this case

In the event that the Chamber permits the collective hearing of the group of applicants known as the "Livno Bus" group, the Law Group respectfully requests that this *Amicus Curiae* brief be allowed for the entire group

FACTS

The Law Group notes that the original decision to put the applicant and his colleagues on waiting was taken in 1993, and therefore before the entry into force of the provisions within the GFAP The alleged violation crystalised in 1997 when the applicants discovered that they were no longer on the waiting list The Chamber notes that the Livno Bus Company is a socially owned company, and therefore the appropriate respondent parties are the Federation of BiH and the State of BiH Accordingly, the case falls within the jurisdiction of the Human Rights Chamber

The Law Group has made initial inquiries into the case, including conversations with one of the applicants, with the representative of the Office of the Ombudsmen in Livno, with the Federation Chief Labor Inspector, and with the attorney who filed the case in the Livno Court of First Instance Based on these, The Law Group satisfied itself regarding the basic facts with respect to the observations submitted below

PODNESAK *AMICUS CURIAE*
DOMU ZA LJUDSKA PRAVA BOSNE I HERCEGOVINE
PODNIJET OD STRANE
MEDJUNARODNE PRAVNE GRUPE ZA LJUDSKA PRAVA
U VEZI ZAHTJEVA SAKIBA ZAHIROVICA
Slučaj br CH/97/67 (protiv BiH i Federacije BiH)
14 decembar 1998

UVOD

Ovaj podnesak *amicus curiae* se podnosi u skladu sa Pravilima postupka Doma za ljudska prava, osobito Clan 32, paragraf 1 *ter*

> *Komisija može u bilo kojem stadiju postupka omogućiti ili pozvati bilo koju vladu ili ne-vladino tijelo ili organizaciju, pojedinca ili grupu pojedinaca, te osobito Ombudsmena za ljudska prava da sudjeluje kao amicus curiae*

Međunarodna pravna grupa za ljudska prava ljubazno traži od Doma da dopusti njeno učešce u postupku Komisija je iskazala interes za *amicus* intervencije od strane ne-vladinih organizacija Kao ne-vladina organizacija koja je vec duže vrijeme radila na pitanjima diskriminacije i zapošljavanja, Pravna grupa cijeni mogucnost da prezentira svoje mišljenje u vezi ovog važnog slučaja, koji je dobio veliki publicitet, a tiče se navodne diskriminacije pri zapošljavanju Pravna grupa je pozvala predstavnike vladinih administrativnih ureda, radničkih sindikata, pravnike i druge zainteresirane strane na diskusiju o pitanjima koje je aktualizirao ovaj slučaj

U slučaju da Dom dopusti zajedničku raspravu grupe podnosilaca zahtjeva poznatih kao "Livno bus"-grupa, Pravna grupa ljubazno traži da ovo *amicus curiae* mišljenje bude dopušteno za cijelu grupu

ČINJENICE

Pravna grupa zapaža da je prvobitna odluka da se podnosilac zahtjeva i njegove kolege stave na listu čekanja donešena 1993 godine, što znači prije stupanja na snagu odredaba Opceg okvirnog sporazuma o miru Navedena povreda se kristalizira 1997 godine, kada su podnosioci zahtjeva otkrili da se više ne nalaze na listi čekanja Dom ustvrđuje da je Livno bus kompanija u drustvenom vlasništvu, te da su stoga odgovarajuce protivne strane Federacija BiH i država BiH Shodno tome, slučaj potpada pod jurisdikciju Doma za ljudska prava

Pravna grupa je izvršila početnu istragu povodom slučaja, uključujuci razgovore sa jednim od podnosilaca zahtjeva, sa predstavnikom Ureda ombudsmena u Livnu, sa Glavnim federalnim inspektorom za rad, te sa advokatom koji je uložio tužbu pred Prvostepenim sudom u Livnu Na osnovu ovoga, Pravna grupa je prikupila osnovne činjenice za mišljenje koje iznosi ispod

THE LAW

Through Annex 6 of the GFAP, the Human Rights Chamber is charged with consideration of

> *alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, (Article II, para 2(a))*

In his application to the Chamber, the applicant relies on Articles 6 and 8 of the European Convention The Law Group observes that the case also falls to be considered under Article 6 and 14, Article 8 and 14, and Article 1 Protocol 1 and Article 14

The Chamber is further charged with consideration of

> *alleged or apparent discrimination on any ground such as sex, race,color, language, religion, political or other opinion, national or social origin, assocaition with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to [Annex 6], where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ (Article II, para 2(b))*

The Law Group further observes that the case raises prima facie issues of discrimination, and therefore falls to be considered under the relevant international instruments listed in the Appendix to Annex 6 of the GFAP

The Law Group will make observations in respect of the application of

The International Covenant on Economic, Social, and Cultural Rights (hereafter, ICESCR) Articles 2 and 6,

The Convention on the Elimination of all Forms of Racial Discrimination (hereafter, CERD), Articles 1, 2, and 5,

The International Covenant on Civil and Political Rights (hereafter, ICCPR), Article 26

The European Convention

The applicants were put on "waiting list" status in 1993 This status allows the individual employer to put employees in a temporary stand-by status without dismissing them altogether, when production in the company falls off The individual employer may decide the level of "compensation" for waiting list employees, and whether contributions will be paid on their behalf for the preservation of pension and other rights (*Law on Labor Relations in Times of War or Threat of War, Article 7*) Once the conditions for employment have improved, those on waiting list have a legitimate expectation that they will be restored to full employment It is the case of the applicant and his colleagues that prior to July 1997, persons of Croat origin including pensioners, were hired by the company and that the applicant and his colleagues were removed from the waiting list and effectively dismissed

The Law Group observes as follows in respect of the application of Article 1 of Protocol 1 of the European Convention

ZAKON

Putem Aneksa 6 Opceg okvirnog sporazuma o miru, Dom za ljudska prava je zadužen da razmatra

navodne ili očigledne povrede ljudskih prava kako je naznačeno u Evropskoj konvenciji za zaštitu ljudskih prava i fundamentalnih sloboda i njenim pripadajucim Protokolima, (Član II, paragraf 2(a))

U svom zahtjevu upucenom Domu, podnosilac se poziva na Članove 6 i 8 Evropske konvencije Pravna grupa primjecuje da slučaj takođe treba biti razmatran i pod Članovima 6 i 14, Članovima 8 i 14, te Članom 1 Protokola 1 i Članom 14

Dom je dalje zaduzen da razmatra

navodnu ili očiglednu diskriminaciju po bilo kojoj osnovi, kao što je spol, rasa, boja, jezik, religija, političko ili drugo mišljenje, nacionalno ili društveno porijeklo,veza sa nacionalnom manjinom, imovinsko stanje, rođenje ili drugi status koji proizilazi iz uživanja bilo kojih prava i sloboda predviđenih međunarodnim sporazumima navedenim u Dodatku (uz Aneks 6), gdje se tvrdi ili se čini da su takve povrede počinile Strane, uključujuci i bilo kojeg zvaničnika ili organa Strana, kantona, opcina, ili bilo kojeg pojedinca koji djeluje pod ovlastima takvog zvaničnika ili organa (Član II, paragraf 2 (b))

Pravna grupa dalje primjecuje da slučaj predstavlja prima facie pitanje diskriminacije, te stoga treba biti razmatran prema relevantnim međunarodnim instrumentima navedenim u Dodatku Aneksa 6 Opceg okvirnog sporazuma o miru

Pravna grupa ce iznijeti zapažanja u vezi primjene

Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima (u daljem tekstu ICESCR), Članovi 2 i 6,

Konvencije o eliminaciji svih formi rasne diskriminacije (u daljem tekstu CERD), Članovi 1, 2 i 5,

Međunarodnog pakta o civilnim i političkim pravima (u daljem tekstu ICCPR), Član 26

Evropska konvencija

Podnosioci zahtjeva su stavljeni u status "liste čekanja" 1993 godine Ovaj status omogucuje poslodavcu da stavi zaposlene u privremeno stanje čekanja bez njihovog otpuštanja, u slučajevima kada opadne proizvodnja u kompaniji Poslodavac može odlučiti o visini "kompenzacije" za zaposlene sa liste čekanja, te da li ce se istim isplacivati doprinosi za penzije i druga prava *(Zakon o radnim odnosima u vrijeme rata ili opasnosti od rata, Član 7)* U trenutku kada se uslovi za zapošljavanje poprave, oni sa liste čekanja legitimno očekuju ponovno puno zaposlenje U slučaju podnosioca i njegovih kolega, kompanija je prije mjeseca jula 1997 godine zaposlila

Article 1 of Protocol 1

> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*

The European Commission and the European Court have both addressed the issue of what constitutes "possessions" in the meaning of the Convention Pecuniary rights and contractual rights have been held to be possessions (*A,B and Company AS v FRG, No DR 226 at 234 (1989), Gaygusuz v Austria, judgment of 16 September 1996, Reports 1996, p 1142, para 41)*

The Strasbourg organs have held that in some circumstances, pecuniary benefits originating from social insurance systems are considered a possession for the purposes of Article 1 of Protocol 1 (In the case of *Wanda Paruszewska v Poland, European Commission of Human Rights (Second Chamber) Decision as to Admissibility of Application No 337770/96, 16 April 1998, citing Gaygusuz)* The Commission recalled that "'possessions' may be either 'existing possessions' or claims, in respect of which the applicant can argue that he has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right" (*Paruszewska, citing Van der Mussele v Belgium, judgment of 23 November 1983, Series A No 70, p 23, para 48, and Pine Valley Developments v Ireland, judgment of 29 November 1991, Series A N0 222, p 23, para 51, among others*)

While the applicant must establish the nature of the right within the national law and his entitlement to enjoy it (*S v UK No 11716/85, 47 DR 274 at 279 (1986) and Agneessens v Belgium No 12164/86, 58 DR 63 (1988)*), the concept of "possession" seems to be "autonomous, and the demonstration of an established economic interest by an applicant may be sufficient to establish a right protected by the Convention" (*Law of the European Convention, Harris et al, at 517-518, with reference to Tre Traktorer Aktiebolag v Sweden, A 159 para 53 (1984)*)

The applicants in the case before the Chamber were deprived of the benefit of the payment of their social security contributions for the period that they were on the waiting list If the applicants can demonstrate that this had an effect on the pecuniary benefits that emanate from such a payment, then this would fall to be considered as a possession within the meaning of Article 1 of Protocol 1

Having received a compensatory stipend of 80 DEM for nearly four years (from July 1993 through May 1997), and in the absence of a legal basis for dismissal, the applicant and his colleagues would have a legitimate expectation of the continuation of compensation or reinstatement Fom the evidence submitted by the applicant and his colleagues, it is clear that others were hired, indicating the economic conditions which may have warranted the waiting list status had changed Therefore, based on the domestic legislation, they would have a legitimate expectation of reinstatement and the pecuniary benefits arising therefrom

The Law Group observes as follows in respect of the application of Article 6 of the European Convention

Article 6 (para 1)

> *In the determination of his civil rights and obligations , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*

osobe hrvatskog porijekla, uključujući i penzionere, dok su podnosilac i njegove kolege uklonjeni sa liste čekanja i efektivno otpušteni

Pravna grupa zapaža slijedece u vezi primjene Člana 1 Protokola 1 Evropske konvencije

Član 1 Protokola 1

Svako fizičko ili pravno lice ima pravo na neometano uživanje svoje imovine Niko ne može biti lišen svoje imovine, osim u javnom interesu i pod uvjetima predviđenim zakonom i opcim načelima međunarodnog prava

Evropska komisija i Evropski sud su oboje razmatrali pitanje šta predstavlja "imovinu" u značenju Konvencije Zaključeno je da se novčana prava i ugovorna prava smatraju imovinom *(A,B i Company AS protiv FRG, broj DR 226 pod 234 (1989), Gaygusuz protiv Austrije, presuda od 16 septembra 1996 godine, Izvještaji 1996, str 1142, paragraf 41)*

Strazburski organi su držali da se, pod nekim okolnostima, novčane koristi koje potiču iz sistema socijalnog osiguranja smatraju imovinom u smislu Člana 1 Protokola 1 (U slučaju *Wanda Paruszewska protiv Poljske, Evropska komisija za ljudska prava (Drugi dom), Odluka o prihvatljivosti tužbe br 337770/96, 16 april 1998 godine, citirajuci Gaygusuz)* Komisija je ponovno ustvrdila da " 'imovina' mogu biti ili 'postojeca imovina' ili tužbe, u kojim tužitelj može tvrditi da ima barem 'legitimna očekivanja' da ce ostvariti efektivno uživanje imovinskog prava " *(Paruszewska, citirajuci Van der Mussele protiv belgije, presuda od 23 novembra 1983 godine, serija A br 70, str 23, paragraf 48, i Pine Valley Developments protiv Irske, presuda od 29 novembra 1991 godine, serija A br 222, str 23, paragraf 51, među ostalim)*

Dok podnosilac mora utemeljiti prirodu prava i svoje ovlaštenje da ga uživa u okviru nacionalnog zakona *(S protiv Ujedinjenog Kraljevstva br 11716/85, 47 DR 274 pod 279 (1986) i Agneessens protiv Belgije br 12164/86, 58 DR 63 (1988))*, čini se da je koncept "imovine" "autonoman, te demonstracija uspostavljenog ekonomskog interesa od strane podnosioca može biti dovoljna za uspostavu prava zaštićenog Konvencijom" *(Odredbe Evropske konvencije o ljudskim pravima, D J Harris, M O'Boyle & C Warbrick, Butterworths, 1995, str 517 – 518, pozivajuci se na Tre Traktoree Aktiebolag protiv Švedske, A 159 paragraf 59 (1984))*

Podnosioci su, u slučaju koji razmatra Dom, uskraceni za koristi placanja doprinosa za njihovo socijalno osiguranje za period koji su proveli na listi čekanja Ako podnosioci mogu dokazati da je ovo imalo uticaj na novčane koristi koje proizilaze iz takvih placanja, onda bi ovo potpadalo u razmatranje kao imovina u okviru značenja Člana 1 Protokola 1

Buduci da su primili kompenzaciju u iznosu od 80 DEM za skoro četiri godine (od jula 1993 do maja 1997), a u odsustvu pravne osnove za otpuštanje sa posla, podnosilac i njegove kolege bi imali legitimno očekivanje nastavka kompenzacije ili ponovnog zapošljavanja Iz dokaza predocenih od strane podnosioca i njegovih kolega jasno je da su druga lica bila zapošljavana, sto ukazuje da su se ekonomski uvjeti, koji su opravdavali stavljanje na listu čekanja, promijenili Stoga, na osnovu domaceg zakonodavstva, oni bi legitimno očekivali ponovno zapošljavanje i novcane koristi koje iz toga proističu

Article 6 creates affirmative obligations for the State, rather than an obligation that requires the State to merely refrain from interfering with the rights of the individual These affirmative obligations include access to the court (*Golder v UK, A 18 (1975)*), free of improper legal or practical obstacles placed in the individual's way, and within a reasonable time Backlogged courts are no excuse The Convention requires States to organise their legal systems such that the courts may comply with the requirements of Article 6(1) Thus, a State may be held liable not only for the delay in handling a particular case in a generally expeditious judicial system, but also for a failure to increase resources in response to a backlog of cases and for structural deficiencies in its system of justice that causes delays *((Law of the European Convention on Human Rights, D J Harris, M O'Boyle & C Warbrick, Butterworths, 1995, at 227, citing Zimmerman and Steiner v Switzerland, A 66 (1983))*

An individual may be considered to be deprived of access to the court, and therefore to a fair and public hearing within a reasonable time, when the court fails to schedule a hearing or to respond at all to a complaint submitted The fact that the applicant and his colleagues have to date received no response to their complaint, filed in July 1997 with the Livno Court of First Instance, suggests a violation of the provision in Article 6 concerning a fair and public hearing within a reasonable time The failure of representatives of the respondent parties to respond to the applicants and those acting on their behalf would suggest that the applicant and his colleagues have received no hearing at all, fair or unfair

The Law Group observes as follows in respect of the application of Article 8 of the European Convention

Article 8

> *Everyone has the right to respect for his private and family life* (para 1)
>
> *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others* (para 2)

One of the fundamental interests within the sphere of private life protected under Article 8 is the capacity of the individual to determine their identity "There is not merely a right to a closet identity, [the individual] must be free to choose how he is regarded by the state and how to present himself to others" (*Law of the European Convention, Harris et al, at 307*) While the preponderance of the case-law focuses on sexual, social and family relations, the right of an individual to live his or her life as belonging to a particular ethnic or religious group must also be respected and protected by the State

What's more the State has an obligation to abstain from obstructing the individual's right to privacy, and the object of Article 8 is "essentially that of protecting the individual against arbitrary interference by the public authorities" (*Airey judgment of 9 October 1979, Series A no 32, p 17, para 32*) Toward this end, the Court has held that "the State had a positive obligation to ensure that all individuals have effective means to vindicate their right to privacy" (*X and Y v the Netherlands judgment of 26 March 1985, Series A no 91, pp 13 14, paras 27-30*)

Pravna grupa zapaža slijedece u vezi primjene Člana 6 Evropske konvencije

Član 6 (paragraf 1)

Prilikom utvrđivanja njegovih građanskih prava i obaveza svako ima pravo na pravičnu i javnu raspravu u razumnom roku pred nezavisnim i nepristrasnim, zakonom uspostavljenim sudom

Clan 6 uspostavlja afirmativne obaveze za državu, prije nego obavezu da se država samo uzdrži od mijesanja u prava pojedinca Ove afirmativne obaveze uključuju pristup sudu *(Golder protiv Ujedinjenog Kraljevstva, A 18 (1975))*, koji ce biti slobodan od nepriličnih pravnih ili praktičnih prepreka za pojedinca, te biti ostvaren u razumnom vremenskom okviru Sudovi sa nagomilanim neriješenim slučajevima ne predstavljaju nikakvu ispriku Konvencija traži od država da organizuju svoje pravne sisteme tako da se sudovi mogu pridržavati zahtjeva iz Člana 6 (1) Tako se dižava može smatrati odgovornom ne samo za kašnjenje u rješavanju određenog slučaja u inace brzom sudskom sistemu, vec takođe i za propust da poveca resurse kao odgovor na prezatrpanost neriješenim slučajevima, kao i za nedostatke u svom sistemu pravosuđa koji uzrokuju kašnjenja *(Odredbe Evropske konvencije, Harris i grupa autora, str 227, citirajuci Zimmerman i Steiner protiv Švajcarske, A 66 (1983))*

Pojedinac se može smatrati uskracenim za pristup sudu, a time i za pravičnu i javnu raspravu u razumnom roku, onda kada sud propusti da zakaže raspravu ili da uopce odgovori na uložene zalbe Činjenica da podnosilac i njegove kolege do danas nisu primili nikakav odgovor na njihovu zalbu, podnesenu kod Prvostepenog suda u Livnu u julu 1997 godine, ukazuje na povredu odredbe Člana 6 koja se tiče pravične i javne rasprave u razumnom vremenskom roku Propust predstavnika protivnih strana da odgovore podnosiocima i onima koji ih zastupaju, ukazuje da podnosiocu i njegovim kolegama nije omogucena nikakva rasprava uopce, bila ona pravična ili nepravična

Pravna grupa zapaža slijedece u vezi primjene Člana 8 Evropske konvencije

Član 8

Svako ima pravo na poštivanje svog privatnog i porodičnog života (paragraf 1)

Javna vlast se ne miješa u vršenje ovog prava, osim ako je takvo miješanje predviđeno zakonom i ako je to neophodna mjera u demokratskom društvu u interesu nacionalne bezbjednosti, javne sigurnosti, ekonomske dobrobiti zemlje, sprječavanja nereda ili zločina, zaštite zdravlja i morala ili zaštite prava i sloboda drugih (paragraf 2)

Jedan od fundamentalnih interesa u sferi privatnog života zašticen Članom 8 je sposobnost pojedinca da odredi svoj identitet "Ne postoji samo pravo na skriveni identitet, (individua) mora biti slobodna da odabere kako ce ga cijeniti država i kako ce se predstavljati drugima" *(Odredbe Evropske konvencije, Harris i grupa autora, str 307)* Dok se veliki dio običajnog prava tiče spolnih,

The Law Group observes as follows in respect of the application of Article 14 of the European Convention

Article 14

> *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, lanugage, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*

The Strasbourg organs have found that in order for there to be a violation of Article 14, it must be shown that the case falls within the ambit of one of the normative articles of the Convention, and persons in an analogous situation were treated differently without objective justification for that treatment (*Abdulaziz, Cabales and Balkandali v UK (1985), Belgian Linguistic Case (1968), Marckx v Belgium (1979)*

With respect to Article 1 of Protocol 1

As already observed above, the facts of the present case appear within the ambit of Article 1 of Protocol 1 of the Convention The similarly situated persons for the purposes of Article 14 would be all those persons available for employment, the applicants included From the information provided by the applicant, only those of Croat origin were hired Absent objective justification being put forward by the respondent parties, it would appear that the applicant's rights were violated under Article 14 in conjunction with Article 1 of Protocol 1

Inasmuch as the Law on Labor Relations at Time of War or Threat of War allowed for a waiting list status, the burden is on the respondents to show that there were legitimate reasons for placing employees on the waiting list (e g , an economic slowdown), that they did not arbitrarily or discriminatorily select specific employees for this status, and that they did not actually replace these employees

The Law Group notes that the Human Rights Ombudsperson for BiH recognized that alleged ethnically motivated dismissal from work might fall within the scope of Article 1 of Protocol 1 in relation to the financial impact on the applicant of the loss of an applicant's employment *(Decision to Open Investigation, Application No 351/97 by Devleta Sariæ against the Federation of BiH, 27 May 1997)*

With respect to Article 6

The Law Group reiterates the arguments put forth with respect to the application of Article 14 in conjunction with Article 1 of Protocol 1, and observes that it would similarly appear that the applicant's rights were violated under Article 14 in conjunction with Article 6

If evidence is available indicating that the apparent failure of the courts to process the applicants' claims had any prohibited discriminatory bases, then clearly Article 14 would need to be taken into consideration In this regard, the Law Group draws the attention of the Chamber to the Opinion of the Human Rights Ombudsperson for BiH with respect to *Application No 351/97 by Devleta Sariæ against the Federation of BiH (27 May 1997)*

With respect to Article 8

društvenih i porodičnih odnosa, pravo pojedinca da živi svoj život pripadajuci etničkoj ili religijskoj grupi mora takođe biti poštovano i zašticeno od strane države

Staviše, dižava ima obavezu da se suzdrži od opstruiranja prava pojedinca na privatnost, a cilj Clana 8 je "u suštini da zaštiti pojedinca od arbitrarnog miješanja od strane javnih vlasti" *(Airey presuda od 9 oktobra 1979, serija A br 32, str 17, paragraf 32)* U tom cilju, sud je ocijenio da "država ima pozitivnu obavezu da osigura da sve individue imaju efikasna sredstva da vindiciraju svoje pravo na privatnost" *(X i Y protiv Holandije, presuda od 26 marta 1985 godine, serija A br 91, str 13 14, paragrafi 27 30)*

Pravna grupa je zapazila slijedeće u vezi primjene Člana 14 Evropske konvencije

Član 14

Uživanje prava i sloboda predviđenih ovom konvencijom osigurava se bez diskriminacije po bilo kojoj osnovi, kao sto su spol, rasa, boja kože, jezik, vjeroispovijest, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, veza sa nekom nacionalnom manjinom, imovno stanje, rođenje ili drugi status

Strazburski organi su utvrdili da, da bi postojala povreda Člana 14, mora biti pokazano da slučaj spada u okvir jednog od normativnih članova Konvencije, te da su osobe u analognim situacijama bile tretirane drugačije, bez objektivnog opravdanja za takav tretman *(Abdulaziz, Cabales i Balkandali protiv Ujedinjenog Kraljevstva (1985), slučaj Belgian Linguistics (1968), Marckx protiv Belgije (1979)*

U vezi Člana 1 Protokola 1

Kako je gore vec primijeceno, čini se da su činjenice trenutnog slučaja u okviru Člana 1 Protokola 1 Konvencije Osobe u istoj situaciji kao u Članu 14 bi bile sve one osobe koje stoje na raspolaganju za zaposlenje, uključujuci tužitelje Iz informacije dostavljene od strane podnosioca, zaposljavana su samo lica hrvatskog porijekla Kako protivne strane nisu izašle sa objektivnim opravdanjem, čini se da su prava podnosioca bila povrijeđena prema Članu 14 u svezi sa Članom 1 Protokola 1

S obzirom da Zakon o radnim odnosima u vrijeme rata ili opasnosti od rata dopušta status na listi čekanja, teret je na protivnim stranama da dokažu da su postojali legitimni razlozi za stavljanje zaposlenih na listu čekanja (npr ekonomska stagnacija), da nisu arbitrarno ili diskriminatorno odabrali pojedine zaposlene za ovaj status, te da nisu zaista zamijenili ove zaposlene drugima

Pravna grupa primjecuje da je Ombudsmen za ljudska prava BiH potvrdio da navodno otpuštanje sa posla koje je motivirano etničkim razlozima može potpasti pod opseg Člana 1 Protokola 1 u vezi sa finansijskim posljedicama gubitka zaposlenja za podnosioca *(Odluka o otvaranju istrage, tužba br 351/97 od strane Devlete Saric protiv Federacije BiH, 27 maja 1997 godine)*

The Law Group reiterates the arguments put forth with respect to the application of Article 14 in conjunction with Article 1 of Protocol 1, and observes that it would similarly appear that the applicant's rights were violated under Article 14 in conjunction with Article 8

If the applicant and his colleagues were targetted first for removal from their jobs to the waiting list, and later for dismissal because of being of Bosniak origin, then Article 14 may have been violated with respect to their right to privacy as guaranteed under Article 8 The Law Group draws the attention of the Chamber to the Opinion of the Human Rights Ombudsperson for BiH with respect to *Application No 351/97 by Devleta Sariæ against the Federation of BiH (27 May 1997)* concerning this issue

Other International Instruments applied in accordance with GFAP Appendix to Annex 6

In accordance with the Constitution of BiH (Annex 4 of GFAP, Article II, para 1), the State of BiH and both Entities must secure the rights and freedoms provided for in the same documents listed in the Appendix to Annex 6, which together with the European Convention, form the basis for the Human Rights Chamber consideration of alleged or apparent discrimination Annex 4 Article II, para 4 similarly upholds the obligation that these rights and freedoms be secured for all persons "without discrimination on any ground, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status " The Human Rights Chamber has taken a broad interpretation of this obligation, considering the fact that the international treaties contained in these appendices are not directly incorporated into domestic law, as is the European Convention

> In the Chamber's view, [Article II, para 4 of the Constitution of BiH] includes both an obligation to secure the rights in question to all persons, and an obligation to do so without discrimination It is one aspect of the general obligation under Article II, paragraph 1 of the Constitution, "to secure the highest level of internationally recognised human rights " This interpretation is confirmed by Article I of Annex 6 of the Agreement where the general obligation referred to is stated as including the obligation to secure the rights and freedoms guaranteed by all the agreements listed Where one of the human rights agreements referred to imposes a clear, precise and absolute prohibition on a particular course of action, the only way in which the obligation to secure the right in question to all persons without discrimination can be carried out is by giving effect to the prohibition

(*Damjanoviæ v FbiH, No CH/96/30, 1997, para 37*)

The Law Group observes as follows in respect of the application of Articles 2 and 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 2 (para 2)

> *The States Parties undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*

Article 6 (para 1)

U vezi Člana 6

Pravna grupa ponovo naglašava argumente iznijete u vezi primjene Člana 14 u svezi sa Članom 1 Protokola 1 i primjecuje da se isto tako čini da su prava podnosioca povrijeđena i prema Članu 14 u svezi sa Članom 6

Ako postoji dokaz da je očigledan propust sudova da procesiraju žalbe podnosilaca imao bilo koju zabranjenu diskriminatornu osnovu, onda bi jasno trebalo uzeti Član 14 u razmatranje U tom smislu, Pravna grupa usmjerava pažnju Doma na Mišljenje Ombudsmena za ljudska prava za BiH u vezi Žalbe br 351/97 od strane Devlete Saric protiv Federacije BiH (27 maja 1997 godine)

U vezi Člana 8

Pravna grupa ponovo naglašava argumente iznesene u vezi primjene Člana 14 u svezi sa Članom 1 Protokola 1 i primjecuje da se čini da su prava podnosioca slično povrijeđena i prema Članu 14 u svezi sa Članom 8

Ako su podnosilac i njegove kolege odabrane za uklanjanje sa njihovih radnih mjesta na listu čekanja i kasnije za otpuštanje sa posla zbog njihovog bosnjačkog porijekla, onda je moguce da je Clan 14 povrijeđen s obzirom na njihovo pravo na privatnost kako se ono garantira Članom 8 Pravna grupa usmjerava pažnju Doma na Mišljenje Ombudsmena za ljudska prava za BiH u vezi Žalbe br 351/97 od strane Devlete Saric protiv Federacije BiH (27 maja 1997 godine), a koje se tiče ovog pitanja

<u>Drugi međunarodni instrumenti primjenjeni u skladu sa Dodatkom Aneksa 6 Opceg okvirnog sporazuma o miru</u>

U skladu sa Ustavom BiH (Aneks 4 Opceg okvirnog sporazuma o miru, Član II, paragraf 1), drzava BiH i oba Entiteta moraju osigurati prava i slobode, naznačene u istim dokumentima koji su nabrojani u Dodatku Aneksa 6, koji zajedno sa Evropskom konvencijom predstavljaju osnovu za

razmatranje, od strane Doma za ljudska prava, navodnih ili očiglednih diskriminacija Aneks 4, Član II, paragraf 4 slično potvrđuje obavezu da ova prava i slobode budu osigurani za sve osobe "bez diskriminacije po bilo kojoj osnovi, kao što je spol, rasa, boja kože, jezik, religija, političko ili drugo mišljenje, nacionalno ili društveno porijeklo, veza sa nacionalnom manjinom, imovinski status, rođenje ili drugi status" Dom za ljudska prava je usvojio široku interpretaciju ove obaveze, imajuci u vidu da međunarodni ugovori sadržani u ovim dodacima nisu direktno inkorporirani u domace pravo, kao što je to Evropska konvencija

Po stanovištu Doma, (Član II, paragraf 4 Ustava BiH) podrazumijeva i obavezu da se osiguraju naznačena prava svim osobama i obavezu da se to učini bez diskriminacije Jedan od aspekata opce obaveze prema Clanu II, paragraf 1 Ustava je da se "osigura najviši nivo međunarodno priznatih ljudskih prava " Ova interpretacija je potvrđena Članom 1 Aneksa 6 Sporazuma gdje se kaže da opca obaveza o kojoj se govori sadrži i obavezu da se osiguraju prava i slobode zagarantovane svim nabrojanim sporazumima Tamo gdje jedan od spomenutih sporazuma o ljudskim pravima namece jasnu, preciznu i apsolutnu zabranu nekog pravca

> *The States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right*

States are obligated to respect, protect and fulfill the rights guaranteed under international treaties, and failure to perform any one of these obligations constitutes a violation of such rights 'The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights The obligation to *protect* requires States to prevent violations by third parties The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights" (*Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (elaborating on the Limburg Principles on the Implementation of the ICESCR), Human Rights Quarterly 20 (1998), 693 694*)

While States enjoy a margin of discretion in the means for implementing their obligations, the burden is on the State to demonstrate that, despite obstacles, it is progressing toward the full realization of the rights guaranteed under the ICESCR Furthermore, the State cannot justify limitations of those rights because of different social, religious and cultural backgrounds (*Maastricht Guidelines at 694 695*)

The obligation to respect the rights of the Livno Bus employees is violated by the arbitrary and involuntary dismissal from their jobs The Livno Bus Company's failure to give just cause for the employees' effective dismissal in 1997 constitutes a violation of their right to work, and the State's obligation to safeguard that right

The Law Group notes that in *Special Report No 392/97 Discrimination concerning the Right to Work in Kozaraprevoz (6 May 1997)*, the Ombudsperson stated

> [T]he applicable law on non-discrimination does not prohibit the introduction of distinctions between categories of persons, where such distinctions are based on narrow grounds that support legitimate social or public policy norms Any such distinctions must, however, also be proportionate to that legitimate aim Furthermore, although a Government may restrict the exercise or even derogate from certain rights during public emergencies that threaten the life of the nation, this power may neither be exercised in an arbitrary manner nor applied with too broad a brush (para 20)

The Ombudsperson found the dismissal or suspension of workers in that case constituted "prohibited discrimination with respect to the right to work guaranteed under para 1 of Article 6 of the ICESCR, and thus violate[d] Article I of Annex 6 to the GFAP" She noted that the individuals in question were all members of one political party and were replaced by individuals from a different political party, thus apparently indicating that distinctions were being drawn and actions taken solely on grounds of political beliefs (paras 22 & 23)

Similarly in Mr Zahirovic's case, the fact that he and his colleagues are all of one ethnic/national group, and were replaced by individuals of a different ethnic group would seem to indicate that distinctions were drawn and the employer's actions taken on discriminatory grounds, thereby violating Articles 2 and 6 of the ICESCR

The Law Group observes as follows in respect of the application of Articles 1, 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)

djelovanja , jedini način na koji se može sprovesti obaveza da se svim osobama osiguraju spomenuta prava bez diskriminacije je davanje snage zabrani

(Damjanovic protiv FBiH, br CH/96/30, 1997, paragraf 37)

Pravna grupa zapaža slijedece u vezi primjene Članova 2 i 6 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima (ICESCR)

Član 2 (paragraf 2)

Drzave clanice obavezuju se da garantiraju da ce sva prava koja su u njemu formulirana biti ostvarivana bez ikakve diskriminacije zasnovane na rasi, boji, polu, jeziku religiji, političkom ili drugom mišljenju, nacionalnom ili društvenom porijeklu, imovinskom stanju, rođenju ili drugom statusu

Član 6 (paragraf 1)

Države članice priznaju pravo na rad , koje obuhvaca pravo koje ima svako lice na mogucnost zaradivanja kroz slobodno izabran ili prihvacen rad, i preduzimaju odgovarajuce mjere za očuvanje ovog prava

Dižave su obavezne da poštuju, štite i ispunjavaju prava zagarantovana pod međunarodnim ugovorima, a propust da se sprovede bilo koja od ovih obaveza predstavlja povredu tih prava "Obaveza da *postuju,* traži od država da se suzdrže od uplitanja u uživanje ekonomskih, socijalnih i kulturnih prava Obaveza da *štite,* traži od država da spriječe povrede od strane trecih strana Obaveza da *ispunjavaju,* traži od država da poduzmu odgovarajuce zakonodavne, administrativne, budžetarne, sudske i druge mjere ka punoj realizaciji tih prava " *(Maastrichtski vodič za povredama ekonomskih, socijalnih i kulturnih prava (elaboracija Limburških principa o implementaciji ICESCR), Human Rights Quarterly 20 (1998), 693-694)*

Dok dizave uživaju visak diskrecije u sredstvima za implementaciju svojih obaveza, teret je na državi da demonstrira da, unatoč preprekama, ona napreduje prema punoj realizaciji prava zagarantovanih pod ICESCR Osim toga, država ne može opravdati ograničavanje tih prava zbog različitog socijalnog, religijskog i kulturnog porijekla *(Maastrichtski vodič str 694 695)*

Obaveza poštivanja prava "Livno bus" - zaposlenih je povrijeđena arbitrarnim i nedobrovoljnim otpuštanjem sa njihovih radnih mjesta Propust Livno bus kompanije da navede pravičan razlog za efektivno otpuštanje zaposlenih u 1997 godini predstavlja povredu njihovog prava da rade, kao i drzavne obaveze da stiti to pravo

Pravna grupa primjecuje da je u *Specijalnom izvještaju br 392/97 Diskriminacija u vezi prava na rad u Kozaraprevozu (6 maj 1997)* Ombudsmen naznačio

(M)jerodavno pravo za ne diskriminaciju ne zabranjuje uvođenje razlika između kategorija lica, gdje su te razlike zasnovane na usko ograničenim osnovima koji podržavaju legitimne socijalne ciljeve ili ciljeve javne politike Ove razlike, moraju, međutim, biti u skladu sa zakonitim ciljem Dalje, iako Vlada može da suzi

Article 1 (para 1)

> *In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose* **or effect** *of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life* (emphasis added)

Article 2(1)(a)

> *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation*

Article 5(e)(i)

> *In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights, in particular the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration*

Article 1 of CERD is a broad and free-standing prohibition on discrimination which expands States' obligations beyond intent to include apparently unintentional effect Article 2 creates both an affirmative obligation to ensure compliance on the part of State actors and the obligation to refrain from any distinction, exclusion, restriction or preference on discriminatory bases Article 2 is more precisely applied to the rights of workers through Article 5(e)(i) Thus the Law Group observes that CERD, applied to the facts of this case, creates State responsibility for the actions of the Livno Bus Company

The Law Group observes as follows in respect of the application of Article 26 of the International Covenant on Civil and Political Rights (ICCPR)

Article 26

> *[A]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color sex language, religion, political or other opinion, national or social origin, property, birth or other status*

Article 26 of the ICCPR provides an absolute prohibition on discrimination, and as such, is an independent right Although not every distinction is discriminatory, a distinction constitutes discrimination when it is not based on "reasonable and objective criteria " (*UN Covenant on Civil and Political Rights, CCPR Commentary, Dr M Nowak, N P Engel, at 473, notes 76 and 77 discussing the travaux preparatoires as well as the drafting Committee's regard for the Strasbourg case law on Article 14 of the European Convention*) Whether such reasonable and objective criteria existed in 1993, when the Livno Bus Company placed the applicant and his colleagues on the waiting list is beyond the scope of the Chamber's jurisdiction Nonetheless, Article 26 places a rigorous burden on the

primjenu ili čak isključi određena prava za vrijeme opšte opasnosti koja prijeti životu nacije, ovo se pravo ne može primjenjivati arbitrarno niti primijeniti preširoko (paragraf 20)

Ombudsmen je zaključio da• otpuštanje ili suspenzija radnika u tom slučaju predstavlja "zabranjenu diskriminaciju s obzirom na pravo na rad zagarantovano pod paragrafom 1 Člana 6 ICESCR i time kiši Clan I Aneksa 6 Opceg okvirnog sporazuma o miru " Ona je naznačila da su doticne osobe sve bile članovi jedne političke partije i da su bili zamijenjeni osobama druge političke partije, čime je očito naznačeno da su povučene razlike i da se akcije poduzimaju isključivo na osnovu političkih uvjerenja (paragrafi 22 & 23)

Slično je i u slučaju gdina Zahirovica, gdje činjenica da su on i njegove kolege svi iz jedne etničke/nacionalne grupe i da su bili zamijenjeni pripadnicima druge etničke grupe naznačava da su povučene razlike i da su akcije poslodavca poduzete na diskriminatornim osnovama, čime su povrijeđeni Članovi 2 i 6 ICESCR-a

Pravna grupa zapaža slijedece u vezi primjene Članova 1, 2 i 5 Konvencije o eliminaciji svih formi rasne diskriminacije (CERD)

Član 1 (paragraf 1)

U ovoj konvenciji termin "rasna diskriminacija" odnosi se na svako razlikovanje, ograničavanje ili davanje prvenstva koji se zasnivaju na rasi, boji, precima, nacionalnom ili etničkom porijeklu koji imaju za svrhu ***ili rezultat*** *da naruše ili da kompromituju priznavanje, uživanje ili vršenje, pod jednakim uvjetima, prava čovjeka i osnovnih sloboda na političkom, ekonomskom, socijalnom i kulturnom polju ili u svakoj drugoj oblasti javnog života*

(naknadno podvučeno)

Član 2 (1) (a)

Svaka drzava članica obavezuje se da ne počini nikakvo djelo rasne diskriminacije ili ne vrši rasnu diskriminaciju protiv osoba, grupa osoba ili ustanova kao i da postupa tako da se sve javne vlasti i javne, nacionalne i lokalne ustanove pridržavaju ove obaveze

Član 5 (e)(i)

Prema osnovnim obavezama navedenim u Članu 2 ove Konvencije, države članice obavezuju se da zabrane i da ukinu rasnu diskriminaciju u svim njenim oblicima i da jamče pravo svakome na jednakost pred zakonom bez razlike na rasu, boju, ili nacionalno ili etničko porijeklo, naročito u pogledu uživanja ekonomskih, socijalnih i kulturnih prava, naročito prava na rad, na slobodan izbor rada, na pravične i zadovoljavajuće uvjete rada, na zaštitu u slučaju nezaposlenosti, na jednaku zaradu za jednak rad, na pravičnu i zadovoljavajuci nagradu

Član 1 CERD-a je široka i slobodno postavljena zabrana diskriminacije koja proširuje obaveze dizava iznad namjere da uključi očit nenamjeran rezultat Član 2 uspostavlja i afirmativnu obavezu da se osigura pridržavanje od strane državnih činitelja i obavezu suzdržavanja od bilo

State to show that such criteria not only existed when they were dismissed, but also to show that the grounds for their dismissal were not expressly prohibited discrimination under the Covenant, such as religion, or national or social origin

Remedies

Should the Chamber allows the Law Group standing as *Amicus Curiae*, the Law Group will be pleased to submit its observations regarding remedies at a later, appropriate stage, if so invited

The Law Group appreciates this opportunity to have been able to submit its obsevaqtions, and would be pleased to assist further should the Chamber so invite

Deena Hurwitz
Director, Bosnia Project
International Human Rights Law Group

Diana Šehiæ
Senior Attorney
International Human Rights Law Group

kakvog razlikovanja, isključivanja, ograničavanja ili preferiranja na diskriminatornoj osnovi Član 2 se mnogo preciznije odnosi na prava radnika iz Člana 5 (e)(i) Shodno tome, Pravna grupa zapaža da CERD, primjenjen na činjenično stanje ovog slučaja, uspostavlja odgovornost države za akcije Livno bus kompanije

Pravna grupa zapaža slijedece u vezi primjene Člana 26 Medjunarodnog pakta o civilnim i političkim pravima (ICCPR)

Član 26

Sva lica su jednaka pred zakonom i imaju pravo bez ikakve diskriminacije na podjednaku zaštitu zakona U tom smislu, zakon mora zabraniti svaku diskriminaciju i osigurati svim licima podjednaku i uspješnu zaštitu protiv svake diskriminacije, naročito u pogledu rase, boje, pola, jezika, vjere, političkog ili drugog mišljenja, nacionalnog ili socijalnog porijekla, imovinskog stanja, rođenja ili drugog statusa

Clan 26 ICCPR-a uspostavlja apsolutnu zabranu diskriminacije i kao takav predstavlja jedno nezavisno pravo Iako svako pravljenje razlike nije diskriminatorno, pravljenje razlike predstavlja diskriminaciju onda kada nije zasnovano na "razumnim i objektivnim kriterijima" *(UN pakt o civilnim i političkim pravima, CCPR Komentar, Dr M Nowak, N P Engel, str 473, napomene 76 i 77)* Da li su razumni i objektivni kriteriji postojali 1993 godine kada je Livno bus kompanija stavila podnosioca i njegove kolege na listu za čekanje je izvan opsega jurisdikcije Doma Ipak, Član 26 namece rigoroznu obavezu državi da pokaže da ti kriteriji ne samo da su postojali kada su oni otpusteni, vec i da pokaže da razlozi za njihovo otpuštanje nisu predstavljali izričito zabranjenu diskriminaciju prema Paktu, kao sto su religija, ili nacionalno ili socijalno porijeklo

Pravni lijekovi

Ukoliko Dom dopusti Pravnoj grupi učešce kao Amicus Curiae, Pravna grupa ce sa zadovoljstvom priložiti svoje opservacije u vezi lijekova u odgovarajucem kasnijem stadiju

Pravna grupa cijeni priliku da je bila u mogucnosti priložiti svoje opservacije i sa zadovoljstvom ce prihvatiti da nastavi asistirati Domu ukoliko je on na to pozove

Deena Hurwitz
Direktor, Projekt Bosna
Međunarodna pravna grupa
za ljudska prava

Diana Šehic
Viši pravni saradnik u
Međunarodnoj pravnoj grupi

SPECIAL REPORT
No 392/97

Discrimination concerning the Right to Work in Kozaraprevoz

Addressed to

Mr Vinko Kondic,
Minister of Work, Employment and Social Protection
of the Republika Srpska

and

Mr Radomir Pašic,
Director Kozaraprevoz

The Human Rights Ombudsperson for Bosnia and Herzegovina,

pursuant to para 6 of Article V of Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzogovina,

has presented the following report to Mr Radomir Pašic, Director, Kozaraprevoz Novi Grad and to Mr Vinko Kondic, Minister of Work, Employment and Social Protection of the Republika Srpska as the competent government officials within the meaning of that provision

on 6 May 1997

I SUBJECT MATTER OF SPECIAL REPORT

1 This Special Report addresses the issue of discrimination and the right to work in the firm Kozaraprevoz a company owned jointly by the State and the workers, located in Novi Grad Republika Srpska

2 The basis for the Report is the suspension and/or the dismissal of fourteen members and/or officials of the Socialist Party of the Republika Srpska from their jobs in the firm, Kozaraprevoz in Novi Grad Twelve were suspended in the course of April 1996 and five were dismissed on the basis of decisions issued between 11 December 1996 and 27 February 1997 A list of these individuals is listed in the Annex to this Report

II THE APPLICABLE LAW

3 Para 2 of Article II of Annex 6 to the General Framework Agreement reads, in pertinent part, as follows

[English original / engleski original]

SPECIJALNI IZVJEŠTAJ
Br 392/97

Diskriminacija u vezi sa pravom na rad u Kozaraprevozu

upucen

G Vinku Kondiću,
Ministru rada, zapošljavanja i socijalne zaštite
Republike Srpske

i

G Radomiru Pašicu,
Direktoru Kozaraprevoza

Ombudsman za ljudska prava za Bosnu i Hercegovinu,

u skladu sa stavom 6 Člana V Aneksa 6 Opšteg okvirnog sporazuma za mir u Bosni i Hercegovini,

uputila je sljedeći izvještaj g Radomiru Pašicu, direktoru Kozaraprevoza, Novi Grad, i g Vinku Kondicu, Ministru rada, zapošljavanja i socijalne zaštite Republike Srpske kao nadležnim vladinim službenicima u smislu ove odredbe,

dana 6 maja 1997 godine

I PREDMET SPECIJALNOG IZVJEŠTAJA

1 Ovaj Specijalni izvještaj bavi se pitanjem diskriminacije i prava na rad u preduzecu Kozaraprevoz, koje je u mješovitoj svojini a nalazi se u Novom Gradu u Republici Srpskoj

2 Osnova Izvještaja je suspendovanje i/ili otpuštanje s posla četrnaest članova i/ili funkcionera Socijalističke partije Republike Srpske iz preduzeca Kozaraprevoz u Novom Gradu Dvanaest je suspendovano tokom aprila 1996 godine a pet otpušteno na osnovu odluka donesenih između 11 decembra 1996 , i 27 februara 1997 Spisak ovih pojedinaca je naveden u Aneksu ovog Izvještaja

II MJERODAVNO PRAVO

3 Stav 2 člana 2 Aneksa 6 Opšteg okvirnog sporazuma, u relevantnom dijelu glasi

"The Office of the Ombudsperson shall consider

(b) alleged or apparent discrimination on any ground arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ"

Amongst the international agreements listed in the Appendix to the Annex is the International Covenant on Economic Social and Cultural Rights

4 Para 1 of Article 6 of the International Covenant on Economic, Social and Cultural Rights reads, in pertinent part, as follows

"The Parties to the present Covenant recognize the right to work and will take appropriate steps to safeguard this right"

5 Para 1 of Article 5 of the International Covenant on Economic, Social and Cultural Rights reads, in pertinent part, as follows

"Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant"

III FACTS

6 Kozaraprevoz is a mixed owned company (state and workers) located in Novi Grad (formerly Bosanski Grad) As of January 1996, the company employed 192 persons

7 On 3 May 1996, the Government of the Republika Srpska issued a decree ordering the removal of Mr Dragoljub Trivanovic from his position as Director of Kozaraprevoz Mr Trivanovic is vice-president of the Socialist Party of the Republika Srpska (hereinafter referred to as SPRS) and a member of the Peoples Assembly of the Republika Srpska

8 On his dismissal Mr Trivanovic was replaced as Director of Kozaraprevoz by Mr Radomir Pašic who at the material time was president of the Novi Grad chapter of the Serb Democratic Party (hereinafter referred to as SDS)

9 On 8 May 1996, members of the police force forcibly evicted Mr Trivanovic from his office in Kozaraprevoz and forbade him to reenter the premises of the company On the same date Mr Trivanovic was requested to transfer all keys used in the company to the newly appointed Director He and four other employees of the firm, were subsequently arrested by the police and detained in one office of the company for approximately one hour

10 On 25 June 1996 the Supreme Court of the Republika Srpska annulled the decision to dismiss Mr Trivanovic apparently on the grounds that the Government of the Republika Srpska had failed to follow the correct procedures for the dismissal of a director

"Kancelarija ombudsmana ce razmatrati

(b) navodnu ili očiglednu diskriminaciju na bilo kojem osnovu proizilazi iz uživanja bilo kojih prava i sloboda predviđenih međunarodnim sporazumima navedenim u Dodatku uz ovaj Aneks, gdje se tvrdi da su takva kršenja ili se čini da su im stranc počinile, bilo od strane svaničnika ili organa"

Među međunarodnim sporazumima navedenim u Dodatku uz ovaj Aneks je Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima

4 Stav 1 člana 6 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima, u bitnom dijelu, glasi

"Stiane ovog pakta priznaju pravo na rad i preduzece odgovarajuce korake kako bi obezbijedile ovo pravo '

5 Stav 1 člana 5 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima, u relevantnom dijelu, glasi

"Ništa se iz ovog Pakta ne može tumačiti u smislu da se podrazumijeva za bilo koju Državu, grupu ili pojedince, svako pravo koje zahtjeva bilo koju aktivnost ili vršenje bilo kakve radnje usmjerene na kršenje svakog prava i slobode koji su ovim priznati, ili na vece ograničenje nego što je predviđeno ovim Paktom "

III ČINJENICE

6 Kozaraprevoz je preduzece u mještovitom vlasništvu (država i radnici) u Novom Gradu (bivši Bosanski Novi) Od januara 1996, preduzece je ima 192 zaposlena

7 Dana 3 maja 1996, Vlada Republike Sprkse je donijela uredbu kojom se naređuje otpuštanje g-dina Dragoljuba Trivanovica za položaja direktora Kozaraprevoza Gdin Trivanovic je potpredsjednik Socijalističke Partije Republike Srpske (u daljem tekstu SPRS) i član Narodne Skupštine Republike Srpske

8 Pošto je otpušten, g-dina Trivanovica zamijenio na mjestu direktora Kozaraprevoza g-din Radomir Pašic koji je u to vrijeme bio predsjednik ogranka Srpske Demokratske Stranke u Novom Gradu (u daljem tekstu SDS)

9 Dana 8 maja 1996, pripadnici policijskih snaga su nasilno izbacili g-dina Trivanovica iz njegove kancelarije u Kozaraprevozu i zabranili mu da se vrati u prostorije preduzeca Istog dana, od g-dina Trivanovica se tražilo da preda sve ključeve preduzeca, novom direktoru On, i još četiri zaposlena u preduzecu, su zatim uhapšeni od strane policije i bili pritvoreni u jednoj kancelariji preduzeca oko jedan sat

10 Dana 25 juna 1996, Vrhovni sud Republike Srpske je poništio odluku o otpuštanju g-dina Trivanovica, pošto Vlada Republike Srpske očigledno nije poštovala pravila postupka za otkaz direktora

11 On 8 July 1996, the Government of the Republika Srpska issued a new decree reiterating the substance of its decree of 3 May 1996

12 On 10 July 1996, some employees of Kozaraprevoz began a demonstration in the firm to protest the removal of Mr Trivanovic from his position and to request the implementation of the decision of the Supreme Court of 25 June 1996

13 On 11 July 1996 some of the demonstrating employees were arrested and charged with criminal offences Some of these employees were later convicted for breach of the peace Appeals are currently pending in these cases

14 During the course of July and August 1996, twelve additional employees of Kozaraprevoz were suspended from their jobs in conjunction with the introduction of disciplinary proceedings against them All twelve of these employees are members of the SPRS

15 Since the time of their suspension, all twelve of the employees subject to disciplinary proceedings have been without any source of income and have not enjoyed any social benefits that would normally accrue to employees in the same situation

16 On 5 November 1996, the Supreme Court of the Republika Srpska annulled the decree of 8 July 1996 and ordered the reinstatement of Mr Trivanovic as Director of Kozaraprevoz The Court requested the Government to execute the judgement within fifteen days and adjured the Government against further interference in the management or operation of the company In its judgement the Supreme Court of the Republika Srpska described Kozaraprevoz as a mixed ownership company

17 On 11 December 1996 Mr Radomir Pašic issued a decision according to which he declared that Mr Trivanovic was dismissed from any employment, whether as Director or in another post in Kozaraprevoz with retroactive effect as of 31 October 1996

18 Since 11 December 1996, Mr Radomir Pašic has issued decisions similar to that of 11 December 1996 with respect to four of the workers who had previously been suspended None of these decisions referred to the disciplinary proceedings initiated against the individuals concerned

IV ANALYSIS

Preliminary observation

19 The Ombudsperson notes that on 8 April 1997, Mr Trivanovic filed a complaint with her Office The complaint was registered on the same date under Application number 173/97 In his complaint, the applicant claims that the non-enforcement of the Supreme Court decision of 5 November 1996 constitutes a violation of Articles 6 and 14 of the European Convention on Human Rights and prohibited discrimination with respect to Article 6 of the International Covenant on Economic Social and Cultural Rights As the Ombudsperson is currently investigating that applicant's complaint on an individual basis, she finds it unnecessary to address the issues raised in that application in the present Special Report

Discrimination and the right to work

20 The Ombudsperson first observes that the applicable law on non-discrimination does not prohibit the introduction of distinctions between categories of persons, where such distinctions are

11 Dana 8 jula 1996, Vlada Republike Srpske je donijela novu odluku sa istim sadržajem kao i odluka od 3 maja 1996

12 Dana 10 jula 1996, nekoliko zaposlenih u Kozaraprevozu su počeli demonstracije u preduzecu kako bi se protivili otkazu g-dina Trivanovica sa njegovog položaja i da zahtjevaju izvršenje odluke Vrhovnog suda od 25 juna 1996

13 Dana 11 jula 1996, neki od zaposlenih koji su demonstrirali su uhapšeni i optuženi za krivična djela Neki zaposleni su kasnije osuđeni za narušavanje mira Trenutno se odlučuje o žalbama u ovim slučajevima

14 Tokom mjeseca jula i avgusta 1996, još dvanaest radnika Kozaraprevoza su suspendovani sa posla u vezi sa pokretanjem disciplinskog postupka protiv njih Svih dvanaest ovih zaposlenih su članovi SPRS

15 Od momenta njihove suspenzije, ovih dvanaest zaposlenih protiv kojih je pokrenut disciplinski postupak, nisu primali nikakve prihode i nisu uživali socijalna primanja koja pripadaju zaposlenima u istoj situaciji

16 Dana 5 novembra 1996, Vrhovni sud Republike Srpske je poništio odluku od 8 jula 1996 i naredio ponovno vracanjee g-dina Trivanovica na mjesto direktora Kozaraprevoza Sud je zahtijevao od Vlade da izvrši presudu u roku od petnaest dana i obustavio dalje miješanje Vlade u upravu ili rad preduzeca U svojoj presudi, Vrhovni sud Republike Srpske je opisao Kozaraprevoz kao preduzece u mješovitoj svojini

17 Dana 11 decembra 1996, g-din Radomir Pašic je donio odluku prema kojoj je potvrdio da je g-din Trivanovic otpušten sa posla, bilo kao direktor bilo sa drugog položaja, u Kozaraprevozu za retroaktivnim važenjem od 31 oktobra 1996

18 Od 11 decembra 1996, g-din Radomir Pašic je donosio odluke slične onoj od 11 decembra 1996, za četiri radnika koji su prije toga suspendovani Nijedna od ovih odluka se ne odnosi na disciplinski postupak koji je pokrenut protiv pojedinaca

IV ANALIZA

Prethodno mišljenje

19 Ombudsman zapaža da je 8 aprila 1997, g-din Trivanovic podnio žalbu Kancelariji Žalba je registrovana istog dana pod brojem žalbe (B)173/97 U svojoj žalbi, podnosilac žalbe tvrdi da neizvršenje odluke Vrhovnog suda od 5 novembra 1996, predstavlja kršenje članova 6 i 14 Evropske Konvencije o ljudskim pravima i zabranjuje diskriminaciju u pogledu člana 6 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima Pošto ombudsman trenutno ispituje žalbu podnosioca na pojedinačnoj osnovi, smatra nepotrebnim da naznači probleme iz žalbe u ovom Specijalnom izvještaju

Diskriminacija i pravo na rad

20 Ombudsman prije svega smatra da mjerodavno pravo za ne-diskriminaciju ne zabranjuje uvođenje razlika između kategorija lica, gdje su te razlike zasnovane na predrasudama koje

based on narrow grounds that support legitimate social or public policy aims Any such distinctions must however, also be proportionate to that legitimate aim Furthermore, although a Government may restrict the exercise or even derogate from certain rights during public emergencies that threaten the life of the nation this power may neither be exercised in an arbitrary manner nor applied with too broad a brush

21 The Ombudsperson further observes that Governmental declarations that particular enterprises or positions within those enterprises are sensitive for national security reasons are not definitive to support dismissals from employment unless the Government establishes, through objective criteria, the sensitive nature of the activities of the enterprise at issue and proves that the retention of an individual in a particular position will jeopardise the operation of those sensitive tasks or activities

22 In the present case, Kozaraprevoz either dismissed or suspended the individuals listed in the Annex to this Report without respecting the procedures established under the applicable laws That fact, coupled with the fact that the individuals in question are all members of one political party and were replaced by individuals from a different political party would seem to indicate that distinctions were being drawn and actions taken solely on the grounds of the political beliefs of those who were dismissed Furthermore, the dismissals of the named individuals occurred several months after the cessation of war so even were the margin of appreciation afforded to Kozarapremoz to be broadened to accommodate needs dictated by a state of emergency conditions to sustain such a claim did not obtain at the time of the dismissals

23 Accordingly the Ombudsperson finds that the dismissal or the suspension of the individuals listed in the Annex to this Report by the Kozaraprevoz company constitutes prohibited discrimination with respect to the right to work guaranteed under para 1 of Article 6 of the International Covenant on Economic Social and Cultural Rights and thus violates Article 1 of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina

Engagement of responsibility for the contravention of human rights and fundamental freedoms

24 The Ombudsperson notes that the prohibition against any State group or person's performing any act aimed at the destruction or unacceptable limitation of a protected right or freedom engages the responsibility of the Director of Kozaraprevoz, as the head of a mixed-ownership company and the Government of the Republika Srpska, as exercising oversight over mixed-ownership companies As the Ombudsperson has found above the dismissal or suspension from employment of the individuals listed in the Annex to this Report constitutes discrimination concerning the right to work In this regard the Ombudsperson further notes that with respect to some of those individuals the management of Kozaraprevoz created conditions that rendered it impossible for them to fulfil their obligations as employees or to pursue effectively claims in this regard

25 Accordingly the Ombudsperson finds that Mr Radomir Pašic Director of Kozaraprevoz and Mr Vinko Kondic Minister of Work, Employment and Social Protection of the Republika Srpska have performed acts aimed at the limitation of the above rights to a greater extent than is provided for in the relevant international human rights instruments They have therefore acted in contravention of para 1 of Article 5 of the International Covenant on Economic Social and Cultural Rights and thereby of Article 1 of Annex 6 to the General Framework Agreement

V CONCLUSIONS

26 The Ombudsperson concludes that the dismissal or the suspension of the individuals listed in the Annex to this Report constitute prohibited discrimination with respect to Articles 6 and 5 of

podržavaju ciljevi socijalne ili javne politike Ove razlike, moraju, međutim, biti u skladu sa zakonitim ciljem Dalje, iako Vlada može da suzi primjenu ili čak isključi određena prava za vrijeme opšte opasnosti koja prijeti životu nacije, ovo se pravo ne može primjenjivati arbitrerno niti primijeniti preširoko

21 Ombudsman je dalje mišljenja da odluke Vlade da su pojedina preduzeca ili položaji u tim preduzecima osjetljivi iz razloga nacionalne sigurnosti, ne mogu definitivno podržati otkaze za posla osim ako Vlada ustanovi, na osnovu objektivnog kriterija, osjetljivu prirodu poslova preduzeca i dokaže da ce zadizavanje pojedinca na određenom položaju ugroziti vršenje ovih osjetljivih zadataka ili aktivnosti

22 U ovom slučaju, Kozaraprevoz je bilo otpustila ili suspendovala pojedince nabrojane u Aneksu ovog Izvještaja bez poštovanja postupka ustanovljenog mjerodavnim pravom Ova činjenica, zajedno sa činjenicom da su ovi pojedinci svi članovi jedne političke stranke i zamijenjeni pojedincima iz druge političke stranke govori da su napravljene razlike, a radlje poduzete isključivo na temeljima političkih uvjerenja onih koji su otpušteni Dalje, otkazi imenovanih pojedinaca su nastupili nekoliko mjeseci nakon prestanka rata, tako da čak i kada bi se malo razumijevanja prema Kozaraprevozu moglo proširiti na prilagođene potrebe usljed stanja opasnosti, uslovi koji bi podržali takvu tvrdnju, nisu postojali u vrijeme otkaza

23 Prema tome, ombudsman nalazi da otkaz ili suspenzija pojedinaca navedenih u Aneksu ovog Izvještaja od strane preduzeca Kozaraprevoz predstavlja zabranjenu diskriminaciju poštovanja prava na rad garantovanog pod stavom 1 člana 6 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima te na taj način krši član 1 Aneksa 6 Opšteg okvirnog sporazuma za mir u Bosni i Hercegovini

Odgovornost za kršenje ljudskih prava i osnovnih sloboda

24 Ombudsman zapaža da zbirana usmjerena protiv svake Države, grupe ili lica koja vrse bilo koju radnju usmjerenu na uništenje ili neprihvatljivo suženje prava ili sloboda povlači odgovornost direktora Kozaraprevoza, kao šefa preduzeca u mješovitom vlasništvu, i Vlade Republike Srpske da je izvršila propust prema preduzecima u mješovitom vlasništvu Prema gore iznesenom,, otkaz ili suspenzija sa zaposlenja pojedinaca navedenih u Aneksu ovog Izvještaja predstavlja diskriminaciju u pogledu prava na rad U tom smislu, ombudsman dalje zapaža da je za neke od zaposlenih, uprava Kozaraprevoza stvorila uslove koji su ih onemogucavali da ispune svoje obaveze kao zaposleni ili da efektivno ostvare svoje zahtjeve u vezi s tim

25 Prema tome, ombudsman nalazi da su g-din Radomir Pašic, direktor Kozaraprevoza, i g-din Vinko Kondic, Ministar rada, zapošljavanja i socijalne zaštite Republike Srpske, vršili radnje usmjerene na ograničenje navedenih prava u širem obimu nego što je predviđeno odgovarajucim međunarodnim instrumentima za ljudska prava Oni su stoga postupali u suprotnosti sa stavom 1 člana 5 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima, i u vezi s tim, sa članom 1 Aneksa 6 Opšteg okvirnog sporazuma

V ZAKLJUČAK

26 Ombudsman zaključuje da otkaz ili suspenzija pojedinaca navedenih u Aneksu ovog Izvještaja predstavlja zabranjenu diskriminaciju u smislu člana 6 i 5 Međunarodnog pakta o

the International Covenant on Economic, Social and Cultural Rights and thus of Article I of Annex 6 to the General Framework Agreement

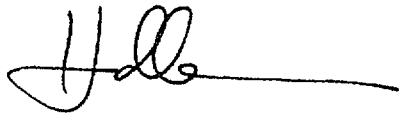
VI RECOMMENDATIONS OF THE OMBUDSPERSON

27 In accordance with para 6 of Article V of Annex 6 to the General Framework Agreement for Peace, the Ombudsperson recommends that the following action should be taken on or before **30 May 1997**

Mr Vinko Kondic, Minister of Work, Employment and Social Protection of the Republika Srpska and Mr Radomir Pašic should contact the Ombudsperson to arrange a meeting to discuss the following matters

(a) the resolution of the cases of the individuals whose names are listed in the Annex to this Special Report, by reinstating them in their former jobs or providing appropriate compensation for the loss of their livelihoods, and

(b) the means by which the right to work will in the future be guaranteed to all public employees on a non-discriminatory basis, in accordance with the requirements of Annex 6 of the General Framework Agreement



Dr Gret Haller
Ombudsperson

ekonomskim, socijalnim i kulturnim pravima te na taj način člana 1 Aneksa 6 Opšteg okvirnog sporazuma

VI PREPORUKE OMBUDSMANA

27 U skladu sa stavom 6 člana 5 Aneksa 6 Opšteg okvirnog sporazuma za mir, ombudsman preporučuje da se preduzmu sljedeci koraci najkasnije do **30 maja 1997**

G-din Vinko Kondic, Ministar rada, zapošljavanja i socijalne zaštite Republike Srpske i g-din Radomir Pašic treba da stupe u kontakt sa ombudsmanom da bi dogovorili sastanak na kojem bi se razmatrala sljedeca pitanja

(a) rješenje slučajeva pojedinaca čija imena su navedena u Aneksu ovog Specijalnog izvještaja, tako što ce ih vratiti na ranije poslove ili obezbjediti odgovarajucu kompenzaciju za gubitak njihovih domova, i

(b) sredstva kojima ce se pravo na rad ubuduce garantovati svim javnim radnicima, na nediskriminacijskoj osnovi, u skladu sa zahtjevima Aneksa 6 Opšteg okvirnog sporazuma

(potpisano)
Dr Gret Haller
ombudsman

DODATAK

A *Spisak suspendovanih radnika u mjesecu julu 1996 i protiv kojih je pokrenut disciplinski postupak u avgustu 1996*

1 Simo ZGONJANIN, rođen 1 novembra 1950
2 Miloš JANJIC, rođen 11 marta 1960
3 Ljiljana GAJIC, rođena 13 oktobra 1963
4 Dragojla VUJANOVIC rođena 21 septembra 1953
5 Nada ZGONJANIN, rođena 9 januara 1953
6 Radomir ŠURLAN, rođen ŠnepoznatoC
7 Miroslav STANKOVIC, rođen 19 novembra 1963
8 Mladen SMILJANIC, rođen 11 novembra 1969
9 Rajko ŠLJOKAVICA, rođena ŠnepoznatoC
10 Radoslav KUKAVICA, rođen 28 oktobra 1961
11 Miroslav JANJIC, rođen 18 juna 1964
12 Boro CVIJIC, rođen 15 novembra 1947

B *Spisak otpuštenih radnika iz preduzeca*

1 Dragoljub TRIVANOVIC otpušten 11 decembra 1996 sa retroaktivnim važenjem od 31 oktobra 1996
2 Mirko ŠURLAN otpušten 11 decembra 1996 sa retroaktivnim važenjem od 9 jula 1996
3 Milos JANČIC, otpušten 11 decembra 1996 sa retroaktivnim važenjem od 18 juna 1996
4 Ljiljana GAJIC otpuštena 25 decembra 1996
5 Dragojla VUJANOVIC, otpuštena 27 februara 1997

ANNEX

A *List of employees suspended in the course of July 1996 and against whom disciplinary proceedings were introduced in August 1996*

1 Simo ZGONJANIN, born on November 1950
2 Miloš JANJIC, born on 11 March 1960
3 Ljiljana GAJIC, born on 13 October 1963
4 Dragojla VUJANOVIC, born on 21 September 1953
5 Nada ZGONJANIN, born on 9 January 1953
6 Radomir ŠURLAN, born on (unspecified)
7 Miroslav STANKOVIĆ, born on 19 November 1963
8 Mladen SMILJANIC, born on 11 November 1969
9 Rajko ŠLJOKAVICA, born on (unspecified)
10 Radoslav KUKAVICA, born on 28 October1961
11 Miroslav JANJIC, born on 18 June 1964
12 Boro CVIJIC, born on 15 November1974

B *List of employees dismissed from the company*

1 Dragoljup TRIVANOVIC, dismissed on 11 December 1996 with retroactive effect as from 31 October 1996
2 Mirko ŠURLAN, dismissed on 11 December 1996 with retroactive effect as from 9 July 1996
3 Miloš JANCIC, dismissed on 11 December 1996 with retroactive effect as from 18 June 1996
4 Ljiljana GAJIC dismissed on 25 December 1996
5 Dragojla VUJANOVIC, dismissed on 27 February 1997